

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 403 Session of 2013

INTRODUCED BY GROVE, GINGRICH, METCALFE, STEPHENS, EVANKOVICH, EMRICK, DUNBAR, HICKERNELL, MILLARD, BAKER, AUMENT, KAUFFMAN, STERN, MACKENZIE, MOUL, MILLER, MULLERY, F. KELLER, C. HARRIS, FLECK, MURT, TOEPEL, SWANGER, PETRI, BLOOM, ROCK, PEIFER, GABLER, GILLEN AND GRELL, JANUARY 29, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 8, 2013

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 providing for
16 records of and reports by employers, FOR INELIGIBILITY OF <--
17 INCARCERATED EMPLOYEE, for certain agreements void and
18 penalty, for false statements and representations to obtain
19 or increase compensation, for false statements and
20 representations to prevent or reduce compensation and other
21 offenses and for violation of act and rules and regulations.

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

24 Section 1. Section 206 of the act of December 5, 1936 (2nd
25 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment

1 Compensation Law, amended July 21, 1983 (P.L.68, No.30) and
2 November 17, 1995 (P.L.615, No.64), is amended to read:

3 Section 206. Records of and Reports by Employers.--(a) Each
4 employer (whether or not liable for the payment of contributions
5 under this act) shall keep accurate employment records
6 containing such information, as may be prescribed by the rules
7 and regulations adopted by the department. Such records shall be
8 open to inspection by the department and its agents at any
9 reasonable time, and as often as may be deemed necessary, but
10 employers need not retain such records more than four (4) years
11 after contributions relating to such records have been paid. The
12 department may require from such employers such reports as it
13 deems necessary, which shall be sworn to, if required by the
14 department.

15 (b) Information thus obtained shall not be made public or be
16 open to public inspection, other than to the members of the
17 board, the officers and employes of the department and other
18 public employes in the performance of their public duties, but
19 any employe or employer at a hearing on an appeal shall, upon
20 request, be supplied with information from such records to the
21 extent necessary for the proper presentation and consideration
22 of the appeal.

23 (c) Any officer or employe of the department or the board,
24 or any other public employe, who shall violate any of the
25 provisions of this section shall, upon conviction thereof in a
26 summary proceeding, be sentenced to pay a fine of not less than
27 [twenty dollars (\$20)] one hundred dollars (\$100) nor more than
28 [two hundred dollars (\$200)] three hundred dollars (\$300) and in
29 default of the payment of such fine and cost of prosecution
30 shall be sentenced to imprisonment for not longer than thirty

1 (30) days.

2 (d) Any employer who has been determined by the department
3 to be subject to the reporting provisions of this act and has
4 been so notified, and who neglects or refuses to file or to
5 complete in such manner as the department may prescribe either
6 the periodic report required by the department to establish the
7 amount of such contributions or the periodic report required by
8 the department showing the amount of wages paid to each employe,
9 or both, on or before the date such reports are required to be
10 filed, shall pay a penalty of [ten per centum (10%)] fifteen per
11 centum (15%) of the total amount of contributions paid or
12 payable by the employer or employe as the case may be for the
13 period: Provided, That such penalty shall be not less than
14 [twenty-five dollars (\$25)] one hundred twenty-five dollars
15 (\$125) or more than [two hundred and fifty dollars (\$250)] four
16 hundred fifty dollars (\$450). Such penalty shall apply to the
17 reports for each period with respect to which such reports are
18 required to be filed: Provided, That such penalty shall not
19 apply to reports for any period with respect to which the last
20 day for filing such reports is prior to a date on which the
21 department has notified the employer that he has been determined
22 an employer subject to the reporting provisions of this act,
23 unless the reports for such prior periods are not filed within
24 thirty (30) days after the employer has been so notified. The
25 penalties provided by this section shall be in addition to all
26 other penalties provided for in this act.

