

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1503 Session of
2009

INTRODUCED BY GALLOWAY, METCALFE, BELFANTI, GERGELY, BOYLE,
BEYER, BRENNAN, CARROLL, D. COSTA, FABRIZIO, FRANKEL,
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MENSCH, MOUL, MURT, M. O'BRIEN, RAPP, READSHAW, SABATINA,
SIPTROTH, M. SMITH, SOLOBAY, VULAKOVICH, WAGNER, WANSACZ,
WATSON, WHITE, YUDICHAK AND OBERLANDER, JUNE 2, 2009

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 2, 2009

AN ACT

1 Requiring construction industry employers to verify the Social
2 Security numbers of all employees for purposes of wage
3 reporting and employment eligibility; providing for the
4 powers and duties of the Department of Labor and Industry;
5 prescribing sanctions; and establishing good faith immunity
6 under certain circumstances.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Construction
11 Industry Employment Verification Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly states otherwise:

16 "Construction." Erection, reconstruction, demolition,
17 alteration, modification, custom fabrication, building,
18 assembling, site preparation and repair work or maintenance work

1 done on any real property or premises under contract, whether or
2 not the work is for a public body or paid for from public funds.

3 "Construction industry employer." An individual,
4 partnership, association, joint stock company, corporation,
5 business trust or any other business entity, person or groups of
6 persons:

7 (1) that acts directly or indirectly to employ persons
8 to provide or perform services in the construction industry
9 for remuneration; and

10 (2) whose aggregate remuneration for providing
11 construction services to others in a calendar year exceeds
12 \$25,000.

13 "Employee." An individual for whom a construction industry
14 employer is required by law to file a Form W-2 with the Internal
15 Revenue Service.

16 "EVP." The E-Verify Program operated by the Department of
17 Homeland Security.

18 "IRCA." The Immigration and Nationality Act (66 Stat. 163, 8
19 U.S.C. § 1101 et seq.).

20 "NVS." The Social Security Number Verification Service
21 operated by the Social Security Administration.

22 "Secretary." The Secretary of Labor and Industry of the
23 Commonwealth.

24 "Willful." Action or conduct undertaken intentionally or
25 with reckless disregard for or deliberate ignorance of the
26 requirements and obligations established by this act.

27 Section 3. Verification.

28 (a) Duty of construction industry employers.--A construction
29 industry employer shall participate in NVS and EVP and shall do
30 the following, subject to the requirements of Federal law

1 governing the use of NVS and EVP:

2 (1) within 30 days following the effective date of this
3 section, use NVS to verify for wage reporting purposes the
4 Social Security numbers of its employees in existence on the
5 effective date of this section; and

6 (2) prior to the commencement of work by a new employee,
7 use EVP to verify for employment eligibility purposes the
8 Social Security number of the new employee.

9 (b) Verification statements.--A construction industry
10 employer shall submit a verification statement annually to the
11 Department of Revenue with its State income tax return. The
12 statement shall be on a form prescribed by the Department of
13 Revenue and shall comply with the following requirements:

14 (1) The statement shall represent that the construction
15 industry employer has verified the Social Security numbers of
16 its employees through NVS or EVP, as appropriate.

17 (2) The statement shall include a certification that the
18 information in the statement is true and correct and that the
19 person signing the statement understands that the submission
20 of false or misleading information in connection with the
21 verification shall subject the person and the construction
22 industry employer to sanctions provided by law.

23 (3) The statement shall be signed by a representative of
24 the construction industry employer who has sufficient
25 knowledge and authority to make the representation and
26 certifications contained in the statement.

27 (c) Discrimination prohibited.--In conducting the Social
28 Security number verification required by this section, a
29 construction industry employer shall not discriminate against an
30 employee on the basis of race, ethnicity, color or national

1 origin.

2 Section 4. Violations.

3 It is a violation of this act for a construction industry
4 employer to:

5 (1) Employ an employee whose Social Security number has
6 not been verified by NVS or EVP as required by this act.

7 (2) Make a false statement or misrepresentation in a
8 verification statement required by this act.

9 Section 5. Enforcement and sanctions.

10 (a) General rule.--The secretary shall enforce the
11 provisions of this act.

12 (b) Investigation of complaints.--The secretary shall
13 accept, review and investigate in a timely manner any credible
14 complaint that a construction industry employer has violated a
15 provision of this act.

16 (c) Audits.--To ensure compliance with the requirements of
17 this act, the secretary shall conduct complaint-based and random
18 audits of construction industry employers in this Commonwealth.
19 In conducting such audits, the secretary shall utilize NVS and
20 EVP to verify the Social Security numbers for wage reporting
21 purposes and employment eligibility of employees in accordance
22 with Federal law governing the use of those systems.

23 (d) Sanctions.--The following sanctions shall apply to a
24 violation of section 724A of IRCA or of this act:

25 (1) A construction industry employer that violates
26 section 724A of IRCA or engages in the violation described in
27 section 4(1) may be required, at the discretion of the
28 secretary, to forfeit all licenses or certifications issued
29 by the Commonwealth that authorize the construction industry
30 employer to conduct business in this Commonwealth, including

1 corporate articles and franchises for a period of up to three
2 years.

3 (2) A construction industry employer that willfully
4 violates section 724A of IRCA or willfully engages in the
5 violation described in section 4(1) shall be required to
6 forfeit all licenses or certifications issued by the
7 Commonwealth that authorize the construction industry
8 employer to conduct business in this Commonwealth, including
9 corporate articles and franchises, for a period of 3 years.

10 (3) The Office of Attorney General shall have the same
11 authority to revoke corporate articles and franchises under
12 this act as it has under 15 Pa.C.S. § 503 (relating to
13 actions to revoke corporate franchises).

14 Section 6. Protection from retaliation.

15 (a) General Rule.--It shall be unlawful for a construction
16 industry employer to discharge, threaten or otherwise retaliate
17 or discriminate against an employee regarding compensation or
18 other terms or conditions of employment because the employee:

19 (1) participates in an investigation, hearing or inquiry
20 held by the secretary or any other governmental authority
21 under this act; or

22 (2) reports or makes a complaint regarding the violation
23 of this act to a construction industry employer or
24 governmental authority.

25 (b) Actions.--

26 (1) An employee who suffers retaliation or
27 discrimination in violation of this section may bring an
28 action in a court of common pleas in accordance with
29 established civil procedures of this Commonwealth.

30 (2) The action must be brought within three years from

1 the date the employee knew of the retaliation or
2 discrimination.

3 (c) Relief.--If an employee prevails in an action commenced
4 under this section, the employee shall be entitled to the
5 following relief:

6 (1) Reinstatement of the employee, if applicable.

7 (2) Restitution equal to three times the amount of the
8 employee's wages and fringe benefits calculated from the date
9 of the retaliation or discrimination.

10 (3) Reasonable attorney fees and costs of the action.

11 (4) Any other legal and equitable relief as the court
12 deems appropriate.

13 Section 7. Good faith immunity.

14 A construction industry employer that relies in good faith on
15 NVS and EVP procedures to verify the Social Security number of
16 employees shall be immune from the sanctions authorized under
17 section 5 in the event that incorrect information has been
18 provided to the construction industry employer.

19 Section 8. Effective date.

20 This act shall take effect in 60 days.