

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1052 Session of  
1993

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MARCH 29, 1993

REFERRED TO COMMITTEE ON LABOR RELATIONS, MARCH 29, 1993

AN ACT

1 Amending the act of December 5, 1936 (2nd Sp.Sess., 1937  
2 P.L.2897, No.1), entitled "An act establishing a system of  
3 unemployment compensation to be administered by the  
4 Department of Labor and Industry and its existing and newly  
5 created agencies with personnel (with certain exceptions)  
6 selected on a civil service basis; requiring employers to  
7 keep records and make reports, and certain employers to pay  
8 contributions based on payrolls to provide moneys for the  
9 payment of compensation to certain unemployed persons;  
10 providing procedure and administrative details for the  
11 determination, payment and collection of such contributions  
12 and the payment of such compensation; providing for  
13 cooperation with the Federal Government and its agencies;  
14 creating certain special funds in the custody of the State  
15 Treasurer; and prescribing penalties," further defining  
16 "employment."

17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. Section 4(1) of the act of December 5, 1936 (2nd  
20 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment  
21 Compensation Law, amended July 6, 1977 (P.L.41, No.22) and July  
22 10, 1980 (P.L.521, No.108), is amended to read:

23 Section 4. Definitions.--The following words and phrases, as  
24 used in this act, shall have the following meanings, unless the

1 context clearly requires otherwise.

2 \* \* \*

3 (1) (1) "Employment" means all personal service performed  
4 for remuneration by an individual under any contract of hire,  
5 express or implied, written or oral, including service in  
6 interstate commerce, and service as an officer of a corporation.

7 (2) The term "Employment" shall include an individual's  
8 entire service performed within or both within and without this  
9 Commonwealth, if--

10 (A) The service is localized within this Commonwealth, or

11 (B) The service is not localized in any state but some of  
12 the service is performed within this Commonwealth and (a) the  
13 base for operations or place from which such service is directed  
14 or controlled is in this Commonwealth, or (b) the base for  
15 operations or place from which such service is directed or  
16 controlled is not in any state in which some part of the service  
17 is performed, but the individual's residence is in this  
18 Commonwealth. Service shall be deemed to be localized within  
19 this Commonwealth if--(a) the service is performed entirely  
20 within this Commonwealth, or (b) the service is performed both  
21 within and without this Commonwealth, but the service performed  
22 without this Commonwealth is incidental to the individual's  
23 service within this Commonwealth as for example where it is  
24 temporary or transitory in nature or consists of isolated  
25 transactions. Services performed without this Commonwealth shall  
26 not be included within the term "Employment" if contributions  
27 are required and paid with respect to such services under an  
28 unemployment compensation law of any other state.

29 Services performed by an individual for wages shall be deemed  
30 to be employment subject to this act, unless and until it is

1 shown to the satisfaction of the department that--(a) such  
2 individual has been and will continue to be free from control or  
3 direction over the performance of such services both under his  
4 contract of service and in fact; and (b) as to such services  
5 such individual is customarily engaged in an independently  
6 established trade, occupation, profession or business.

7 (C) The term "Employment" shall include an individual's  
8 services wherever performed within the United States, the Virgin  
9 Islands or Canada if--(i) such service is not covered under the  
10 unemployment compensation law of any other state, the Virgin  
11 Islands or Canada, and (ii) the place from which the service is  
12 directed or controlled is in this Commonwealth.

13 (3) "Employment" shall also include--

14 (A) Services covered by an election pursuant to section 4  
15 (j) of this act, and

16 (B) Services covered by an arrangement pursuant to section  
17 312 of this act between the department and the agency of any  
18 other state or Federal Unemployment Compensation Law, pursuant  
19 to which all services performed by an individual for an  
20 employing unit are deemed to be performed entirely within this  
21 State, shall be deemed to be employment if the department has  
22 approved an election of an employing entity for whom such  
23 services are performed, pursuant to which the entire service of  
24 such individual during the period covered by such election is  
25 deemed to be employment.