27 SECTION 1.1. SECTION 402.6 OF THE ACT, AMENDED DECEMBER 9, <--
28 2002 (P.L.1330, NO.156), IS AMENDED TO READ:

29 SECTION 402.6. INELIGIBILITY OF INCARCERATED EMPLOYE.--(A)
30 AN EMPLOYE SHALL NOT BE ELIGIBLE FOR PAYMENT OF UNEMPLOYMENT

1 COMPENSATION BENEFITS FOR ANY WEEKS OF UNEMPLOYMENT DURING WHICH
2 THE EMPLOYEE IS INCARCERATED AFTER A CONVICTION.

3 (B) THE DEPARTMENT SHALL UTILIZE ANY REASONABLE MEANS
4 DETERMINED NECESSARY BY THE SECRETARY TO IDENTIFY AND PREVENT
5 THE PAYMENT OF BENEFITS TO INCARCERATED INDIVIDUALS WHO ARE
6 DISQUALIFIED UNDER THIS SECTION. AT A MINIMUM, THE MEANS SHALL
7 INCLUDE A CROSS-CHECK OF COUNTY PRISON INMATE RECORDS WITH
8 RECORDS KEPT BY THE DEPARTMENT OF CURRENT BENEFIT RECIPIENTS. AN
9 EXPENSE INCURRED UNDER THIS SUBSECTION IS HEREBY DECLARED TO BE
10 AN ADMINISTRATIVE EXPENSE TO BE PAID FROM THE ADMINISTRATIVE
11 FUND.

12 Section 2. Section 701 of the act is amended to read:

13 Section 701. Certain Agreements Void; Penalty.--No agreement
14 by an employe to waive, release, or commute his rights to
15 compensation, or any other rights under this act, shall be
16 valid. No agreement by an employe or by employes to pay all or
17 any portion of an employer's contributions, required under this
18 act from such employer, shall be valid. No employer shall,
19 directly or indirectly, make or require or accept any deduction
20 from the remuneration of individuals in his employ to finance
21 contributions required from him under this act, or require or
22 accept any waiver by an employe of any right hereunder. Any
23 employer or officer or agent of an employer who violates any
24 provision of this section shall be guilty of a misdemeanor, and,
25 upon conviction thereof, shall be sentenced for each offense to
26 pay a fine of not less than [one hundred dollars] five hundred
27 dollars nor more than [one thousand dollars] one thousand five
28 hundred dollars, or be imprisoned for not more than six months,
29 or both.

30 Section 3. Section 801 of the act, amended December 9, 2002

1 (P.L.1336, No.158), is amended to read:

2 Section 801. False Statements and Representations to Obtain
3 or Increase Compensation.--(a) Whoever makes a false statement
4 or representation knowing it to be false, or knowingly fails to
5 disclose a material fact to obtain or increase any compensation
6 or other payment under this act or under an employment security
7 law of any other state or of the Federal Government or of a
8 foreign government, either for himself or for any other person,
9 shall upon conviction thereof in a summary proceeding, be
10 sentenced to pay a fine of not less than [one] five hundred
11 dollars nor more than one thousand five hundred dollars, or
12 shall be sentenced to imprisonment for not longer than thirty
13 days, or both, and each such false statement or representation
14 or failure to disclose a material fact shall constitute a
15 separate offense. In addition to any other sanction, an
16 individual convicted under this subsection shall be ordered to
17 make restitution of the compensation to which the individual was
18 not entitled and of interest on that compensation in accordance
19 with section 804(a).

20 (b) Whoever makes a false statement knowing it to be false,
21 or knowingly fails to disclose a material fact to obtain or
22 increase any compensation or other payment under this act or
23 under an employment security law of any other state or of the
24 Federal Government or of a foreign government, may be
25 disqualified in addition to such week or weeks of improper
26 payments for a penalty period of [two] ten weeks and for not
27 more than one additional week for each such week of improper
28 payment: Provided, That no additional weeks of disqualification
29 shall be imposed under this section if prosecution proceedings
30 have been instituted against the claimant because of such

1 misrepresentation or non-disclosure. The departmental
2 determination imposing penalty weeks under the provisions of
3 this subsection shall be subject to appeal in the manner
4 provided in this act for appeals from determinations of
5 compensation. The penalty weeks herein provided for shall be
6 imposed against any weeks with respect to which the claimant
7 would otherwise be eligible for compensation[, under the
8 provisions of this act, which begin within the four year period
9 following the end of the benefit year with respect to which the
10 improper payment or payments occurred].

