

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1748 Session of
2023

INTRODUCED BY McNEILL, OCTOBER 13, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, OCTOBER 13, 2023

AN ACT

1 Providing for the registration of labor brokers; imposing duties
2 on the Department of Labor and Industry and the Secretary of
3 Labor and Industry; establishing the Labor Broker
4 Registration Account; and imposing penalties.

5 TABLE OF CONTENTS

- 6 Section 1. Short title.
7 Section 2. Definitions.
8 Section 3. Prohibition.
9 Section 4. Proof of registration.
10 Section 5. Verification system.
11 Section 6. Registration.
12 Section 7. Expiration and renewal.
13 Section 8. Certification of compliance.
14 Section 9. Reporting changes.
15 Section 10. Fees.
16 Section 11. Labor Broker Registration Account.
17 Section 12. Prohibited acts.
18 Section 13. Investigations.
19 Section 14. Penalties.

1 Section 15. Suspension of registration.

2 Section 16. Other relief.

3 Section 17. Regulations.

4 Section 18. Effective date.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Labor Broker
9 Registration Act.

10 Section 2. Definitions.

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

14 "Account." The Labor Broker Registration Account established
15 under section 11.

16 "Construction." Erection, reconstruction, demolition,
17 alteration, modification, custom fabrication, building,
18 assembling, site preparation and repair work done on any real
19 property or premises under contract, whether or not the work is
20 for a public body and paid for from public funds.

21 "Debar." As follows:

22 (1) Action taken by the secretary to prohibit a
23 contractor, subcontractor or person from contracting with or
24 participating in contracts for public work for a period of at
25 least three years.

26 (2) The debarment shall include all divisions or other
27 organizational elements of a contractor or subcontractor
28 unless limited by its terms to specific divisions or
29 organizational elements.

30 (3) The debarment may apply to affiliates or other

1 persons or entities associated with the contractor,
2 subcontractor or individual if they are specifically named
3 and given written notice of the debarment and an opportunity
4 to appeal.

5 (4) The debarment shall apply to a successor entity. An
6 entity shall be a successor entity if it:

7 (i) has one or more of the same principals or
8 officers as the employer against whom the order was
9 issued;

10 (ii) performs similar work within the same
11 geographical area;

12 (iii) occupies the same premises;

13 (iv) shares the same telephone number or facsimile
14 number;

15 (v) has the same email address or Internet website;

16 (vi) employs substantially the same workforce or
17 administrative employees, or both;

18 (vii) utilizes the same tools, equipment or
19 facilities;

20 (viii) employs or engages the services of any person
21 or persons involved in the direction or control of the
22 other; or

23 (ix) lists substantially the same work experience.

24 "Department." The Department of Labor and Industry of the
25 Commonwealth.

26 "Employee." As follows:

27 (1) An individual performing a service or labor for an
28 employer for wages, remuneration or other compensation.

29 (2) The term includes:

30 (i) In relation to workers' compensation, as the

term "employee" is defined in section 104 of the Workers' Compensation Act.

(ii) In relation to unemployment compensation, as the term "employee" is defined in section 4(i) of the Unemployment Compensation Law.

"Employer." As follows:

(1) A person, including an agent of the person, that engages the services of an employee for wages, remuneration or other compensation.

(2) The term includes:

(i) In relation to workers' compensation, as the term "employer" is defined in section 103 of the Workers' Compensation Act.

(ii) In relation to unemployment compensation, as the term "employer" is defined in section 4(j) of the Unemployment Compensation Law.

"Labor broker." As follows:

(1) An entity or individual that supplies construction workers to an employer for the performance of construction work or for a construction project of the employer on a site in this Commonwealth in exchange for compensation from the employer, provided that the completion of the project is directed by the employer and not the entity or individual.

(2) The term does not include a construction subcontractor that is responsible for and carries out all of the following:

(i) Performing construction work on a project in accordance with a written contract for a defined scope of construction work at a fixed price.

(ii) Obtaining necessary licenses or permits to

perform construction services under the entity's or individual's name.

(iii) Exclusively controlling the work of any subcontractor, including the authority to hire and fire and to direct the methods and means of construction work performed on the construction project.

(iv) Paying wages and fringe benefits to workers through any subcontractor and not through any other entity or individual and maintaining required employment and payroll records by the subcontractor.

(v) Purchasing the majority of materials, supplies and tools for construction work performed by the subcontractor on the construction project.

(vi) Maintaining workers' compensation and unemployment insurance coverage for periods preceding, during and succeeding the terms of the construction project for the type and scope of construction performed by the subcontractor on the construction project.

