

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1356

Session of
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CLYMER, PHILLIPS, TIGUE, COLAFELLA AND LETTERMAN, JULY 15,
1983

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, JULY 15, 1983

AN ACT

1 Regulating persons engaged in the business of garment
2 manufacturing.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Legislative intent.

15 It is the intent of the General Assembly to establish a
16 system of registration, penalties, confiscation, bonding
17 requirements and misdemeanors for the imposition of prompt and
18 effective criminal and civil sanctions against violations of,
19 and especially patterns and practices of violations of, any of
20 the provisions of law of this Commonwealth applicable to the
21 employment of workers in the garment industry. The civil
22 penalties provided for are in addition to any other penalty
23 provided by law. This shall be deemed an exercise of the police
24 power of the State for the protection of the public welfare,
25 prosperity, health, safety and peace of the people of this
26 Commonwealth.

27 Section 2. Definitions.

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

1 "Garment manufacturing." Sewing, cutting, making,
2 processing, repairing, finishing, assembling or otherwise
3 preparing any garment or any article of wearing apparel,
4 designed or intended to be worn by any individual, for sale or
5 resale by any person or any persons contracting to have the
6 above operations performed.

7 "Person." An individual, partnership, corporation or
8 association. The term includes, but is not limited to,
9 employers, manufacturers, jobbers, wholesalers, contractors and
10 subcontractors. The term does not include any person who
11 manufactures garments by himself or herself, without the
12 assistance of a contractor, employee or others; any person who
13 engages solely in that part of the business engaged solely in
14 cleaning, alteration or tailoring; any person who engages in the
15 activities herein regulated as an employee with wages as his
16 sole compensation; or any person as provided by regulation.

17 "Secretary." The Secretary of Labor and Industry.

18 Section 3. Rules and regulations.

19 The secretary shall promulgate all rules and regulations
20 necessary to carry out the provisions of this act.

21 Section 4. Powers of secretary.

22 The secretary, upon good cause, may impose, in his
23 discretion, the terms of penalties, the revocation of
24 registrations and the confiscation or disposal of goods in
25 accordance with rules and regulations.

26 Section 5. Records.

27 Every employer engaged in the business of garment
28 manufacturing shall keep accurate records for three years which
29 show all of the following:

30 (1) The names and addresses of all garment workers

1 directly employed by such person.

2 (2) The hours worked daily by employees, including the
3 times the employees begin and end each work period.

4 (3) The daily production sheets including piece rates.

5 (4) The wage and wage rates paid each payroll period.

6 (5) The contract worksheets indicating the price per
7 unit agreed to between the contractor and manufacturer.

8 (6) The ages of all minor employees.

9 (7) Any other conditions of employment.

10 Section 6. Advisory council.

11 The secretary shall appoint an advisory council on garment
12 manufacturing to advise him of common industry problems and to
13 effect liaison between his office and various segments of the
14 industry. The committee shall consist of a cross section of the
15 industry and shall include representatives of unions, employees,
16 contractor associations, jobbers and manufacturers.

17 Section 7. Registration.

18 (a) Form.--Every person engaged in the business of garment
19 manufacturing shall register with the secretary in writing on a
20 form developed by the secretary providing the form of business
21 entity, its current name, address, number of employees and such
22 other information as the secretary may by regulation prescribe.
23 Such registration shall be completed at least once a year or at
24 such intervals as required by the secretary.

25 (b) Fee.--The secretary shall issue a certificate of
26 registration upon completion of the registration form and
27 documentation that a current workers' compensation insurance
28 policy is in effect for the employees of the person seeking
29 registration. The initial registration fee shall be \$100 and
30 each renewal registration fee shall be \$75.

1 (c) Other information.--At the time a certificate of
2 registration is originally issued, the secretary shall provide
3 related and supplemental information regarding basic knowledge
4 of business administration and applicable labor laws. Such
5 related and supplemental information, as much as reasonably
6 possible, shall be provided in the primary language of the
7 garment manufacturer.

8 (d) Proof.--Proof of registration shall be by an official
9 registration form. Every person so registered shall post the
10 registration form where it may be read by employees during the
11 workday.

12 Section 8. Fine.

13 Any person engaged in the business of garment manufacturing
14 who is not registered commits a misdemeanor and shall, upon
15 conviction, be sentenced to pay a fine of not more than \$100.

16 Section 9. Joint liability.

17 Any person engaged in the business of garment manufacturing
18 who contracts with any other person similarly engaged who has
19 not registered with the secretary shall be deemed an employer
20 and shall be jointly liable with the other person for any
21 violation of this act.

22 Section 10. Confiscation.

23 The secretary may confiscate garments or padlock an
24 establishment where prima facie evidence shows that garments are
25 being manufactured by a person who is not registered by the
26 secretary.

