

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1170 Session of 2019

INTRODUCED BY MACKENZIE, GALLOWAY, BARRAR, T. DAVIS, KEEFER, MILLARD, NEILSON, READSHAW, MENTZER, EMRICK AND KORTZ, APRIL 9, 2019

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 4, 2019

AN ACT

1 Prohibiting the employment of unauthorized employees; requiring  
2 construction industry employers to verify the Social Security  
3 numbers of employees; and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Construction  
8 Industry Employee Verification Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Agency." An agency, department, board or commission of the  
14 Commonwealth or of a municipality that issues a license for  
15 purposes of operating a business in this Commonwealth.

16 "Construction industry." The industry which engages in the  
17 erection, reconstruction, demolition, alteration, modification,

1 custom fabrication, building, assembling, site preparation and  
2 repair work or maintenance work done on real property or  
3 premises under a contract, including work for a public body or  
4 work paid for from public funds.

5 "Construction industry employer." An individual, entity or  
6 organization that transacts business in this Commonwealth in the  
7 construction industry, has a license issued by an agency and  
8 employs at least one employee in this Commonwealth. THE TERM <--  
9 INCLUDES A STAFFING AGENCY THAT SUPPLIES WORKERS TO A  
10 CONSTRUCTION INDUSTRY EMPLOYER.

11 "DEPARTMENT." THE DEPARTMENT OF LABOR AND INDUSTRY OF THE  
12 COMMONWEALTH.

13 "EMPLOY." TO ENTER INTO AN EMPLOYER-EMPLOYEE RELATIONSHIP  
14 WITH AN INDIVIDUAL OR TO USE A CONTRACT, SUBCONTRACT OR EXCHANGE  
15 WITH AN INDIVIDUAL TO OBTAIN LABOR.

16 "Employee." ~~An individual for whom a construction industry~~ <--  
17 ~~employer is required by law to file a Form W-2 with the Internal~~  
18 ~~Revenue Service.~~ AN INDIVIDUAL WHO HAS ENTERED INTO AN EMPLOYER- <--  
19 EMPLOYEE RELATIONSHIP WITH A CONSTRUCTION INDUSTRY EMPLOYER OR  
20 ENTERS INTO A CONTRACT, SUBCONTRACT OR EXCHANGE WITH A  
21 CONSTRUCTION INDUSTRY EMPLOYER TO PROVIDE LABOR.

22 "Employer." A construction industry employer.

23 "E-Verify program." The Internet-based program administered  
24 by the United States Department of Homeland Security and the  
25 United States Social Security Administration which allows  
26 employers to verify an employee's work-authorization status. The  
27 term includes any successor program.

28 "License." A permit, certificate, approval, registration,  
29 charter or similar form of authorization that is required by law  
30 and issued by an agency for the purposes of operating a business

1 in this Commonwealth. The term includes articles of  
2 incorporation and partnership registrations. The term does not  
3 include a professional or occupational license or certificate  
4 granted to an individual to engage in a profession or trade.

5 "SUBCONTRACTOR." A PERSON REGARDLESS OF TIER, INCLUDING, BUT <--  
6 NOT LIMITED TO, A STAFFING AGENCY THAT SUPPLIES WORKERS TO A  
7 CONSTRUCTION INDUSTRY EMPLOYER UNDER A CONTRACT. THE TERM SHALL  
8 NOT INCLUDE PERSONS THAT ARE MATERIAL SUPPLIERS FOR A PROJECT.

9 "Unauthorized employee." An individual who does not have the  
10 legal right or authorization under Federal law to work in the  
11 United States.

12 Section 3. Prohibited employment.

13 (a) Prohibition.--An employer may not knowingly employ an  
14 unauthorized employee.

15 (b) Verification.--On and after the effective date of this  
16 section, each employer who hires an employee shall verify the  
17 employment eligibility of the employee through the E-Verify  
18 program and shall keep a record of the verification for the  
19 duration of the employee's employment or three years, whichever  
20 is longer.

21 (C) STAFFING AGENCIES.--IF A STAFFING AGENCY SUPPLIES <--  
22 WORKERS TO MULTIPLE INDUSTRIES, SUBSECTIONS (A) AND (B) SHALL  
23 ONLY APPLY TO WORKERS SUPPLIED FOR THE CONSTRUCTION INDUSTRY.

24 Section 4. Procedures, presumptions and defenses.

25 (A) COMPLAINTS.--A COMPLAINT ABOUT A VIOLATION OF SECTION <--  
26 3(A) MAY BE SUBMITTED TO THE DEPARTMENT.

27 ~~(a)~~ (B) Form.--The ~~Attorney General~~ DEPARTMENT shall <--  
28 prescribe a complaint form for an individual to allege a  
29 violation of section 3(a). An individual who knowingly provides  
30 materially false information in a complaint form under this

1 subsection shall be subject to punishment under 18 Pa.C.S. §  
2 4904 (relating to unsworn falsification to authorities).