26 (C) Notwithstanding any other provisions of section 4(1), an  
27 individual's entire service as an officer or member of a crew of  
28 an American vessel on or in connection with such vessel,  
29 wherever performed, and whether in intrastate or interstate or  
30 foreign commerce, if the employer maintains within this State

1 the operating office from which the operations of the American  
2 vessel, in respect to which such services are performed, are  
3 ordinarily and regularly managed, supervised, directed and  
4 controlled.

5 (D) Service of an individual who is a citizen of the United  
6 States after December 31, 1971, performed outside the United  
7 States (except in Canada and in the case of the Virgin Islands  
8 after December 31, 1971, and before January 1 of the year  
9 following the year in which the Secretary of Labor approves for  
10 the first time an unemployment insurance law submitted to him by  
11 the Virgin Islands for approval) in the employ of an American  
12 employer (other than service which is deemed "employment" under  
13 the provisions of paragraph (2) of this subsection or the  
14 parallel provisions of another state's law), if:

15 (a) the employer's principal place of business in the United  
16 States is located in this State; or

17 (b) the employer has no place of business in the United  
18 States, but (i) the employer is an individual who is a resident  
19 of this State; or (ii) the employer is a corporation which is  
20 organized under the laws of this State; or (iii) the employer is  
21 a partnership or a trust and the number of the partners or  
22 trustees who are residents of this State is greater than the  
23 number who are residents of any one other state; or

24 (c) none of the criteria of divisions (a) and (b) of this  
25 subparagraph is met but the employer has elected coverage in  
26 this State, or the employer having failed to elect coverage in  
27 any state, the individual has filed a claim for benefits, based  
28 on such service, under this act.

29 (d) an "American employer" for purposes of this  
30 subparagraph, means a person who is (i) an individual who is a

1 resident of the United States; or (ii) a partnership if two-  
2 thirds or more of the partners are residents of the United  
3 States; or (iii) a trust, if all of the trustees are residents  
4 of the United States; or (iv) a corporation organized under the  
5 laws of the United States or of any state.

6 (E) Service by an individual other than one who is an  
7 employe under paragraphs (1) and (2) of this subsection who  
8 performs services for remuneration for any person--

9 (a) as an agent-driver or commission-driver engaged in  
10 distributing meat products, vegetable products, fruit products,  
11 bakery products, beverages (other than milk), or laundry or dry-  
12 cleaning services, for his principal;

13 (b) as a traveling or city salesman, other than as an agent-  
14 driver or commission-driver, engaged upon a full-time basis in  
15 the solicitation on behalf of, and the transmission to, his  
16 principal (except for side-line sales activities on behalf of  
17 some other person) of orders from wholesalers, retailers,  
18 contractors, or operators of hotels, restaurants, or other  
19 similar establishments for merchandise for resale or supplies  
20 for use in their business operations:

21 Provided, That for the purposes of this subparagraph, the  
22 term "employment" shall include services described in (a) and  
23 (b) above performed after December 31, 1971 only if: (i) the  
24 contract of service contemplates that substantially all of the  
25 services are to be performed personally by such individual; (ii)  
26 the individual does not have a substantial investment in  
27 facilities used in connection with the performance of the  
28 services (other than in facilities for transportation); and  
29 (iii) the services are not in the nature of a single transaction  
30 that is not part of a continuing relationship with the person

1 for whom the services are performed.

2 (F) Services performed after December 31, 1971 by an  
3 individual as defined under the provisions of Articles X, XI and  
4 XII of this act except for services excluded from employment  
5 pursuant to such articles.