27 Section 11. Penalties.

28 (a) Imposition.--A penalty, as provided herein, may be
29 imposed against any person for any of the following:

30 (1) Failure to comply with any judgment due for

1 violation of any labor laws applicable to garment industry
2 workers within five days of its due date.

3 (2) Failure to comply with the registration requirements
4 of section 7.

5 (3) Failure to comply with a cease and desist order
6 issued by the secretary or his designee.

7 (b) Order.--The order imposing the penalty may be served
8 personally or by registered mail. Such order shall be in writing
9 and shall describe the nature of the violation, including
10 reference to the statutory provisions, rules or regulations
11 alleged to have been violated.

12 (c) Nature of penalties.--The penalties shall be a civil
13 penalty of \$50 for each affected employee for the initial
14 violation and a civil penalty of \$100 for each affected employee
15 for the second or subsequent violation.

16 Section 12. Additional powers of secretary.

17 The secretary, in addition to any civil penalty may require
18 that as a condition of continued registration, the employer
19 deposit with him within ten days a bond in the sum as the
20 secretary may deem sufficient and adequate in the circumstances
21 but not to exceed \$10,000. The bond shall be payable to the
22 secretary and shall provide that the employer shall pay his
23 employees in accordance with the law. In lieu of the deposit of
24 a bond, the secretary, in his discretion, may accept other
25 evidence of financial security sufficient to guarantee payment
26 of wages to affected employees. The secretary, in addition to
27 any civil penalty imposed, shall require a bond upon any second
28 violation within any two-year period. The secretary may revoke
29 the registration of any person for any period ranging from 30
30 days to one year upon a third violation and may confiscate any

1 garment or wearing apparel, assembled or partially assembled, if
2 the third violation relates to minimum wages, child labor or
3 maximum hours of labor. If the secretary does exercise the
4 authority to confiscate upon such a third violation, the
5 secretary shall notify all persons for whom assembly was being
6 done and shall provide for the return of such confiscated
7 garments or wearing apparel upon such persons' assumption of
8 liability for the violation.

9 Section 13. Disposition of certain garments.

10 Any garment or wearing apparel, assembled or partially
11 assembled by or on behalf of any person who has not complied
12 with the registration requirements of section 7, may be
13 confiscated by the secretary. The confiscated garments or
14 wearing apparel shall be placed in the custody of the secretary
15 who shall be charged with the responsibility of destroying or
16 disposing of them under section 4, provided that the goods shall
17 not enter the mainstream of commerce and shall not be offered
18 for sale. The secretary shall, by certified mail, give notice of
19 the removal and the location where the confiscated goods are
20 held in custody to the known manufacturer and contractor.

21 Section 14. Hearing.

22 (a) Time, date and nature of hearing.--Any person against
23 whom a penalty is assessed or whose goods are confiscated may
24 petition to the secretary within five days of receipt of notice
25 of the penalty or confiscation by a verified petition in
26 writing, objecting to the penalty assessment or confiscation of
27 goods and requesting a hearing. This hearing shall relate solely
28 to assessment or confiscation. If no petition is filed within
29 the five-day period, such assessment or confiscation shall
30 become conclusive, and any penalty assessed shall be due and

1 payable within five days of the effective date of the cease and
2 desist order. If a hearing is held, the hearing shall be held
3 within ten days of the filing of the petition and a decision
4 shall be rendered within five days after the conclusion of the
5 hearing. Penalties assessed shall be payable within five days of
6 receipt of notice of payment due by the petitioner.

7 (b) Review.--Within ten days after service of notice of an
8 order, decision or award, following a hearing pursuant to
9 subsection (a), the parties may seek review by filing a notice
10 of appeal with the court of common pleas for the county in which
11 the employer is registered, or if not registered, maintains his
12 principal place of business, in accordance with the appropriate
13 rules of procedure. In such case, a trial de novo shall be held.
14 A copy of the notice of appeal shall be served upon the
15 secretary by the appellant. Upon the filing of the notice of
16 appeal, the appellant shall post a bond payable to the secretary
17 in the amount equal to any penalty ordered paid by the hearing
18 officer.

19 (c) Finality.--If no notice of appeal is filed within ten
20 days of receipt of the notice of order, decision or award, the
21 order, decision or award shall, in the absence of fraud, be
22 deemed the final order.

23 (d) Certified copy.--Within ten days of the order becoming
24 final, the secretary shall file a certified copy of the final
25 order with the prothonotary of the court in accordance with the
26 appropriate rules of procedure, unless a settlement has been
27 reached by the parties and approved by the secretary. Judgment
28 shall be entered immediately by the prothonotary in conformity
29 therewith. The judgment so entered shall have the same force and
30 effect as, and shall be enforced in the same manner as any other

1 judgment of the court in which it is entered. Enforcement of
2 such judgment shall receive court priority.