3 ~~(b)~~ (C) Duty to investigate.--Upon receipt of a complaint on <--  
4 a prescribed complaint form alleging that an employer knowingly  
5 employs an unauthorized employee, the ~~Attorney General~~ <--  
6 DEPARTMENT shall investigate whether the employer has violated <--  
7 section 3(a).

8 ~~(c)~~ (D) Authority to investigate.--The ~~Attorney General~~ <--  
9 DEPARTMENT may investigate a complaint that is not submitted on <--  
10 a prescribed complaint form, including an anonymous complaint.

11 ~~(d)~~ (E) Prohibition.--The ~~Attorney General~~ DEPARTMENT may <--  
12 not investigate a complaint that is based solely on race, color  
13 or national origin.

14 ~~(e)~~ (F) Verification.--If investigating a complaint, the <--  
15 ~~Attorney General~~ DEPARTMENT shall verify the work authorization <--  
16 of the alleged unauthorized employee with the Federal Government  
17 under section 642(c) of the Illegal Immigration Reform and  
18 Immigrant Responsibility Act of 1996 (Public Law 104-208, 8  
19 U.S.C. § 1373(c)). A Commonwealth or local official may not  
20 attempt to independently make a final determination on whether  
21 an unauthorized employee is authorized to work in the United  
22 States.

23 ~~(f)~~ (G) Notification and action.--If, after an <--  
24 investigation, the ~~Attorney General~~ DEPARTMENT determines that <--  
25 the alleged employee is an unauthorized employee, the ~~Attorney~~ <--  
26 ~~General~~ DEPARTMENT shall do all of the following: <--

27 ~~(1) Notify United States Immigration and Customs~~ <--  
28 ~~Enforcement of the unauthorized employee.~~

29 ~~(2) Bring~~ (1) FOR A FIRST VIOLATION, THE DEPARTMENT <--  
30 SHALL ISSUE A WARNING LETTER DETAILING THE VIOLATION AND

1 INFORMING THE CONSTRUCTION INDUSTRY EMPLOYER OF THE  
2 PROVISIONS OF THIS ACT. NOTWITHSTANDING PARAGRAPH (2), A  
3 VIOLATION BY A CONSTRUCTION INDUSTRY EMPLOYER THAT OCCURS 10  
4 YEARS OR MORE AFTER A PRIOR VIOLATION SHALL BE DEEMED A FIRST  
5 VIOLATION. THE FOLLOWING SHALL APPLY:

6 (I) THE DEPARTMENT MAY NOT ISSUE A WARNING LETTER IF  
7 THE EMPLOYER DEMONSTRATES THAT THE EMPLOYMENT ELIGIBILITY  
8 OF THE UNAUTHORIZED EMPLOYEE WAS VERIFIED IN GOOD FAITH  
9 THROUGH THE E-VERIFY PROGRAM IN ACCORDANCE WITH SECTION  
10 3(B).

11 (II) AFTER THE ISSUANCE OF A WARNING LETTER, THE  
12 EMPLOYER SHALL VERIFY IN WRITING TO THE DEPARTMENT WITHIN  
13 10 BUSINESS DAYS THAT THE EMPLOYER HAS TERMINATED THE  
14 EMPLOYMENT OF EACH UNAUTHORIZED EMPLOYEE IN THIS  
15 COMMONWEALTH. IF THE EMPLOYER FAILS TO PROVIDE SUCH  
16 VERIFICATION, THE VIOLATION SHALL CONSTITUTE A SECOND  
17 VIOLATION, AND THE DEPARTMENT SHALL MAKE A REFERRAL TO  
18 THE ATTORNEY GENERAL UNDER PARAGRAPH (2).

19 (III) THE EMPLOYER MAY APPEAL THE ISSUANCE OF THE  
20 WARNING LETTER UNDER THE PROVISIONS OF 2 PA.C.S.  
21 (RELATING TO ADMINISTRATIVE LAW AND PROCEDURE).

22 (2) FOR A SECOND OR SUBSEQUENT VIOLATION, THE DEPARTMENT  
23 SHALL REFER THE CASE TO THE ATTORNEY GENERAL FOR ENFORCEMENT.  
24 THE ATTORNEY GENERAL SHALL BRING an action against the  
25 employer in the county where the unauthorized employee is or  
26 was employed by the employer. The Attorney General shall not  
27 bring an action against an employer for a violation that  
28 occurred before the effective date of this section.

29 ~~(g)~~ (H) Expedited action.--Upon docketing, the court shall <--  
30 expedite the action, including assigning the hearing at the

1 earliest practicable date.

