

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1205 Session of
1993

INTRODUCED BY PICCOLA, FLEAGLE, CHADWICK, SCHEETZ, CARONE,
ARMSTRONG, NAILOR, HECKLER, NICKOL, S. H. SMITH, DEMPSEY,
SAYLOR, CLYMER, BUNT, B. SMITH, FAIRCHILD, SEMMEL, HESS,
SAURMAN, CORNELL, DRUCE, ROHRER, PITTS, MASLAND, TULLI,
MILLER, E. Z. TAYLOR, GEIST, LEH, PETTIT, BARLEY, HARLEY,
LEE, FARGO, SERAFINI, MARSICO AND CLARK, APRIL 19, 1993

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 19, 1993

AN ACT

1 Amending the act of May 18, 1937 (P.L.665, No.176), entitled "An
2 act relating to the performance of industrial work in homes;
3 regulating, and in certain cases prohibiting, industrial
4 homework; imposing duties, restrictions and liabilities on
5 industrial home-workers and on persons, partnerships,
6 associations and corporations, directly or indirectly
7 furnishing materials and articles to home-workers for
8 manufacture or work thereon; requiring permits and home-
9 workers' certificates and prescribing the fees therefor;
10 conferring powers and imposing duties on the Department of
11 Labor and Industry; and prescribing penalties," changing the
12 purpose of the act; further regulating the performance of
13 industrial work in homes; providing for Federal preemption;
14 and making editorial changes.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 1 of the act of May 18, 1937 (P.L.665,
18 No.176), known as the Industrial Homework Law, amended November
19 24, 1976 (P.L.1196, No.263), is amended to read:

20 Section 1. Legislative Purpose.--This State has long
21 recognized that employment of men, women and children under
22 conditions detrimental to health and general welfare results in

1 injury, not only to the workers immediately affected, but also
2 to the public interest as a whole. This recognition has produced
3 a broad program of regulatory legislation to conserve the public
4 welfare. The continuance of an unregulated industrial homework
5 system in this State runs counter to that program since it is
6 usually accompanied by excessively low wages, long and irregular
7 hours, and unsanitary or otherwise inadequate working quarters.
8 In enacting this act, the Legislature [stated] states that
9 unregulated industrial homework [was] is harmful to society as a
10 whole, to the industrial homework work force, and to workers in
11 factory industries forced to compete against the lower wages and
12 less salutary working conditions characteristic of industrial
13 homework. The Legislature [concluded] concludes that
14 ["industrial homework must eventually be abolished."] industrial
15 homework must be regulated. It is the aim of this act to achieve
16 that goal, and eliminate the pernicious [influence] effects of
17 industrial homework on the people of this State, by [abolishing]
18 regulating industrial homework [except when it is engaged in by
19 certain types of individuals unable to leave their homes to
20 work, as hereinafter specified].

21 Section 2. Section 5 of the act is amended to read:

22 Section 5. Power to Prohibit.--(a) The department shall have
23 the power, upon its own initiative, to make an investigation of
24 any industry or that portion or branch of any industry which
25 employs home-workers, in order to determine:

26 (1) Whether the [wages and] conditions of employment are
27 injurious to the health and welfare of home-workers in such
28 industry or portion or branch; or

29 (2) Whether the payment of wages [and conditions of
30 employment prevailing] in such industry or portion or branch

1 have the effect of rendering unduly difficult the maintenance of
2 existing labor standards, or the observance and enforcement of
3 labor standards established by law, or regulation [for the
4 industry of which such portion or branch is a part, thus
5 jeopardizing wages or working conditions of the factory workers
6 in such industry].

7 (b) If, on the basis of information in its possession, [with
8 or without an investigation as provided in this section,] the
9 department shall find that industrial homework cannot be
10 continued within any industry or portion or branch of any
11 industry without injuring the health and welfare of the home-
12 workers [within that industry], or without rendering unduly
13 difficult the maintenance of existing labor standards or the
14 observance and enforcement of labor standards established by law
15 for [the protection of the factory workers in] that industry,
16 the department shall, by order, require all employers,
17 representative contractors, or contractors in such industry or
18 portion or branch to discontinue the furnishing within this
19 Commonwealth of articles or materials for industrial homework,
20 and no permit issued under this act shall be deemed thereafter
21 to authorize the furnishing of articles, or materials for
22 industrial homework prohibited by such order.