3 Section 15. Disposition of moneys recovered.

4 Moneys recovered under this act shall be applied first to
5 payment of wages due affected employees. If insufficient funds
6 are withheld or recovered, the money shall be prorated among all
7 such workers. Any remainder shall be paid to the General Fund of
8 the Commonwealth.

9 Section 16. Mandatory arbitration.

10 The secretary shall establish procedures for mandatory
11 arbitration of pricing and product quality disputes arising out
12 of written contracts between manufacturers and contractors.

13 Section 17. Appointment of panel.

14 Upon the written request of any manufacturer or contractor,
15 the secretary shall notify the other party to the dispute of the
16 request for arbitration and shall, within seven days of receipt
17 of the request, appoint an arbitration panel to hear and render
18 a decision regarding the dispute. The panel shall be constituted
19 as follows:

20 (1) A management level representative from a
21 manufacturer in the general geographic area in which the
22 dispute arises, provided that insofar as possible the
23 manufacturer shall not be a direct competitor of the
24 manufacturer involved in the dispute to be arbitrated.

25 (2) A representative from the contractors' association
26 whose membership encompasses the general geographic area in
27 which the dispute arises.

28 (3) A third party to be chosen and agreed upon by the
29 first two from a list of arbitrators provided by the American
30 Arbitration Association. This party shall act as chairperson

1 of the panel.

2 Section 18. Scheduling of hearing.

3 Within seven days of appointment, the chairperson of the
4 panel shall notify the parties in writing of the date, time and
5 location of the hearing before the panel. The hearing date shall
6 be scheduled no later than 21 days after the filing of the
7 request for arbitration, but each party shall have not less than
8 five days notice prior to the hearing date.

9 Section 19. Conduct of hearing.

10 On the date and time specified in the hearing notice, the
11 chairperson shall convene the hearing and shall determine
12 whether each party is represented. If neither party is
13 represented, the arbitration shall be terminated, with costs
14 assigned to the party requesting arbitration, and the parties
15 shall forfeit any further rights under this section relating to
16 the dispute for which arbitration was requested. In the event
17 only one party is in attendance, the arbitration shall proceed
18 and the panel shall make its award based upon the evidence
19 presented. Appearance at the hearing by a party shall be deemed
20 to waive any alleged defect in notice.

21 Section 20. Hearing procedures.

22 To facilitate the conduct of the hearing the following
23 procedures shall govern:

24 (1) Upon good cause shown by a party, the chairperson
25 shall be empowered to issue subpoenas duces tecum and ad
26 testificandum.

27 (2) Each party may be represented by an attorney at the
28 party's own expense.

29 (3) The formal rules of evidence shall not be
30 applicable, but any relevant evidence shall be admitted if it

1 is evidence upon which responsible persons would rely in the
2 conduct of serious business affairs.

3 (4) All testimony shall be taken under oath.

4 (5) No formal written records shall be kept unless one
5 or both parties agree to employ at their own expense a
6 qualified court reporter for that purpose. In such case a
7 copy of the record shall be provided to the panel and a copy
8 shall be made available to the other party at the standard
9 cost for the additional copies.

10 (6) Those in attendance at the hearing shall be limited
11 to the panel, the parties and their counsel, a court
12 reporter, interpreters when requested by a party or the panel
13 and witnesses while testifying.

14 (7) Upon the request of a panel member, the panel may
15 allow a period, not to exceed three days following the
16 conclusion of the hearing during which time a party may
17 submit otherwise admissible evidence not available during the
18 course of the hearing.

19 Section 21. Award.

20 Within 15 days after the conclusion of the hearing, the panel
21 shall make a written award, which shall determine all questions
22 submitted for arbitration. All decisions of the panel shall be
23 by majority vote and the award shall be signed by the members
24 concurring therein. The panel immediately shall provide written
25 notice of the award to the parties and to the secretary.

26 Section 22. Compliance or appeal.

27 Within ten days of receipt of notice of the award, the party
28 or parties who are required to comply with the terms of the
29 award shall so comply and file proof of such compliance with the
30 secretary or shall file a notice of appeal with the common pleas

1 court in the county in which the hearing was held, in accordance
2 with the appropriate rules of procedure. Upon the filing of an
3 appeal, a trial de novo shall be held. The decision reached by
4 the panel as stated in the award shall be received as evidence
5 by the trial court.

6 Section 23. Costs.

7 The basic costs of the arbitration proceeding, including
8 interpreters requested by the panel, shall be borne equally by
9 all parties to the proceeding, but the panel may as a part of
10 its award impose all such costs on the party requesting
11 arbitration if a majority of the panel determines that the
12 matter brought before it was frivolous. In addition, in the case
13 of a frivolous claim the panel may impose upon the party
14 requesting arbitration the costs of translators, court reporters
15 and reasonable attorneys fees incurred by the other party.

16 Section 24. Effective date.

17 This act shall take effect in 60 days.