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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 577 Session of  
2023

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INTRODUCED BY KANE, TARTAGLIONE, L. WILLIAMS, FONTANA, KEARNEY,  
HUGHES, COLLETT, HAYWOOD, COSTA, DILLON, CAPPELLETTI,  
SANTARSIERO AND STREET, APRIL 19, 2023

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REFERRED TO LABOR AND INDUSTRY, APRIL 19, 2023

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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 and for criminal penalties;  
8 providing for private right of action; and further providing  
9 for administrative penalties, for retaliation for action  
10 prohibited, for availability of information and for funding.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

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

17 Section 2. Definitions.

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

21 \* \* \*

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

13 \* \* \*

14 Section 2. Section 4(c)(2), (d) and (e) of the act are  
15 amended to read:

16 Section 4. Improper classification of employees.

17 \* \* \*

18 (c) Order to show cause.--

19 \* \* \*

20 (2) A person served with an order to show cause shall  
21 have a period of [20] 10 days from the date the order is  
22 served to file an answer in writing.

23 \* \* \*

24 (d) Enforcement.--

25 (1) If, subsequent to issuing an order to show cause  
26 under subsection (c), the secretary finds [probable cause  
27 that an employer has committed a criminal violation of this  
28 act, the secretary shall refer the matter to the Office of  
29 Attorney General for investigation or] that an employer has  
30 violated the Workers' Compensation Act, the secretary shall

1 impose administrative penalties under section 6.

2 (2) In addition to imposing penalties under paragraph  
3 (1), the secretary may refer the matter to the Attorney  
4 General for criminal investigation. The secretary shall make  
5 a referral if the employer has previously been found in  
6 violation of this act in another matter. The Attorney General  
7 has jurisdiction under section 5 to initiate an investigation  
8 or prosecution of criminal violations of this act regardless  
9 of whether a referral has been made.

10 (e) Acting in concert with other parties.--A party that does  
11 not meet the definition of "employer" in section 2, but which  
12 [intentionally] contracts with an employer [knowing the employer  
13 intends to misclassify] to supply labor for construction knowing  
14 the employer will misclassify the supplied employees in  
15 violation of this act, shall be subject to the same penalties,  
16 remedies or other actions as the employer found to be in  
17 violation of this act.

18 \* \* \*

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

21 Section 5. Criminal penalties.

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

24 (1) A misdemeanor of the third degree for a first  
25 offense.

26 (2) A misdemeanor of the second degree for a second or  
27 subsequent offense.] An employer, or officer or agent of an  
28 employer, who knowingly violates section 4(a) commits:

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

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

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. The act is amended by adding a section to read:

11          Section 5.1. Private right of action.

12          (a) General rule.--An employee who has been misclassified in  
13          violation of this act, or has been discharged, threatened or has  
14          otherwise suffered retaliation, discrimination or other adverse  
15          action as a result of participating in an investigation or  
16          reporting a violation of this act may bring a private right of  
17          action in a court of common pleas in accordance with established  
18          civil procedures of this Commonwealth.

19          (b) Time.--The action must be brought within three years  
20          from the date that the employee knew of the violation,  
21          retaliation or discrimination.

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

25                  (1) Reinstatement of the employee without a loss in  
26                  seniority status, if applicable.

27                  (2) Restitution equal to three times the amount of the  
28                  employee's wages and fringe benefits calculated from the date  
29                  of the violation, retaliation or discrimination.

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

1           (4) Other legal and equitable relief the court deems  
2           appropriate to make the employee whole.

3           Section 5. Sections 6(a) and 10(a) of the act are amended  
4 and the sections are amended by adding subsections to read:

5 Section 6. Administrative penalties.

6           (a) General rule.--When the secretary finds that a person  
7 has violated this act, the secretary may [assess]:

8           (1) Assess and collect civil penalties of not more than  
9           \$1,000 for the first violation, and not more than \$2,500 for  
10           each subsequent violation.

11           (2) Order a financial audit or tax audit of the person.

12           \* \* \*

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

19 Section 10. Retaliation for action prohibited.

20           (a) General rule.--It shall be unlawful for an employer, or  
21 officer or agent of an employer, to [discriminate in any manner  
22 or take adverse action against any person in retaliation for  
23 exercising rights protected under this act. Rights protected  
24 under this act include, but are not limited to, the right to  
25 file a complaint or inform any person about an employer's  
26 noncompliance with this act.] discharge, threaten or otherwise  
27 retaliate or discriminate in any manner against an employee  
28 regarding compensation or other terms or conditions of  
29 employment because the employee:

30           (1) participates in an investigation, hearing or inquiry

1 by the secretary or any governmental authority; or

2 (2) reports or makes a complaint regarding the violation  
3 of this act to a construction industry employer or any  
4 governmental authority.

5 (a.1) Action.--An employee who suffers retaliation or  
6 discrimination in violation of this section may bring a private  
7 right of action under section 5.1.

8 \* \* \*

9 Section 6. Sections 11 and 17 of the act are amended to  
10 read:

11 Section 11. Availability of information.

12 The department shall create a poster [for job sites] which  
13 outlines the requirements and penalties under this act and shall  
14 make the poster available on its Internet website. Every  
15 employer subject to this act shall keep a summary of this act  
16 and any regulations issued under this act applicable to the  
17 employer, posted in a conspicuous place where employees normally  
18 pass and can read it, both on job sites and in all places of  
19 business. At the discretion of the secretary, a toll-free  
20 hotline telephone number may be established to receive alleged  
21 violations.

22 Section 17. Funding.

23 (a) Enforcement.--The department shall not be required to  
24 enforce this act until adequate funding is appropriated.

25 (b) Recovery of fees and costs.--The department, Office of  
26 Attorney General or a district attorney's office shall be  
27 entitled to recover attorney fees and costs associated with the  
28 investigation of construction worker misclassification from  
29 employers who violate the provisions of this act.

30 Section 7. This act shall take effect in 60 days.