23 (c) All power machines used in conduct of industrial
24 homework shall be guarded in accordance with the laws and
25 regulations of the Department of Labor and Industry.

26 Section 3. Sections 11 and 13 of the act, amended November
27 24, 1976 (P.L.1196, No.263), are amended to read:

28 Section 11. Home-Worker's Certificate.--(a) Every person
29 desiring to engage in industrial homework within this
30 Commonwealth must procure from the department a home-worker's

1 certificate, which shall be issued without cost and which shall
2 be valid for a period of one year from the date of its issuance,
3 unless sooner revoked or suspended by action of the department
4 [or, under subsection (f) of this section, automatically].
5 Application for such certificate shall be made in such form as
6 the department may by regulation prescribe and must be remade
7 each year. Such certificate shall be valid only for work
8 performed by the applicant himself in his own home, and in
9 accordance with the provisions of this act.

10 (b) No home-worker's certificate shall be issued:--

11 (1) To any person under the age of sixteen years; or

12 (2) To any person known to be suffering from an infectious,
13 contagious, or communicable disease, or known to be living in a
14 home that is not clean, sanitary and free from infectious,
15 contagious, or communicable diseases.

16 [(3) To any person, unless that person is unable to leave
17 his home to work on account of:

18 (i) his own physical handicap, if that handicap has lasted
19 for more than thirty consecutive days; or

20 (ii) his own illness, if that illness has lasted for more
21 than thirty consecutive days; or

22 (iii) the necessity of caring for a member of his family who
23 is ill or handicapped, if that illness and/or handicap and
24 necessity has lasted for more than thirty consecutive days.]

25 (c) [It shall be the duty of each applicant for a home-
26 worker's certificate to prove his eligibility for a certificate
27 by presenting evidence of handicap or illness of himself or
28 illness or handicap of a family member sufficient to prove to
29 the department that he qualifies for a home-worker's certificate
30 under one of the exceptions set forth in subsection (b)(3) of

1 this section.] The department shall be empowered to require any
2 applicant for a home-worker's certificate[,] or any family
3 member of any applicant for a home-worker's certificate [upon
4 whose illness an applicant is relying in order to obtain a
5 certificate,] to submit to a medical examination by a physician
6 of the department's choosing in order to aid the department in
7 making a decision on whether or not to issue a certificate.

8 (d) Whenever a physical examination by a physician is
9 necessary, in order for a person to qualify for or to retain a
10 home-worker's certificate, if the person is working, or has been
11 promised work on the condition that he obtain a home-worker's
12 certificate, it shall be the duty of the employer,
13 representative contractor, or contractor for which the person is
14 working or by which the person has been promised work, to pay
15 the cost of the physical examination.

16 (e) Every certificate shall contain the following
17 information, in addition to any information which the department
18 shall, by regulation, require:

19 (1) The home-worker's

20 (i) name,

21 (ii) address,

22 (iii) sex,

23 (iv) Social Security number,

24 (v) date of birth,

25 (vi) height,

26 (vii) weight,

27 (viii) eye color,

28 (ix) hair color; and

29 (2) The expiration date of the certificate[; and

30 (3) The basis of the home-worker's eligibility for a

1 certificate, as set forth in subsection (b)(3) above.

2 (f) Upon the termination of the handicap, illness, or
3 necessity of caring for a family member who is ill or
4 handicapped which has qualified a person for a home-worker's
5 certificate under subsection (b)(3) of this section, that
6 person's certificate shall automatically be revoked].

7 (g) The department may revoke, or suspend any home-worker's
8 certificate if it finds that the holder is performing industrial
9 homework contrary to the conditions under which the certificate
10 was issued, or to any provision of this act, or has permitted
11 any person not holding a valid home-worker's certificate to
12 assist him in performing his industrial homework or has obtained
13 the certificate through fraud or misrepresentation.

14 (h) The department shall keep records of the applications
15 made and certificates issued under this section, and of all
16 information contained thereon.

17 [(i) Notwithstanding any provisions of this act to the
18 contrary, a special home-worker's certificate may be issued to a
19 person who does not qualify for a certificate under subsections
20 (b)(3) and (c) if the person meets the other qualifications of
21 subsection (b) and if the person has been employed fulltime for
22 a period of at least six months in the manufacture of shoes, and
23 is unable to continue his factory employment, if the following
24 conditions are met:

25 (1) The special certificate holder may perform homework only
26 for an employer which operates a factory in which shoes are
27 manufactured, and which does not have more than five percent of
28 its employes engaged in the manufacture of shoes in industrial
29 homework.