6 (G) Notwithstanding any other provisions of this act,  
7 service performed after December 31, 1977, by an individual in  
8 agricultural labor as defined in section 4(1)(4)(1) when:

9 (a) Such service is performed for a person who--

10 (1) during any calendar quarter in either the current or the  
11 preceding calendar year paid remuneration in cash of twenty  
12 thousand dollars or more to individuals employed in agricultural  
13 labor (not taking into account service in agricultural labor  
14 performed before January 1, 1982, by an alien referred to in  
15 section 4(1)(3)(G)(a.1) or 4(1)(2)(G)(a.1)); or

16 (2) for some portion of a day in each of twenty different  
17 calendar weeks, whether or not such weeks were consecutive, in  
18 either the current or the preceding calendar year, employed in  
19 agricultural labor (not taking into account service in  
20 agricultural labor performed before January 1, 1982, by an alien  
21 referred to in section 4(1)(3)(G)(a.1)) ten or more individuals,  
22 regardless of whether they were employed at the same moment of  
23 time.

24 (a.1) Such service is not performed in agricultural labor if  
25 performed before January 1, 1982, by an individual who is an  
26 alien admitted to the United States to perform service in  
27 agricultural labor pursuant to sections 214(c) and 101(a)(15)(H)  
28 of the Immigration and Nationality Act.

29 (b) For the purposes of this subsection any individual who  
30 is a member of a crew furnished by a crew leader to perform

1 service in agricultural labor for any other person shall be  
2 treated as an employe of such crew leader--

3 (1) if such crew leader holds a valid certificate of  
4 registration under the Farm Labor Contractor Registration Act of  
5 1963; or substantially all the members of such crew operate or  
6 maintain tractors, mechanized harvesting or cropdusting  
7 equipment, or any other mechanized equipment, which is provided  
8 by such crew leader; and

9 (2) if such individual is not an employe of such other  
10 person within the meaning of division (a)(1) and (2) above.

11 (c) For the purposes of this subparagraph (G), in the case  
12 of any individual who is furnished by a crew leader to perform  
13 service in agricultural labor for any other person and who is  
14 not treated as an employe of such crew leader--

15 (1) such other person and not the crew leader shall be  
16 treated as the employer of such individual; and

17 (2) such other person shall be treated as having paid cash  
18 remuneration to such individual in an amount equal to the amount  
19 of cash remuneration paid to such individual by the crew leader  
20 (either on his own behalf or on behalf of such other person) for  
21 the service in agricultural labor performed for such other  
22 person.

23 (d) The term "crew leader" means an individual who--

24 (1) furnishes individuals to perform service in agricultural  
25 labor for any other person;

26 (2) pays (either on his own behalf or on behalf of such  
27 other person) the individuals so furnished by him for the  
28 service in agricultural labor performed by them; and

29 (3) has not entered into a written agreement with the farm  
30 operator under which the crew leader is designated as an employe

1 of the farm operator.

2 (H) Notwithstanding any other provisions of this act,  
3 domestic service after December 31, 1977, in a private home,  
4 local college club or local chapter of a college fraternity or  
5 sorority performed for a person who paid cash remuneration of  
6 one thousand dollars or more after December 31, 1977, in any  
7 calendar quarter in the current calendar year or the preceding  
8 calendar year to individuals employed in such domestic service.

9 (I) Notwithstanding any other provisions of this act,  
10 service performed after December 31, 1993, by an individual in  
11 agricultural labor as defined in section 4(1)(4)(1). For  
12 purposes of this subsection, the employer of an agricultural  
13 laborer shall be deemed to be the owner, operator or leaseholder  
14 of the land on which such services are performed where  
15 compensation for such employment was paid by or on behalf of  
16 such owner, operator or leaseholder of the land. Where the  
17 owner, operator or leaseholder permits a farm labor contractor  
18 to pay wages to agricultural laborers on his behalf, the owner,  
19 operator or leaseholder shall be the employer under this  
20 subsection for all purposes.

