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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 817 Session of  
2021

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INTRODUCED BY KANE, TARTAGLIONE, L. WILLIAMS, SAVAL, FONTANA,  
CAPPELLETTI, COSTA, HUGHES, MUTH, COMMITTA, COLLETT,  
SANTARSIERO, FLYNN, HAYWOOD AND KEARNEY, JULY 26, 2021

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REFERRED TO LABOR AND INDUSTRY, JULY 26, 2021

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AN ACT

1 Amending the act of October 13, 2010 (P.L.506, No.72), entitled  
2 "An act providing for the criteria for independent  
3 contractors in the construction industry and for the powers  
4 and duties of the Department of Labor and Industry and the  
5 Secretary of Labor and Industry; and imposing penalties,"  
6 further providing for definitions, for improper  
7 classification of employees, for criminal penalties, for  
8 administrative penalties and for availability of information.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Section 2 of the act of October 13, 2010  
12 (P.L.506, No.72), known as the Construction Workplace  
13 Misclassification Act, is amended by adding a definition to  
14 read:

15 Section 2. Definitions.

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

19 \* \* \*

20 "Debar." Action taken by the secretary to prohibit a

1 contractor, subcontractor or individual from contracting with or  
2 participating in contracts for State-supervised or State-funded  
3 construction for a specified period or permanently. The  
4 debarment will include all divisions or other organizational  
5 elements of a contractor or subcontractor unless limited by its  
6 terms to specific divisions or organizational elements. The  
7 debarment may apply to affiliates or other individuals or  
8 entities associated with the contractor, subcontractor or  
9 individual if they are specifically named and given written  
10 notice of the debarment and an opportunity to appeal.

11 \* \* \*

12 Section 2. Section 4(d) and (e) of the act are amended to  
13 read:

14 Section 4. Improper classification of employees.

15 \* \* \*

16 (d) Enforcement.--If, subsequent to issuing an order to show  
17 cause under subsection (c), the secretary finds [probable cause  
18 that an employer has committed a criminal violation of this act,  
19 the secretary shall refer the matter to the Office of Attorney  
20 General for investigation or] that an employer has violated the  
21 Workers' Compensation Act, the secretary shall impose  
22 administrative penalties under section 6. In addition, the  
23 secretary may refer the matter to the Attorney General for  
24 criminal investigation. The secretary shall make a referral if  
25 the employer has previously been found in violation of this act  
26 in another matter. The Attorney General has jurisdiction under  
27 section 5 to initiate an investigation or prosecution of  
28 criminal violations of this act regardless of whether a referral  
29 has been made.

30 (e) Acting in concert with other parties.--A party that does

1 not meet the definition of "employer" in section 2, but which  
2 [intentionally] contracts with an employer [knowing the employer  
3 intends to misclassify] to supply labor for construction knowing  
4 the employer will misclassify the supplied employees in  
5 violation of this act, shall be subject to the same penalties,  
6 remedies or other actions as the employer found to be in  
7 violation of this act.

8 \* \* \*

9 Section 3. Section 5(a) of the act is amended and the  
10 section is amended by adding a subsection to read:

11 Section 5. Criminal penalties.

12 (a) Grading.--[An employer, or officer or agent of an  
13 employer, that intentionally violates section 4(a) commits:

14 (1) A misdemeanor of the third degree for a first  
15 offense.

16 (2) A misdemeanor of the second degree for a second or  
17 subsequent offense.] The following shall apply:

18 (1) An employer, or officer or agent of an employer who  
19 knowingly violates section 4(a) commits:

20 (i) A misdemeanor of the first degree if the  
21 employer has no prior offense under section 4(a).

22 (ii) A felony of the third degree if the employer  
23 has one or more prior offenses under section 4(a).

24 (2) An employer, or officer or agent of an employer, who  
25 knowingly violates section 4(a)(1), and who knows that the  
26 misclassified employee does not have the legal right or  
27 authorization under Federal law to work in the United States,  
28 commits:

29 (i) A felony of the third degree if the employer has  
30 no prior offense under section 4(a)(1).

1           (ii) A felony of the second degree if the employer  
2           has one or more prior offenses under section 4(a)(1).

3           \* \* \*

4           (d) Definitions.--As used in this section, the following  
5           words and phrases shall have the meanings given to them in this  
6           subsection unless the context clearly indicates otherwise:

7           "Prior offense." A conviction of a violation of section 4,  
8           if the judgment of sentence was imposed before the defendant is  
9           sentenced for a separate violation of section 4.

10          Section 4. Section 6 of the act is amended by adding a  
11          subsection to read:

12          Section 6. Administrative penalties.

13          \* \* \*

14          (c) Intentional violation.--If the secretary determines that  
15          a violation of this act was intentional, the secretary shall  
16          debar, for a set period or permanently, a contractor,  
17          subcontractor or individual from bidding on or participating in  
18          State-supervised construction.

19          Section 5. Section 11 of the act is amended to read:

20          Section 11. Availability of information.

21          The department shall create a poster [for job sites] which  
22          outlines the requirements and penalties under this act and shall  
23          make the poster available on its Internet website. Every  
24          employer subject to this act shall keep a summary of this act  
25          and any regulations issued thereunder applicable to him or her,  
26          posted in a conspicuous place where employees normally pass and  
27          can read it, both on job sites and any and all places of  
28          business. At the discretion of the secretary, a toll-free  
29          hotline telephone number may be established to receive alleged  
30          violations.

1 Section 6. This act shall take effect in 60 days.