30 (2) The homework performed by the special certificate holder

1 must be part of the manufacturing process of shoes.

2 (3) The special certificate holder must be paid the same
3 wages and receive the same benefits as the employer pays or
4 affords to employes in its factory who perform similar work.

5 (4) The employer must deliver and pick up all the materials
6 used in or produced by homework at the home of the special
7 certificate holder without charge to the home-worker.

8 (5) All machinery, equipment, and materials used in the
9 manufacture of goods by the special certificate holder must be
10 supplied to the special certificate holder and maintained by the
11 employer without charge to the home-worker.

12 A certificate issued under authority of this subsection shall
13 bear a mark indicating that it permits its holder to engage in
14 homework only in the shoe manufacturing industry. The provisions
15 of this act shall govern the issuance and use of a special home-
16 worker's certificate insofar as they do not conflict with this
17 subsection. The use of a special home-worker's certificate in
18 violation of this act shall automatically revoke the
19 certificate.

20 (j) Notwithstanding any provisions of this act to the
21 contrary, a special home-worker's certificate may be issued to a
22 person who does not qualify for a certificate under subsections
23 (b)(3) and (c) if the person meets the other qualifications of
24 subsection (b), has been employed fulltime for a period of at
25 least one month in the manufacture of brushes, is unable to
26 continue his factory employment, and if the following conditions
27 are met:

28 (1) The special certificate holder performs homework only
29 for an employer operating a factory in which brushes are
30 manufactured who does not have more than thirty per cent of its

1 employees engaged in the manufacture of brushes in industrial
2 homework.

3 (2) The homework performed by the special certificate holder
4 is part of the process of manufacturing brushes.

5 (3) The employer delivers and picks up all the materials
6 used in or produced by homework at the home of the special
7 certificate holder without charge to the home-worker.

8 (4) All machinery, equipment, and materials used in the
9 manufacture of goods by the special certificate holder is
10 supplied to the special certificate holder and maintained by the
11 employer without charge to the home-worker.

12 A certificate issued pursuant to this subsection shall bear a
13 mark indicating that it permits its holder to engage in homework
14 only in the brush manufacturing industry. The provisions of this
15 act shall govern the issuance and use of a special home-worker's
16 certificate insofar as they do not conflict with this
17 subsection. The use of a special home-worker's certificate in
18 violation of this act shall automatically revoke the
19 certificate.]

20 Section 13. Conditions of Manufacture.--Industrial homework
21 on articles or materials manufactured for any person to whom an
22 employer's permit has been issued shall be performed:--

23 (a) Only by a person possessing a valid home-worker's
24 certificate.

25 (b) Only by persons over the age of sixteen years.

26 (c) Only by persons resident in the home in which the work
27 is done.

28 (d) Only during such hours as may be fixed by law or
29 regulation as permissible hours of labor in factories by persons
30 of the same age [and sex] as the home-worker[; and].

1 (e) Only in a home that is clean and sanitary and free from
2 any infectious, contagious, or communicable disease.

3 (f) Only [by persons who are incapable of leaving their
4 homes to work because of one of the reasons stated in section
5 11(b) (3).] for the same wages and the same benefits as the
6 employer pays or affords to employes who perform similar work in
7 the employer's factory.

8 (g) Only with manufacturing machinery, equipment and
9 materials supplied and maintained by the employer without charge
10 to the home-worker.

11 Upon the issuance of an employer's permit to an employer, or
12 representative contractor, or a contractor's permit to a
13 contractor, such employer, representative contractor, or
14 contractor, shall be deemed to have accepted responsibility for
15 the observance of the conditions of manufacture specified by
16 this section; and each of such conditions shall be deemed to be
17 a condition of the employer's or contractor's permit to the same
18 extent as though it were expressly set forth therein.

19 Section 4. The act is amended by adding a section to read:

20 Section 21.2. Federal Jurisdiction.--(a) This act shall not
21 apply to an employer, contractor or representative contractor
22 who, but for this act, is subject to the provisions of the Fair
23 Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et
24 seq.) and would be granted a certificate and authorized to
25 employ home-workers under the Fair Labor Standards Act of 1938
26 and its regulations relating to industrial homework.

27 (b) Home-workers are subject to the same jurisdictional
28 statutes and regulations as the person by whom they are
29 employed.

30 Section 5. This act shall take effect in 60 days.