21 (4) The word "employment" shall not include--

22 (1) Agricultural labor which shall include all services  
23 performed except those services defined in 4(1)(3)(G) and  
24 4(1)(3)(I)--

25 (a) On a farm in the employ of any person in connection with  
26 cultivating the soil or in connection with raising or harvesting  
27 any agricultural or horticultural commodity, including the  
28 raising, shearing, feeding, caring for, training and management  
29 of livestock, bees, poultry and fur-bearing animals and  
30 wildlife.



1 (b) In the employ of the owner or tenant or other operator  
2 of a farm in connection with the operation, management,  
3 conservation, improvement or maintenance of such farm and its  
4 tools and equipment or in salvaging timber or clearing land of  
5 brush and other debris left by a hurricane, if the major part of  
6 such service is performed on a farm.

7 (c) In connection with the production or harvesting of any  
8 commodity defined as an agricultural commodity in section 15(g)  
9 of the Agricultural Marketing Act, as amended (46 Stat.1550,  
10 sec.3:12 U.S.C.A. 1141j), or in connection with the ginning of  
11 cotton, or in connection with the operation or maintenance of  
12 ditches, canals, reservoirs or waterways not owned or operated  
13 for profit, used exclusively for supplying and storing water for  
14 farming purposes.

15 (d) (1) In the employ of the operator of a farm in  
16 handling, planting, drying, packing, packaging, processing,  
17 freezing, grading, storing, or delivering to storage or to  
18 market or to a carrier for transportation to market in its  
19 unmanufactured state, any agricultural or horticultural  
20 commodity, but only if such operator produced more than one-half  
21 of the commodity with respect to which such service is  
22 performed.

23 (2) In the employ of a group of operators of farms (or a  
24 cooperative organization of which such operators are members) in  
25 the performance of service described in (d)(1) above, but only  
26 if such operators produced more than one-half of the commodity  
27 with respect to which such service is performed.

28 (3) The provisions of (d)(1) and (d)(2) above shall not be  
29 deemed to be applicable with respect to service performed in  
30 connection with commercial canning or commercial freezing or in

1 connection with any agricultural or horticultural commodity  
2 after its delivery to a terminal market for distribution for  
3 consumption.

4 (e) On a farm operated for profit if such service is not in  
5 the course of the employer's trade or business.

6 (f) As used in this subparagraph the term "farm" includes  
7 stock dairy, poultry, fruit, fur-bearing animals, and truck  
8 farms, plantations, ranches, nurseries, ranges, greenhouses or  
9 other similar structures used primarily for the raising of  
10 agricultural or horticultural commodities and orchards.

11 (2) Domestic service in a private home, local college club  
12 or local chapter of a college fraternity or sorority.

13 (3) Service not in the course of the employer's trade or  
14 business performed in any calendar quarter by an employe unless  
15 the cash remuneration paid for such service is fifty dollars or  
16 more and such service is performed by an individual who is  
17 regularly employed by such employer to perform such service. For  
18 purposes of this subparagraph, an individual shall be deemed to  
19 be regularly employed by an employer during a calendar quarter  
20 only if

21 (i) on each of some twenty-four days during such quarter,  
22 such individual performs for such employer for some portion of  
23 the day service not in the course of the employer's trade or  
24 business, or

25 (ii) such individual was regularly employed (as determined  
26 under clause (i)) by such employer in the performance of such  
27 service during the preceding calendar quarter.

28 (4) Service performed on or in connection with a vessel or  
29 aircraft not an American vessel or American aircraft if the  
30 employe is employed on or in connection with such vessel or

1 aircraft when outside the United States.

2 (5) Service performed by an individual in the employ of his  
3 son, daughter, or spouse, and service performed by a child under  
4 the age of eighteen (18) in the employ of his father or mother.