"Person." An individual, firm, sole proprietorship, partnership, corporation, association or other entity.

"Public body." Any of the following:

(1) The Commonwealth.

(2) A political subdivision, including a county, city, borough, incorporated town, township or municipal authority, of this Commonwealth.

(3) An authority created by the General Assembly.

(4) An instrumentality or agency of the Commonwealth.

(5) A school district of this Commonwealth.

"Secretary." The Secretary of Labor and Industry of the Commonwealth or the authorized representative of the Secretary

1 of Labor and Industry of the Commonwealth.

2 "Unemployment Compensation Law." The act of December 5, 1936
3 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
4 Compensation Law.

5 "Workers' Compensation Act." The act of June 2, 1915
6 (P.L.736, No.338), known as the Workers' Compensation Act.

7 Section 3. Prohibition.

8 A person may not hold oneself out or engage in any act as a
9 labor broker without satisfying the registration requirements
10 under this act.

11 Section 4. Proof of registration.

12 A labor broker shall include the labor broker's registration
13 number issued by the department in all advertisements
14 distributed within this Commonwealth and on all contracts,
15 estimates and related documents created after the effective date
16 of this section.

17 Section 5. Verification system.

18 The department shall develop and maintain a list of completed
19 registrations under this act on the department's publicly
20 accessible Internet website, which shall include each labor
21 broker's legal business name, any assumed business name,
22 business address, verification number and verification
23 expiration date.

24 Section 6. Registration.

25 (a) Application.--A labor broker shall apply, in writing or
26 electronically, for registration in a manner and on a form
27 prescribed by the department.

28 (b) Contents.--The registration form shall include the
29 following information:

30 (1) For any individual, sole proprietor, primary owner

1 or officer of a business entity, all of the following
2 information:

3 (i) The applicant's full legal name and title at the
4 applicant's business.

5 (ii) The applicant's business address and telephone
6 number.

7 (iii) The applicant's Federal identification number
8 or Federal tax identification number used for business
9 purposes.

10 (iv) All prior business names and addresses of the
11 applicant.

12 (v) A statement whether:

13 (A) the applicant, even in doing so as part of a
14 business entity application, has ever been convicted
15 of, or pleaded guilty or no contest to, a criminal
16 offense related to fraud, theft, a crime of
17 deception, a crime involving fraudulent business
18 practices or employee misclassification;

19 (B) the applicant, even if doing so as part of a
20 business entity application, has ever been found to
21 have misclassified employees as independent
22 contractors by the department, any other state or
23 political subdivision or the United States Department
24 of Labor; and

25 (C) the applicant's certification or a similar
26 certificate or license issued by any other state or
27 political subdivision has ever been revoked or
28 suspended pursuant to an order issued by a court of
29 competent jurisdiction and, if so, the current status
30 of the certification or similar certificate or

1 license. The statement required by this clause shall
2 include the same information with respect to any
3 other business in which the applicant has or has ever
4 had an interest.

5 (2) The legal business name, any assumed business name,
6 designated business address, physical address, telephone
7 number and email address of the applicant.

8 (3) For an out-of-State business entity, the legal
9 business name, any assumed business name, designated business
10 address, physical address, telephone number and email address
11 of the applicant and any identification number issued to the
12 applicant by the applicant's state or political subdivision
13 through registration, licensing or verification systems, if
14 applicable.

15 (4) For any individual, sole proprietor, primary owner
16 or officer, including a chief executive officer, chief
17 financial officer, chief operating officer or an equivalent
18 officer, of a business entity, the name of all other persons
19 with an ownership interest in the applicant that are not
20 identified under paragraph (1). This paragraph does not apply
21 to shareholders with less than a 5% ownership interest in a
22 publicly traded corporation.

23 (5) A description of the nature of the business of the
24 applicant.

25 (6) Whether the applicant has been suspended or debarred
26 within the last 10 years.

27 (7) Proof of financial responsibility, which may include
28 liability insurance or bonding, or self-insurance.

29 (8) The fee specified under section 10.

30 (9) A signed statement by the applicant that the

information in the application is true and accurate and any individual signing the application is an authorized agent of the applicant subject to the penalties under 18 Pa.C.S.

§ 4904 (relating to unsworn falsification to authorities).

Section 7. Expiration and renewal.

(a) Dates.--The registration shall be completed on a fixed, biennial basis on a date determined by the department.