11 (c) Whoever makes a false statement knowing it to be false,
12 or knowingly fails to disclose a material fact to obtain or
13 increase any compensation or other payment under this act or
14 under an employment security law of the Federal Government, and
15 as a result receives compensation to which he is not entitled,
16 shall be liable to pay to the Unemployment Compensation Fund a
17 sum equal to fifteen percentum (15%) of the amount of such
18 compensation. The sum shall be collectible in the manner
19 provided in section 308.1 or 309 for the collection of past due
20 contributions and by any other means available under Federal or
21 State law. No administrative or legal proceeding for the
22 collection of such sum shall be instituted after the expiration
23 of twelve years following the end of the benefit year with
24 respect to which such sum was paid.

25 (d) Subsection (b) shall be applied by substituting fifty-
26 two weeks for ten weeks and the prohibition in subsection (b) on
27 the imposition of penalty weeks if prosecution proceedings have
28 been instituted shall not apply in any of the following
29 circumstances:

30 (1) An incarcerated individual makes a false statement

1 knowing it to be false, or knowingly fails to disclose a
2 material fact to obtain or increase any compensation or other
3 payment under this act, or under an employment security law of
4 the Federal Government for which he is ineligible under section
5 401(b) or 402.6.

6 (2) An incarcerated individual knowingly provides
7 information or other means to another person whereby the other
8 person claims compensation in the name of the incarcerated
9 individual for which the incarcerated individual is ineligible
10 under section 401(d) or 402.6.

11 Section 4. Section 802(a) of the act, amended June 15, 2005
12 (P.L.8, No.5), is amended to read:

13 Section 802. False Statements and Representations to Prevent
14 or Reduce Compensation; Other Offenses.--(a) Any employer
15 (whether or not liable for the payment of contributions under
16 this act) or any officer or agent of such employer or any other
17 person who does any of the following commits a summary offense
18 and shall, upon conviction, be sentenced to pay a fine of not
19 less than [one] five hundred dollars nor more than fifteen
20 hundred dollars or to imprisonment for not longer than thirty
21 days, or both:

22 (1) makes a false statement or representation knowing it to
23 be false, or who knowingly fails to disclose a material fact to
24 prevent or reduce the payment of compensation to any employe
25 entitled thereto, or to avoid becoming or remaining subject
26 hereto, or to avoid or reduce any contribution or other payment
27 required from an employer under this act;

28 (2) wilfully fails or refuses to make any such contribution
29 or other payment required hereunder;

30 (3) wilfully fails or refuses to produce or permit the

1 inspection or copying of records as required hereunder;

2 (4) wilfully fails or refuses to furnish any report required
3 by section 304 or 315 of this act or any other provision of this
4 act or the rules or regulations of the department; or

5 (5) wilfully reports or attempts to report the wages of one
6 or more employes to the department on an unemployment
7 compensation account other than the account of the employer
8 under this act; or

9 (6) wilfully advises, solicits, encourages or commands an
10 employer or an officer or agent of an employer or any other
11 person to engage in an act or omission that is an offense under
12 this section.

13 * * *

14 Section 5. Section 803 of the act, amended December 9, 2002
15 (P.L.1336, No.158), is amended to read:

16 Section 803. Violation of Act and Rules and Regulations.--
17 Any person who shall wilfully violate any provision of this act
18 or any rule or regulation thereunder, the violation of which is
19 made unlawful, or the observance of which is required under the
20 terms of this act, and for which a penalty is neither prescribed
21 herein nor provided by any other applicable statute, shall, upon
22 conviction thereof in a summary proceeding, be sentenced to pay
23 a fine of not less than [one] five hundred dollars nor more than
24 one thousand five hundred dollars or to imprisonment for not
25 longer than thirty days, or both. Each day such violation
26 continues shall be deemed to be a separate offense.

27 Section 6. This act shall apply as follows:

28 (1) The amendment of sections 206(c), 701, 801(a),
29 802(a) and 803 of the act shall apply to offenses committed
30 on or after the effective date of this section.

1 (2) The amendment of section 206(d) of the act shall
2 apply to reports required on or after the effective date of
3 this section.

4 (3) The amendment or addition of section 801(b), (c) and
5 (d)(1) of the act shall apply to false statements and
6 failures to disclose that occur on or after the effective
7 date of this section.

8 (4) The addition of section 801(d)(2) of the act shall
9 apply to information or other means provided on or after the
10 effective date of this section.

11 Section 7. This act shall take effect immediately.