5 (6) Service performed in the employ of the United States  
6 Government or of an instrumentality of the United States exempt  
7 under the Constitution of the United States from the  
8 contributions imposed by this act, except that, to the extent  
9 that the Congress of the United States shall permit states to  
10 require any instrumentalities of the United States to make  
11 payments into an unemployment fund under a state unemployment  
12 compensation law, all of the provisions of this act shall be  
13 applicable to such instrumentalities in the same manner to the  
14 same extent and on the same terms as to all other employers. In  
15 the event that this State shall not be certified for any year by  
16 the Social Security Board under section three thousand three  
17 hundred four (c) of the Federal Internal Revenue Code of 1954,  
18 as amended, the payments required of such instrumentalities with  
19 respect to such year shall be refunded by the department from  
20 the fund in the same manner and within the same period as is  
21 provided in section three hundred eleven of this act with  
22 respect to contributions erroneously collected.

23 (8) For the purposes of Articles X, XI, XII--(a) Service  
24 performed in the employ of (i) a church or convention or  
25 association of churches or (ii) an organization which is  
26 operated primarily for religious purposes and which is operated,  
27 supervised, controlled or principally supported by a church or  
28 convention or association of churches; or

29 (b) by a duly ordained, commissioned, or licensed minister  
30 of a church in the exercise of his ministry or by a member of a

1 religious order in the exercise of duties required by such  
2 order; or

3 (d) in a facility conducted for the purpose of carrying out  
4 a program of (i) rehabilitation for individuals whose earning  
5 capacity is impaired by age or physical or mental deficiency or  
6 injury or (ii) providing remunerative work for individuals who  
7 because of their impaired physical or mental capacity cannot be  
8 readily absorbed in the competitive labor market, by an  
9 individual receiving such rehabilitation or remunerative work;  
10 or

11 (e) as part of an unemployment work-relief or work-training  
12 program assisted or financed in whole or in part by any Federal  
13 agency or an agency of a State or political subdivision thereof,  
14 by an individual receiving such work relief or work training; or

15 (f) prior to January 1, 1978 for a hospital in a State  
16 prison or other State correctional institution by an inmate of  
17 the prison or correctional institution and after December 31,  
18 1977, by an inmate of a custodial or penal institution.

19 (9) Service performed after June thirtieth, one thousand  
20 nine hundred and thirty-nine, either as an employe,  
21 representative, or service performed in the employ of an  
22 employer when such employe, representative, or employer is  
23 determined to be subject to the Act of Congress known as the  
24 Railroad Unemployment Insurance Act (52 U.S. Stat.1094) or to an  
25 Act of Congress establishing an unemployment compensation system  
26 for maritime employes by the agency or agencies empowered to  
27 make such determinations.

28 (10) (A) Service performed in any calendar quarter in the  
29 employ of an organization exempt from income tax under section  
30 501(a) of the Federal Internal Revenue Code of 1954, as amended,

1 (other than an organization described in section 401(a) of said  
2 code) or under section 521 of said code if the remuneration for  
3 such service is less than fifty dollars; or

4 (B) Service performed in the employ of a school, college or  
5 university if such service is performed (i) by a student who is  
6 enrolled and is regularly attending classes at such school,  
7 college or university or (ii) by the spouse of such a student if  
8 such spouse is advised at the time such spouse commences to  
9 perform such service that (i) the employment of such spouse to  
10 perform such service is provided under a program to provide  
11 financial assistance to such student by such school, college or  
12 university and (ii) such employment will not be covered by any  
13 program of unemployment insurance; or

14 (C) Service performed by an individual under the age of  
15 twenty-two who is enrolled at a nonprofit or public educational  
16 institution which normally maintains a regular faculty and  
17 curriculum and normally has a regularly organized body of  
18 students in attendance at the place where its educational  
19 activities are carried on, as a student in a full-time program,  
20 taken for credit at such institution which combines academic  
21 instruction with work experience, if such service is an integral  
22 part of such program and such institution has so certified to  
23 the employer, except that this subparagraph shall not apply to  
24 service performed in a program established for or on behalf of  
25 an employer or group of employers; or

26 (D) Service performed in the employ of a hospital, if such  
27 service is performed by a patient of the hospital as defined in  
28 section 4(m.1) of this act.