2 ~~(h)~~ (I) Determination.--In determining whether an employee <--  
3 is an unauthorized employee, the court shall consider only the  
4 Federal Government's determination under section 642(c) of the  
5 Illegal Immigration Reform and Immigrant Responsibility Act of  
6 1996. The Federal Government's determination shall create a  
7 rebuttable presumption of the employee's status. The court may  
8 take judicial notice of the Federal Government's determination  
9 and may request the Federal Government to provide automated or  
10 testimonial verification under section 642(c) of the Illegal  
11 Immigration Reform and Immigrant Responsibility Act of 1996.

12 ~~(i)~~ (J) Rebuttable presumption.--Proof that the employer <--  
13 verified the employment authorization of an employee through the  
14 E-Verify program shall create a rebuttable presumption that an  
15 employer did not knowingly employ an unauthorized employee.

16 ~~(j)~~ (K) Affirmative defense.--For the purposes of this <--  
17 section, it shall be an affirmative defense if the employer  
18 demonstrates that it has complied in good faith with section  
19 274A(b) of the Immigration and Nationality Act (66 Stat. 163, 8  
20 U.S.C. § 1324a(b)). An employer shall be considered to have  
21 complied with section 274A(b) of the Immigration and Nationality  
22 Act, notwithstanding an isolated, sporadic or accidental  
23 technical or procedural failure to meet the requirements, if the  
24 employer establishes a good faith attempt to comply with section  
25 274A(b) of the Immigration and Nationality Act.

26 Section 5. Penalties and remedial orders.

27 (a) Order.--Upon a finding of a violation under section 3(a)  
28 PURSUANT TO AN ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER THIS <--  
29 ACT, the court shall order all of the following:

30 (1) The employer to terminate the employment of each

1 unauthorized employee.

2 (2) The employer to a three-year probationary period for  
3 each business location where the unauthorized employee  
4 performed work. During the probationary period the employer:

5 (i) shall file quarterly reports with the ~~Attorney~~ <--  
6 ~~General~~ DEPARTMENT of each new employee who is hired by <--  
7 the employer at the business location where the  
8 unauthorized employee performed work; and

9 (ii) may not knowingly employ an unauthorized  
10 employee.

11 (3) The employer, within ~~three~~ FIVE business days, to <--  
12 verify in writing to the ~~Attorney General~~ DEPARTMENT that the <--  
13 employer has terminated the employment of each unauthorized  
14 employee in this Commonwealth.

15 (4) Agencies to suspend each license that is held by the  
16 employer if the employer fails to timely submit the  
17 verification. Each license that is suspended under this  
18 paragraph shall remain suspended until the employer complies.  
19 Notwithstanding any other law, on filing of the verification,  
20 each license shall be reinstated immediately by the  
21 appropriate agency. For the purposes of this paragraph, a  
22 license that is subject to suspension under this paragraph  
23 shall include each license that is held by the employer  
24 specific to the business location where the unauthorized  
25 employee performed work. If the employer does not hold a  
26 license specific to the business location where the  
27 unauthorized employee performed work, the court shall order  
28 suspension of each license that is held by the employer  
29 pertaining to operations anywhere within this Commonwealth.

30 (b) Duration.--The following shall apply:

1 (1) For a ~~first~~ SECOND violation of section 3(a), the <--  
2 court may order the agency to suspend each license described  
3 under subsection (a)(4) that is held by the employer for a  
4 period not to exceed ~~10~~ 30 business days. <--

5 (2) For a SUBSEQUENT VIOLATION OF SECTION 3(A) OR A <--  
6 violation occurring during a three-year probationary period  
7 under subsection (a)(2), the court ~~may~~ SHALL order suspension <--  
8 for a term not ~~to exceed~~ LESS THAN one year UP TO THE <--  
9 PERMANENT REVOCATION OF EACH LICENSE.

10 (c) Factors.--In determining whether to order suspension or  
11 the duration of a suspension, the court shall consider the  
12 following factors:

13 (1) The number of unauthorized employees employed by the  
14 employer.

15 (2) Any prior misconduct by the employer.

16 (3) The degree of harm resulting from the violation.

17 (4) Whether the employer made good faith efforts to  
18 comply with any applicable requirements.

19 (5) The duration of the violation.

20 (6) The role of the directors, officers or principals of  
21 the employer in the violation.

22 (7) Any other factors the court deems appropriate.

23 (D) SUSPENSION AND REINSTATEMENT FEES.--NOTHING IN THIS ACT <--  
24 SHALL PROHIBIT AN AGENCY FROM CHARGING ANY APPLICABLE FEE FOR  
25 THE SUSPENSION OR REINSTATEMENT OF A LICENSE.

