



SPONSOR: Sen. Walsh & Sen. Townsend & Rep. Osienski &  
Rep. K. Williams  
Sens. Lockman, Sokola; Rep. Morrison

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 255

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO LABOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1105A. Contractor liability.

(a) As used in this section:

(1) "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, and clearing and landscaping, including tree cutting.

(2) "Maintenance" means the repair of an existing facility when the size, type, or extent of the facility is not changed or increased.

(3) "Prime general contractor" means an entity or individual who has primary responsibility for providing construction services or maintenance under a contract or that has an agreement with an owner or developer to manage subcontractors.

(4) "Subcontractor" means any entity or individual that is a party to a contract with a prime general contractor or party to a contract with an entity or individual contracting, at any tier, with the prime general contractor to perform any portion of the work within the scope of the prime general contractor's contract with the owner or developer for construction services or maintenance, including an entity or individual that does not have a direct contractual relationship with the prime general contractor.

(b) In an action brought under § 1113 of this title, a prime general contractor is jointly and severally liable for a violation of this chapter that is committed by a subcontractor, regardless of whether the subcontractor is in a direct contractual relationship with the prime general contractor.

Section 2. Amend § 1113, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1113. Remedies of employees.

(a) A civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction.

(b) Whenever the Department or Attorney General determines that wages, as required under this chapter, have not been paid, the Department or Attorney General may bring any legal action necessary to collect such claim. With the consent of the aggrieved employee, the Department or Attorney General shall have the power to settle and adjust any such claim to the same extent as might the assigning employee.

(c) Any judgment entered for a plaintiff in an action brought under this section shall include an award for the costs of the action, the necessary costs of prosecution and reasonable attorney's fees, all to be paid by the defendant. In the case of actions brought under this section by the ~~Department~~, Department or Attorney General, expenses and attorney's fees shall be remitted by the Department or Attorney General to the State Treasurer. The Department or Attorney General shall not be required to pay the filing fee or other costs of the action or fees of any nature or to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the Department or Attorney General of any process in aid of such action or proceedings. The Department or Attorney General shall have the power to join various claimants in 1 preferred claim or lien and, in case of suit, to join them in 1 cause of action.

Section 3. Amend Chapter 36, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3612. Contractor liability for violation of chapter.

(a) As used in this section:

(1) "Prime general contractor" means an entity or individual who has primary responsibility for providing construction services or maintenance under a contract or that has an agreement with an owner or developer to manage subcontractors.

(2) "Subcontractor" means any entity or individual that is a party to a contract with a prime general contractor or party to a contract with an entity or individual contracting, at any tier, with the prime general contractor to perform any portion of the work within the scope of the prime general contractor's contract with the owner or developer for construction services or maintenance, including an entity or individual that does not have a direct contractual relationship with the prime general contractor.

53           (b) A prime general contractor is jointly or severally liable for a violation of this chapter by a subcontractor at any  
54 tier. Joint or several liability means 2 or more contractors are jointly or severally liable for the same violation, whether or  
55 not the amount of the violation has been recovered against all or some of the contractors.

#### SYNOPSIS

This Act does the following:

(1) Provides that a prime general contractor is jointly and severally liable for a violation of the Wage Payment and Collection Act that is committed by a subcontractor, regardless of whether the subcontractor is in a direct contractual relationship with the prime general contractor.

(2) Authorizes the Attorney General to bring an action to collect wages under the Wage Payment and Collection Act.

(3) Provides that a prime general contractor is jointly or severally liable for a violation of the Delaware Contractor Registration Act by a subcontractor.

Author: Senator Walsh