



SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Cloutier, Delcollo, Hansen; Reps. Briggs King,
K. Williams

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 95

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO CONTRACTOR
REGISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members
elected to each house thereof concurring therein):

1 Section 1. Amend § 3501, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating Delaware Code provisions and internal references
3 accordingly:

4 § 3501. Definitions.

5 (a) As used in this chapter:

6 () “Contractor” means a person, partnership, association, joint stock company, trust, corporation, limited
7 liability company, or other legal business entity or successor or subsidiary thereof that engages in construction services
8 or maintenance under an express or implied contract on behalf of another entity or individual for profit within the State,
9 and includes any subcontractor or lower tier subcontractor of a contractor.

10 () “General contractor” and “construction manager” means an entity or individual who has primary
11 responsibility for providing labor and other services necessary for the construction services in a contract. “General
12 contractor” and “construction manager” also means a higher tier contractor of a subcontractor.

13 (7) "Independent contractor" means an individual ~~who~~ or entity who meets all of the following:

14 a. Performs the work free from the employer's control and direction over the performance of the
15 employee's ~~services; and services.~~

16 b. Is customarily engaged in an independently established trade, occupation, ~~profession or business; and~~
17 profession, or business.

18 c. Performs work which is ~~outside~~ either of the following:

19 1. Outside of the usual course of business of the employer for whom the work is performed.

20 2. Performed by a registered contractor under Chapter 36 of this title outside of any place of business
21 of the employer for whom the work is performed.

22 () "Labor broker" means an entity or individual that hires employees and sells the services of the employees
23 to another employer in need of temporary employees.

24 () "Outside of the usual course of business" means work an individual performs for an employer that is any of
25 the following:

26 a. At a location that is not the employer's place of business.

27 b. Not integrated into the employer's operation.

28 c. Unrelated to the employer's business.

29 () "Place of business" means the principal office or headquarters of the employer, but does not mean a work
30 site at which the employer has been contracted to perform services.

31 () "Subcontractor" means a lower tier contractor of a contractor, including owner operators or independent
32 contractors.

33 Section 2. Amend § 3503, Title 19 of the Delaware Code by making deletions as shown by strike through and
34 insertions as shown by underline as follows:

35 § 3503. Acts prohibited.

36 (a) An employer ~~shall~~ must not act as a labor broker by ~~improperly classify~~ classifying an individual who performs
37 work for remuneration provided by an employer as an independent contractor.

38 (b) An employer has improperly classified an individual when an employer-employee relationship exists, as
39 determined ~~in~~ under subsection (c) of this section, but the employer has not classified the individual as an employee.

40 (c)(1) An "employer-employee" relationship ~~shall be~~ is presumed to exist when work is performed by an
41 individual for remuneration paid by an employer, unless ~~to the satisfaction of the Department~~ the employer ~~demonstrates~~
42 demonstrates, to the satisfaction of the Department, that the individual is an exempt person or independent contractor.

43 (2) By contract, a general contractor or subcontractor may engage an independent contractor registered under
44 Chapter 36 of this title, to do the same type of work in which the general contractor or subcontractor engages, at the
45 same location where the general contractor or subcontractor is working, without establishing an employer-employee
46 relationship between the multiple contracting parties.

47 (3) There is a rebuttable presumption that an entity or individual who acts as a labor broker in providing
48 construction services has engaged in a knowing violation of this chapter.

(d) A person ~~shall~~ must not knowingly incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation ~~of~~ under this section.

(e) A person ~~shall~~ must not knowingly conspire with, aid and abet, assist, advise, or facilitate an employer with the intent of violating the provisions of this chapter.

Section 3. Amend § 3505, Title 19 of the Delaware code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3505. Penalties.

(a) Any employer who violates or fails to comply with § 3503 of this title or any regulation published thereunder ~~shall be deemed~~ is in violation of § 3503 of this title, and ~~shall be~~ is subject to a civil penalty of not less than ~~\$1,000,~~ \$5,000, and not more than ~~\$5,000, \$20,000,~~ \$20,000, for each ~~such~~ violation. Each employee who is not properly classified in violation of § 3503 of this title ~~shall be considered~~ is a separate violation ~~for purposes of~~ under this section.

(c) An employer who discharges or in any manner discriminates against a person because that person has made a complaint or has given information to the Department ~~pursuant to the provisions of~~ under this chapter, or because the person has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any such proceedings, ~~shall be~~ is subject to a civil penalty of not less than ~~\$5,000, \$20,000,~~ \$20,000, and not more than ~~\$10,000, \$50,000,~~ \$50,000, for each ~~such~~ violation.

Section 4. Amend Part IV, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 36. Delaware Contractor Registration.