26 SECTION 6. PROTECTION FROM RETALIATION.

27 (A) GENERAL RULE.--IT SHALL BE UNLAWFUL FOR A CONSTRUCTION  
28 INDUSTRY EMPLOYER TO DISCHARGE, THREATEN OR OTHERWISE RETALIATE  
29 OR DISCRIMINATE AGAINST AN EMPLOYEE REGARDING COMPENSATION OR  
30 OTHER TERMS OR CONDITIONS OF EMPLOYMENT BECAUSE THE EMPLOYEE:



1 (1) PARTICIPATES IN AN INVESTIGATION, HEARING OR INQUIRY  
2 HELD BY THE SECRETARY OF LABOR AND INDUSTRY OR ANY OTHER  
3 GOVERNMENTAL AUTHORITY UNDER THIS ACT; OR

4 (2) REPORTS OR MAKES A COMPLAINT REGARDING THE VIOLATION  
5 OF THIS ACT TO A CONSTRUCTION INDUSTRY EMPLOYER OR  
6 GOVERNMENTAL AUTHORITY.

7 (B) ACTIONS.--

8 (1) AN EMPLOYEE WHO SUFFERS RETALIATION OR  
9 DISCRIMINATION IN VIOLATION OF THIS SECTION MAY BRING AN  
10 ACTION IN A COURT OF COMMON PLEAS IN ACCORDANCE WITH  
11 ESTABLISHED CIVIL PROCEDURES OF THIS COMMONWEALTH.

12 (2) THE ACTION MUST BE BROUGHT WITHIN THREE YEARS FROM  
13 THE DATE THE EMPLOYEE KNEW OF THE RETALIATION OR  
14 DISCRIMINATION.

15 (C) RELIEF.--IF AN EMPLOYEE PREVAILS IN AN ACTION COMMENCED  
16 UNDER THIS SECTION, THE EMPLOYEE SHALL BE ENTITLED TO THE  
17 FOLLOWING RELIEF:

18 (1) REINSTATEMENT OF THE EMPLOYEE, IF APPLICABLE.

19 (2) RESTITUTION EQUAL TO THREE TIMES THE AMOUNT OF THE  
20 EMPLOYEE'S WAGES AND FRINGE BENEFITS CALCULATED FROM THE DATE  
21 OF THE RETALIATION OR DISCRIMINATION.

22 (3) REASONABLE ATTORNEY FEES AND COSTS OF THE ACTION.

23 (4) ANY OTHER LEGAL AND EQUITABLE RELIEF AS THE COURT  
24 DEEMS APPROPRIATE.

25 SECTION 7. IMMUNITY AND COMPLIANCE.

26 (A) IMMUNITY.--A CONSTRUCTION INDUSTRY EMPLOYER THAT RELIES  
27 IN GOOD FAITH ON THE E-VERIFY PROGRAM TO VERIFY EMPLOYMENT  
28 ELIGIBILITY OF NEW EMPLOYEES UNDER THIS ACT SHALL HAVE NO  
29 LIABILITY TO AN INDIVIDUAL WHO IS NOT HIRED OR WHO IS DISCHARGED  
30 FROM EMPLOYMENT IF INCORRECT INFORMATION HAS BEEN PROVIDED TO

1 THE CONSTRUCTION INDUSTRY EMPLOYER.

2 (B) CONTRACTOR AND SUBCONTRACTOR COMPLIANCE.--EXCEPT AS  
3 PROVIDED IN SUBSECTION (C), NOTHING IN THIS ACT MAY BE CONSTRUED  
4 TO RENDER A CONTRACTOR RESPONSIBLE FOR A VIOLATION OF SECTION  
5 3(A) BY A SUBCONTRACTOR OR A SUBCONTRACTOR RESPONSIBLE FOR A  
6 VIOLATION BY ANOTHER SUBCONTRACTOR.

7 (C) GENERAL CONTRACTOR RESPONSIBILITY.--A CONTRACTOR SHALL  
8 NOT BE CONSIDERED IN VIOLATION OF SECTION 3(A) WHEN A  
9 SUBCONTRACTOR HAS KNOWINGLY EMPLOYED AN UNAUTHORIZED EMPLOYEE,  
10 IF THE CONTRACTOR HAS DONE THE FOLLOWING:

11 (1) REQUIRED COMPLIANCE WITH THIS ACT IN THE CONTRACT  
12 WITH THE SUBCONTRACTOR, INCLUDING PROVIDING FOR THE  
13 TERMINATION OF THE CONTRACT UPON A VIOLATION OF THIS ACT BY  
14 THE SUBCONTRACTOR.

15 (2) OBTAINED WRITTEN VERIFICATION FROM THE SUBCONTRACTOR  
16 THAT THE SUBCONTRACTOR IS AWARE OF THE PROVISIONS OF THIS ACT  
17 AND IS RESPONSIBLE FOR COMPLIANCE.

18 Section ~~6~~ 8. Effective date.

<--

19 This act shall take effect ~~in 60 days~~ JULY 1, 2020.

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