29 (11) Service performed in the employ of an international  
30 organization.

1 (12) Service performed by a nonresident, alien individual  
2 for the period he is temporarily present in the United States as  
3 a nonimmigrant under subparagraph (F) or (J) of section  
4 101(a)(15) of the Federal Immigration and Nationality Act, as  
5 amended, and which is performed to carry out the purpose  
6 specified in subparagraph (F) or (J), as the case may be.

7 (14) Service performed in the employ of a foreign government  
8 (including service as a consular or other office or employee or a  
9 nondiplomatic representative).

10 (15) Service performed in the employ of an instrumentality  
11 wholly owned by a foreign government, (i) if the service is of a  
12 character similar to that performed in foreign countries by  
13 employees of the United States Government or of an  
14 instrumentality thereof, and (ii) if the Secretary of State of  
15 the United States shall certify to the Secretary of the Treasury  
16 of the United States that the foreign government, with respect  
17 to whose instrumentality exemption is claimed, grants an  
18 equivalent exemption with respect to similar service performed  
19 in the foreign country by employees of the United States  
20 Government and of instrumentalities thereof.

21 (16) Service performed as a student nurse in the employ of a  
22 hospital or a nurses' training school by an individual who is  
23 enrolled and is regularly attending classes in a nurses'  
24 training school chartered or approved pursuant to the laws of  
25 this Commonwealth and services performed as an interne in the  
26 employ of a hospital by an individual who has completed a four  
27 years' course in a medical school chartered or approved pursuant  
28 to the laws of this Commonwealth.

29 (17) Service performed by an individual for an employer as  
30 an insurance agent or real estate salesman or as an insurance

1 solicitor or as a real estate broker or as a solicitor of  
2 applications for, or salesman of, shares of or certificates  
3 issued by an investment company, or as an agent of an investment  
4 company, if all such service performed by such individual for  
5 such employer is performed for remuneration solely by way of  
6 commission, or services performed by an individual as an  
7 unsalaried correspondent for a newspaper, who receives no  
8 compensation, or compensation only for copy accepted for  
9 publication.

10 (18) Service performed by an individual under the age of  
11 eighteen in the delivery or distribution of newspapers or  
12 shopping news, not including delivery or distribution to any  
13 point for subsequent delivery or distribution.

14 (19) Service covered by an arrangement between the  
15 department and the agency charged with the administration of any  
16 other state or Federal Unemployment Compensation Law, pursuant  
17 to which all services performed by an individual for an  
18 employing entity during the period covered by such employing  
19 unit's duly approved election, are deemed to be performed  
20 entirely within such agency's state or under such Federal law.

21 (5) If the services performed during one-half or more of any  
22 pay period by an employe for the person employing him constitute  
23 employment, all the services of such employe for such period  
24 shall be deemed to be employment, but, if the services performed  
25 during more than one-half of any such pay period by an employe  
26 for the person employing him do not constitute employment, then  
27 none of the services of such employe for such period shall be  
28 deemed to be employment. As used in this paragraph the term "pay  
29 period" means a period (of not more than thirty-one consecutive  
30 days) for which a payment of remuneration is ordinarily made to

1 the employe by the person employing him. This subsection shall  
2 not be applicable with respect to services performed in a pay  
3 period by an employe for the person employing him where any of  
4 such service is excepted by paragraph (9) of subsection (1)(4)  
5 of this section.

6 (6) Notwithstanding any of the other provisions of section 4  
7 (1), services shall be deemed to be in employment, if with  
8 respect to such services a tax is required to be paid under any  
9 Federal law imposing a tax, against which credit may be taken  
10 for contributions required to be paid into a State Unemployment  
11 Compensation Fund or which as a condition for full tax credit  
12 against the tax imposed by the Federal Unemployment Tax Act are  
13 required to be covered under this act.

14 \* \* \*

15 Section 2. This act shall take effect in 60 days.