§ 3601. Short title.

This chapter may be known and cited as the “Delaware Contractor Registration Act.”

§ 3602 Definitions.

For purposes of this chapter:

(1) “Contractor” means a person, partnership, association, joint stock company, trust, corporation, limited liability company, or other legal business entity or successor or subsidiary thereof that engages in construction services or maintenance under an express or implied contract on behalf of another entity or individual for profit within the State, and includes any subcontractor or lower tier subcontractor of a contractor.

(2) "Construction services" includes all building or work on a building, structure, or improvement of any type, including bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heating generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping, including tree cutting.

(3) "Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation.

(4) "Department" means the Department of Labor.

(5) "Knowing" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(6) "Maintenance" means the repair of existing facilities when the size, type, or extent of such facilities is not changed or increased.

(7) "Public works contract" means a construction contract under Chapter 69 of Title 29.

(8) "Secretary" means the Secretary of Labor, or the Secretary's authorized designee.

(9) "Subcontractor" means a lower tier contractor of a contractor, including owner operators or independent contractors.

(10) "Violation" means a project or contract where work is done by a contractor who is not registered under this chapter.

(11) "Worker" means a laborer, mechanic, skilled, or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of construction services or maintenance in the State, regardless of whether the work becomes a component part of the construction or maintenance. "Worker" does not mean a material supplier or employees of a material supplier. A contractor or subcontractor engaged in custom fabrication is not a material supplier for purposes of this section.

§ 3603. Administration and enforcement.

The Office of Contractor Registration in the Department shall administer and enforce this chapter, using the rules and procedures of the Administrative Procedures Act, Chapter 101 of Title 29.

§ 3604. Registration required.

A contractor must register under this chapter before performing construction services or maintenance.

§ 3605. Registration requirements.

(a) To register under this chapter, a contractor shall submit all required forms, information, and fees to the Department.

(b) A contractor must apply for a registration certificate by submitting a complete application on the form provided by the Department, which must include all of the following information regarding the contractor, if applicable:

(1) Name, principal business address, telephone number, fax number, and e-mail address.

(2) Type of business entity, including corporation, partnership, or sole proprietorship.

(3) If the principal business address is not within the State, the name and address of the custodian of records and agent for service of process in the State.

(4) The name of the person, the date and nature of the violation, conviction, or judgment, and all additional information requested by the Department if the contractor or a person holding a financial interest in the contractor's business has ever done any of the following:

a. Held a financial interest in a licensed entity that was cited by the Department for a violation of a labor law.

b. Been convicted of home improvement fraud under § 916 of Title 11 or new home construction fraud under § 917 of Title 11.

c. Been found to have engaged in an unlawful practice under § 2513 of Title 6.

(5) The Federal Employer Identification Number, the State Taxpayer Identification Number, Individual Tax Identification Number, or other tax identification number.

(6) Proof of Delaware worker's compensation insurance.

(7) Proof of a State business license.

(8) A safety plan that is compliant with the requirements established by the Occupational Safety and Health Administration.

(c)(1)a. A contractor who has a State contract under Subchapter IV of Chapter 69 of Title 29 must pay an initial annual non-refundable registration fee of \$300 to the Department with the application under this section.

b. The non-refundable registration fee for the second annual registration is \$300.

c. Upon successful completion of 2 consecutive years of registration, a contractor may register for a 2-year period and pay a nonrefundable registration fee of \$500. The Department may only grant a 2-year registration if the contractor has not violated this chapter or any other labor laws during the registration period that is expiring.

d. A contractor who is performing public work on October 1, 2020, shall submit the registration application form and fee to the Department no later than November 1, 2020.

(2)a. A contractor who does not have a State contract under Subchapter IV of Chapter 69 of Title 29 must pay an initial annual non-refundable registration fee of \$200 to the Department with the application under this section.

b. The non-refundable registration fee for the second annual registration is \$200.

c. Upon successful completion of 2 consecutive years of registration, a contractor may register for a 2-year period and pay a nonrefundable registration fee of \$300. The Department may only grant a 2-year registration if the contractor has not violated this chapter or any other labor laws during the registration period that is expiring.

(d) The Department may enter into cooperative agreements with other State agencies, including the Department of Finance and the Department of State, to share information required under this chapter and to streamline the process of contractor registration.

(e) Information under subsections (a), (b), or (d) of this section is not public information under Chapter 100 of Title 29.

§ 3606. Issuance and term of a certificate of registration.

(a) Except as provided under § 3607 of this title, upon receipt of a completed, accurate, application and fee under § 3605 of this title, the Department shall issue a certificate of registration to the contractor. A certificate of registration is valid as follows:

(1) For 1 year from the date of registration.

