

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," in preliminary
16 provisions, further providing for definitions.

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

19 Section 1. Section 4(1)(3) and (4)(1) introductory paragraph
20 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897,
21 No.1), known as the Unemployment Compensation Law, are amended
22 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) * * *

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

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

7 (B) Services covered by an arrangement pursuant to section
8 312 of this act between the department and the agency of any
9 other state or Federal Unemployment Compensation Law, pursuant
10 to which all services performed by an individual for an
11 employing unit are deemed to be performed entirely within this
12 State, shall be deemed to be employment if the department has
13 approved an election of an employing entity for whom such
14 services are performed, pursuant to which the entire service of
15 such individual during the period covered by such election is
16 deemed to be employment.

17 (C) Notwithstanding any other provisions of section 4(1), an
18 individual's entire service as an officer or member of a crew of
19 an American vessel on or in connection with such vessel,
20 wherever performed, and whether in intrastate or interstate or
21 foreign commerce, if the employer maintains within this State
22 the operating office from which the operations of the American
23 vessel, in respect to which such services are performed, are
24 ordinarily and regularly managed, supervised, directed and
25 controlled.

26 (D) Service of an individual who is a citizen of the United
27 States after December 31, 1971, performed outside the United
28 States (except in Canada and in the case of the Virgin Islands
29 after December 31, 1971, and before January 1 of the year
30 following the year in which the Secretary of Labor approves for

1 the first time an unemployment insurance law submitted to him by
2 the Virgin Islands for approval) in the employ of an American
3 employer (other than service which is deemed "employment" under
4 the provisions of paragraph (2) of this subsection or the
5 parallel provisions of another state's law), if:

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

8 (b) the employer has no place of business in the United
9 States, but (i) the employer is an individual who is a resident
10 of this State; or (ii) the employer is a corporation which is
11 organized under the laws of this State; or (iii) the employer is
12 a partnership or a trust and the number of the partners or
13 trustees who are residents of this State is greater than the
14 number who are residents of any one other state; or

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

20 (d) an "American employer" for purposes of this
21 subparagraph, means a person who is (i) an individual who is a
22 resident of the United States; or (ii) a partnership if two-
23 thirds or more of the partners are residents of the United
24 States; or (iii) a trust, if all of the trustees are residents
25 of the United States; or (iv) a corporation organized under the
26 laws of the United States or of any state.

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

30 (a) as an agent-driver or commission-driver engaged in

1 distributing meat products, vegetable products, fruit products,
2 bakery products, beverages (other than milk), or laundry or dry-
3 cleaning services, for his principal;

4 (b) as a traveling or city salesman, other than as an agent-
5 driver or commission-driver, engaged upon a full-time basis in
6 the solicitation on behalf of, and the transmission to, his
7 principal (except for side-line sales activities on behalf of
8 some other person) of orders from wholesalers, retailers,
9 contractors, or operators of hotels, restaurants, or other
10 similar establishments for merchandise for resale or supplies
11 for use in their business operations:

12 Provided, That for the purposes of this subparagraph, the
13 term "employment" shall include services described in (a) and
14 (b) above performed after December 31, 1971 only if: (i) the
15 contract of service contemplates that substantially all of the
16 services are to be performed personally by such individual; (ii)
17 the individual does not have a substantial investment in
18 facilities used in connection with the performance of the
19 services (other than in facilities for transportation); and
20 (iii) the services are not in the nature of a single transaction
21 that is not part of a continuing relationship with the person
22 for whom the services are performed.

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

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

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

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

7 (2) for some portion of a day in each of twenty different
8 calendar weeks, whether or not such weeks were consecutive, in
9 either the current or the preceding calendar year, employed in
10 agricultural labor (not taking into account service in
11 agricultural labor performed before January 1, 1982, by an alien
12 referred to in section 4(1)(3)(G)(a.1)) ten or more individuals,
13 regardless of whether they were employed at the same moment of
14 time.

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

20 (b) For the purposes of this subsection any individual who
21 is a member of a crew furnished by a crew leader to perform
22 service in agricultural labor for any other person shall be
23 treated as an employe of such crew leader--

24 (1) if such crew leader holds a valid certificate of
25 registration under the Farm Labor Contractor Registration Act of
26 1963; or substantially all the members of such crew operate or
27 maintain tractors, mechanized harvesting or cropdusting
28 equipment, or any other mechanized equipment, which is provided
29 by such crew leader; and

30 (2) if such individual is not an employe of such other

1 person within the meaning of division (a) (1) and (2) above.

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

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

8 (2) such other person shall be treated as having paid cash
9 remuneration to such individual in an amount equal to the amount
10 of cash remuneration paid to such individual by the crew leader
11 (either on his own behalf or on behalf of such other person) for
12 the service in agricultural labor performed for such other
13 person.

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

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

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

20 (3) has not entered into a written agreement with the farm
21 operator under which the crew leader is designated as an employe
22 of the farm operator.

23 (H) Notwithstanding any other provisions of this act,
24 domestic service after December 31, 1977, in a private home,
25 local college club or local chapter of a college fraternity or
26 sorority performed for a person who paid cash remuneration of
27 one thousand dollars or more after December 31, 1977, in any
28 calendar quarter in the current calendar year or the preceding
29 calendar year to individuals employed in such domestic service.

30 (I) Notwithstanding any other provisions of this act,

1 service performed after December 31, 2021, by an individual in
2 agricultural labor, as defined in section 4(1). For purposes of
3 this clause, the employer of an agricultural laborer shall be
4 deemed to be the owner, operator or leaseholder of the land on
5 which the services are performed where compensation for
6 employment was paid by or on behalf of the owner, operator or
7 leaseholder of the land. Where the owner, operator or
8 leaseholder permits a farm labor contractor to pay wages to an
9 agricultural laborer on the owner's, operator's or leaseholder's
10 behalf, the owner, operator or leaseholder shall be the employer
11 under this subsection for all purposes.

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

13 (1) Agricultural labor which shall include all services
14 performed except those services defined in 4(1)(3)(G) or (I)--

15 * * *

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