

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1781 Session of 2017

INTRODUCED BY F. KELLER, COX, GROVE, MCGINNIS AND MILNE, SEPTEMBER 12, 2017

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 1, 2018

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An
2 act defining the liability of an employer to pay damages for
3 injuries received by an employe in the course of employment;
4 establishing an elective schedule of compensation; providing
5 procedure for the determination of liability and compensation
6 thereunder; and prescribing penalties," in liability and
7 compensation, providing for registration of status as
8 independent contractor.

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

11 Section 1. The act of June 2, 1915 (P.L.736, No.338), known
12 as the Workers' Compensation Act, is amended by adding a section
13 to read:

14 Section 304.3. (a) Notwithstanding any other provision of
15 law THIS ACT, a person may file a registration with the
16 department regarding the status of an individual who is
17 classified for Federal income tax purposes as an independent
18 contractor of the person.

19 (b) A registration under this section shall include the
20 following:

<--

1 (1) A written waiver by the individual of all benefits under  
2 this act from the person.

3 (2) An affidavit by the individual specifying that the  
4 individual understands AND AGREES that the individual: <--  
5 (i) is not an employe of the person;  
6 (ii) is not entitled to benefits under this act from the  
7 person; and <--  
8 (iii) may purchase workers' compensation insurance under  
9 this act; OR OTHER DISABILITY INSURANCE AT THE INDIVIDUAL'S OWN <--  
10 EXPENSE; AND

11 (IV) IS NOT ENTITLED TO BENEFITS FROM THE UNINSURED  
12 EMPLOYERS GUARANTY FUND IF THE INDIVIDUAL IS INJURED WHILE  
13 PERFORMING SERVICES FOR THE PERSON.

14 (c) The waiver and affidavit under subsection (b) shall be  
15 made upon forms prescribed by the department.

16 (d) THE FOLLOWING SHALL APPLY: <--

17 (1) A person who registers an individual as an independent  
18 contractor under this section:

19 ~~(1)~~ (I) shall not be liable to the individual for benefits <--  
20 under this act; and

21 ~~(2)~~ (II) shall not be required to provide insurance coverage <--  
22 or self-insure under this act regarding the individual.

23 (2) AN INDIVIDUAL REGISTERED AS AN INDEPENDENT CONTRACTOR <--  
24 UNDER THIS SECTION SHALL NOT BE ELIGIBLE FOR BENEFITS FROM THE  
25 UNINSURED EMPLOYERS GUARANTY FUND IF THE PERSON IS INJURED WHILE  
26 PERFORMING SERVICES AS AN INDEPENDENT CONTRACTOR PURSUANT TO THE  
27 REGISTRATION.

28 (e) A registration ~~regarding~~ IDENTIFYING an individual as an <--  
29 independent contractor shall be valid for each future year,  
30 except that the individual may request that the registration be

1 revoked at any time. The following apply:

2 (1) The request for revocation shall be on a form prescribed  
3 by the department.

4 (2) The individual shall file the request for revocation  
5 with the department and CONCURRENTLY provide notice by certified <--  
6 mail of the filing of the request with the person who filed the  
7 registration.

8 (3) The department shall confirm receipt of the request for  
9 revocation with the individual and the person WITHIN FIVE DAYS <--  
10 OF THE RECEIPT OF THE REQUEST.

11 (4) The revocation shall be effective ten days after the  
12 receipt of the request by the department.

13 ~~(f) A person may not offer or provide an incentive, <--~~  
14 ~~pecuniary or otherwise, for an individual to:~~

15 ~~(1) complete the waiver and affidavit under subsection (b);~~

16 ~~or~~

17 ~~(2) refrain from filing a request for revocation under~~  
18 ~~subsection (e).~~

19 ~~(F) A PERSON SHALL NOT DO ANY OF THE FOLLOWING TO PERSUADE <--~~  
20 ~~AN INDIVIDUAL TO COMPLETE THE WAIVER AND AFFIDAVIT UNDER~~  
21 ~~SUBSECTION (B) OR REFRAIN FROM FILING A REQUEST FOR REVOCATION~~  
22 ~~UNDER SUBSECTION (E):~~

23 ~~(1) KNOWINGLY PROVIDE AN INCENTIVE TO THE INDIVIDUAL,~~  
24 ~~PECUNIARY OR OTHERWISE.~~

25 ~~(2) KNOWINGLY PROVIDE MATERIALLY FALSE INFORMATION TO THE~~  
26 ~~INDIVIDUAL.~~

27 ~~(3) KNOWINGLY WITHHOLD INFORMATION FROM THE INDIVIDUAL IN~~  
28 ~~ORDER TO DECEIVE THE INDIVIDUAL.~~

29 ~~(g) A person violating subsection (f) shall be subject to~~  
30 ~~the penalties under FOR AN INTENTIONAL VIOLATION OF section 305. <--~~

1 (h) As used in this section:

2 (1) "Independent contractor" includes an individual who  
3 performs services for a person for valuable consideration but  
4 who is not classified as an employe of the person for Federal  
5 income tax purposes.

6 (2) "Person" includes a corporation, partnership, limited  
7 liability company, business trust, other association, government  
8 entity other than the Commonwealth, estate, trust, foundation or  
9 individual.

10 SECTION 2. THE ADDITION OF SECTION 304.3 OF THE ACT SHALL <--  
11 NOT BE CONSTRUED TO ALTER, REPEAL OR SUPERSEDE ANY PROVISION OF  
12 THE ACT OF OCTOBER 13, 2010 (P.L.506, NO.72), KNOWN AS THE  
13 CONSTRUCTION WORKPLACE MISCLASSIFICATION ACT.

14 Section ~~2~~ 3. This act shall take effect in ~~60~~ 180 days. <--