(2) For a period that ends 2 years from the date of registration, if the contractor successfully completes 2 years of registration.

(3) A certificate of registration must be renewed no less than 30 days before the expiration date of a certificate of registration. The Department may deny the certificate of registration if the contractor has violated this chapter or any law under § 3605(b)(4) of this title during the registration period that is expiring.

(b) A certificate of registration is not transferable.

(c) A registered contractor who allows the contractor's certificate of registration to expire before applying to renew the certificate must subsequently apply for a registration certificate as if for the first time.

§ 3607. Denial, suspension, or revocation of certificate of registration.

(a) The Department may deny, suspend, or revoke a certificate of registration if the contractor or an officer, partner, director, stockholder, or agent of the contractor does any of the following under this chapter:

(1) Fails to comply with any requirement of this chapter.

(2) Willfully makes a misstatement or omits a material fact in an application for or renewal of a certificate of registration.

167 (3) Fails to provide all information, including records, forms, or documents, requested by the Department
168 under this chapter.

169 (4) Performs work without full compliance with this chapter.

170 (5) Contracts with or uses a subcontractor who is not registered under this chapter in the completion of a
171 public works contract.

172 (6) Fails to cooperate or interferes with an investigation by the Department.

173 (7) Violates a criminal or civil law or regulation related to the ability of the contractor to comply with the
174 labor laws of this State.

175 (b)(1) The Department shall reject an application that is incomplete or contains inaccurate information.

176 (2) If a contractor knowingly supplies incomplete or inaccurate information to the Department under this
177 section, all of the following apply:

178 a. The application for registration must be rejected.

179 b. The contractor may not apply for registration until 1 year from the date of the notice of
180 disqualification.

181 c. The contractor is subject to other applicable penalties, including under Chapter 12 of Title 6.

182 (c)(1) The Secretary shall exercise reasonable discretion in deciding whether to deny, suspend, or revoke a
183 certificate of registration under subsection (a) or (b) of this section.

184 (2) The Secretary may not revoke or suspend a certificate of registration for longer than 5 years. The Secretary
185 shall consider the following criteria to determine the length of time that a certificate of registration is denied, revoked,
186 or suspended:

187 a. The contractor's record of previous violations of any civil or criminal law related to the fitness of the
188 contractor to bid on or engage in construction services or maintenance including this chapter and the Prevailing
189 Wage Law, § 6960 of Title 29.

190 b. If the contractor should reasonably have known that a subcontractor to a contract did not have a
191 certificate of registration, had a lapsed certificate of registration, or had a certificate of registration revoked or
192 suspended.

193 c. The total number of unregistered subcontractors at a work site and the size and scope of the project on
194 which the unregistered subcontractor worked.

d. If the contractor in contract with a subcontractor who is not registered under this chapter obeyed the Department's directive to remove the unregistered subcontractor from the work site to cure the violation of this chapter.

(d)(1) The Department may require as a condition of initial or continued registration that a contractor who has violated either this chapter or the Prevailing Wage Law, § 6960 of Title 29, must provide a surety bond payable to the Department.

(2) The Department shall require a surety bond if there is a pending investigation or litigation of a violation of a State or federal labor law alleged against the contractor which the Secretary finds would constitute a knowing violation of this chapter.

(3) The surety bond must be in the amount and form that the Secretary deems necessary for the protection of the contractor's workers, but must not exceed \$10,000 per worker.

(4) The surety bond must be released upon a final adjudication of the investigation or litigation under paragraph (d)(2) of this section if the final adjudication is in favor of the contractor.

§ 3608. Appeals.

(a) Following an investigation in which the Department makes an initial determination that a contractor has violated 1 or more provisions of this chapter, the Department may make a decision to do 1 or more of the following:

(1) Deny, suspend, or revoke a certificate of registration.

(2) Require the posting of a surety bond.

(3) Impose an administrative penalty.

(b) The Department shall notify the contractor, in writing, of a decision to take an action taken under subsection (a) of this section which must comply with § 10122 of Title 29 and include all of the following:

(1) The action to be taken.

(2) The grounds upon which the determination was made to take the action.

(3) Instructions to request a hearing under § 102 of this title.

(c)(1) A request for a hearing must be made in writing, addressed to the Secretary, and made within 10 business days from the date of receipt of the notice under subsection (b) of this section.

(2) If a hearing is not requested under paragraph (c)(1) of this section, the determination made by the Department under subsection (a) of this section is final.

(d) The Office of Contractor Registration shall review a request for hearing under paragraph (c)(1) of this section to determine if the dispute can be resolved at an informal settlement conference. If the Office of Contractor Registration

holds an informal settlement conference and a settlement is not reached, the Office of Contractor Registration shall forward the hearing request to the Secretary to schedule a hearing.