(b) Acceptance.--The department shall accept an application for a registration renewal before the expiration of an active registration in a time frame specified by the department.

Section 8. Certification of compliance.

After a labor broker completes an application for registration or registration renewal under this act and pays the fee specified under section 10, the department shall issue a certificate of compliance to the labor broker that includes a registration number.

Section 9. Reporting changes.

A labor broker shall update its registration within 30 days of any change in personal or business information required to be provided to the department under this act.

Section 10. Fees.

(a) Amount.--An applicant for registration or registration renewal under this act shall pay an application fee of not more than \$300 to the department.

(b) Deposit.--Fees under subsection (a) shall be deposited into the account.

Section 11. Labor Broker Registration Account.

(a) Establishment.--The Labor Broker Registration Account is established as a restricted revenue, interest-bearing account in the General Fund.

1 (b) Deposit.--The department shall deposit fees and
2 penalties collected under this act into the account.

3 (c) Appropriation.--Money in the account and interest earned
4 on the money are appropriated on a continuing basis to the
5 department for administering and enforcing the provisions of
6 this act.

7 Section 12. Prohibited acts.

8 (a) Specific prohibitions.--On or after the effective date
9 of this subsection, a person who holds oneself out or engages in
10 any act as a labor broker may not do any of the following:

11 (1) Fail to complete the registration as a labor broker
12 as required under this act.

13 (2) Fail to display or identify its registration number
14 as required under section 4.

15 (3) Knowingly make a false statement in the application
16 for labor broker registration.

17 (4) Knowingly contract with or perform work as a labor
18 broker for another person:

19 (i) without first completing the registration
20 required under this act; or

21 (ii) after the registration required under this act
22 has expired or has been suspended.

23 (5) Knowingly contract with or pay another person for
24 work as a labor broker if:

25 (i) the person has not completed the registration
26 required under this act; or

27 (ii) the person's registration required under this
28 act has expired or has been suspended.

29 (b) Verification.--A person seeking to contract or engage
30 with a purported labor broker shall verify the registration of

1 the purported labor broker using the verification system
2 described in section 5.

3 (c) Unregistered labor broker.--

4 (1) A person, including an agent of a person, may not
5 contract with or engage the services of an unregistered labor
6 broker.

7 (2) A person found to have engaged with an unregistered
8 labor broker shall be subject to penalties described under
9 section 14.

10 Section 13. Investigations.

11 (a) Authorization.--If the secretary receives information
12 indicating that a person has violated this act, the secretary
13 may investigate the matter.

14 (b) Permitted actions.--The secretary may take any of the
15 following actions:

16 (1) Enter and inspect a worksite or place of business at
17 any reasonable time to examine and inspect records that
18 relate to the compliance of this act.

19 (2) Subpoena witnesses, administer oaths, examine
20 witnesses and copy or compel the production of records,
21 contracts and other documents that are necessary and
22 appropriate to the enforcement of this act.

23 (3) Petition Commonwealth Court to enforce any subpoena
24 or order issued by the department under this act.

25 Section 14. Penalties.

26 The following penalties apply:

27 (1) A person that violates section 12(a)(1) or (2) shall
28 be subject to the following:

29 (i) For a first violation, the department shall
30 issue a warning letter to the person detailing the

omission and provide 30 days to correct the violation.

(ii) For a second or subsequent violation, the department shall bring an administrative action to assess a fine of up to \$2,500 for each day that the labor broker is not registered.

(2) For a violation of section 12(a)(3), (4) or (5), the department shall bring an administrative action to assess a fine of up to \$10,000 per violation.

(3) A person that violates section 12(b) or (c) shall be subject to the following:

(i) For a first violation, the department shall issue a fine of no more than \$25,000.

(ii) For a second or any subsequent violations, the department shall issue a fine not to exceed \$25,000 per day per worker provided by the unregistered labor broker.

(4) The secretary may debar a person that violates any of the provisions of section 12.

Section 15. Suspension of registration.

(a) Reasons.--The secretary may suspend a labor broker's registration for failing to comply with an investigation under section 13, failing to pay penalties imposed in accordance with section 14 or otherwise failing to correct a violation as required by section 14.

(b) Appeal.--A suspension under subsection (a) shall be subject to appeal of the administrative action.

Section 16. Other relief.

In addition to the penalties specified under this act, the department may seek other relief, including injunctive relief and costs, reasonable attorney fees and investigation costs.

Section 17. Regulations.

1 The department may promulgate regulations as necessary to
2 implement this act.
3 Section 18. Effective date.
4 This act shall take effect in one year.