(e) The Secretary shall issue a final case decision at the conclusion of a hearing held under this section as required under Chapter 101 of Title 29.

(f) A contractor may seek judicial review of the Secretary's final case decision by commencing an action in Superior Court, within 30 days of the date of the final decision under subsection (e) of this section.

(g) When a determination to suspend or revoke a certificate of registration is final, the holder of a certificate of registration shall surrender the certificate of registration within 20 days of the later of the date of the notice under subsection (b) of this section or the final decision under subsection (d) of this section by sending the certificate of registration to the Secretary by certified mail.

(h) If a contractor's application for a certificate of registration is denied or a contractor's certificate of registration is suspended or revoked, the contractor cannot perform work for which a bid has been submitted and which is under review.

§ 3609. Penalties.

(a) A knowing violation of this chapter is subject to a civil penalty of not less than \$5,000 and not more than \$85,000 per violation.

(b) A violation that is not a knowing violation may be subject to a civil penalty of not more than \$1,000 per violation.

§ 3610. Enforcement.

(a) The Department may bring a civil action to enforce this chapter, including an action for injunctive relief in the Court of Chancery to enjoin work by an unregistered contractor.

(b) The Department is not required to post a bond or filing fee in connection with an action under this section.

(c) Any finding of fact or conclusion of law in any court in this State or any administrative agency in this State finding that construction services or maintenance occurred must be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been fully determined on appeal to the appropriate court, if all time for filing such appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

§ 3611. Distribution of proceeds from fees and civil penalties.

(a) The Department shall retain all application fees collected under § 3605 of this title for enforcement purposes.

(b) All civil penalties collected under this chapter must be paid to the General Fund of this State.

254 Section 5. Amend Subchapter IV, Chapter 69, Title 29 of the Delaware Code by making deletions as shown by
255 strike through and insertions as shown by underline as follows:
256 ~~§§ 6968—6969. [Reserved.]~~
257 § 6968. Requirement of certificate of registration.
258 (a) After a bid proposal for a public works contract is submitted, but before the award of a public works contract, a
259 contractor must provide the agency to which it is contracting a copy of the certificate of registration under Chapter 36 of
260 Title 19 for each subcontractor listed in the bid proposal.
261 (b) An agency shall provide contractors and subcontractors the opportunity to register under Chapter 36 of Title 19
262 before the award of a contract.
263 § 6969. [Reserved.]
264 Section 6. This Act takes effect October 1, 2020.
265 Section 7. The Department of Labor shall conduct education and information sessions statewide regarding this
266 Act.

SYNOPSIS

This Act provides a fair bidding environment for contractors who obey the law and protects the interests of workers and taxpayers by implementing recommendations from the review of the Workplace Fraud Act required by Senate Resolution No. 26 of the 149th General Assembly by making changes to the Workplace Fraud Act and creating the Delaware Contractor Registration Act.

This Act revises the Workplace Fraud Act by doing all of the following:

1. Creates definitions for the terms “contractor”, “general contractor”, “construction manager”, “labor broker”, “outside of the usual course of business”, “place of business”, and “subcontractor” and revises the definition of “independent contractor”.
2. Explicitly prohibits labor brokers from providing construction services.
3. Allows general contractors, construction managers, and subcontractors to engage other construction companies in the same line of work as the general contractor, construction manager, or subcontractor.

The Delaware Contractor Registration Act creates a contractor registration system to effectively regulate employee misclassification by doing all of the following:

1. Requires contractors to pay a small annual fee and apply for a certificate of registration to engage in construction activities in this State.
2. Requires registered contractors to establish compliance with State labor and revenue laws.
3. Requires that all contractors who work on a public works contract comply with the new contractor registration requirement.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Substitute Bill differs from Senate Bill No. 95 as follows:

1. Clarifies the definition of “contractor” and “independent contractor”.
2. Narrows the information required for registration to requirements that are applicable to the contractor and to information the Department of Labor (Department) does not already have.
3. Requires the contractor to disclose if the contractor or a person holding a financial interest in the contractor's business has been convicted of home improvement fraud or new home construction fraud or found to have engaged in a prohibited trade practice.

4. Creates lower registration fees for contractors that do not have public works contracts.
5. Defines the circumstances when the Department can require a surety bond and when the surety bond must be released.
6. Clarifies the opportunity and process to request a hearing if the Department decides to take an action to against a contractor.
7. Makes this Act effective on October 1, 2020 and states that the Department will conduct education and information sessions statewide regarding this Act.

Author: Senator Walsh