

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1030** Session of
2011

INTRODUCED BY GORDNER, APRIL 28, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MAY 23,
2011

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 relief from charges and for establishment and maintenance of
17 employer's reserve accounts; providing for automatic relief
18 from charges; further providing for qualifications required
19 to secure compensation, for rate and amount of compensation,
20 for definitions and for rules of procedure; and providing for
21 shared-work program and for applicability.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Section 213 of the act of December 5, 1936 (2nd
25 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
26 Compensation Law, added December 9, 2002 (P.L.1330, No.156), is
27 amended to read:

1 Section 213. Relief from Charges for Certain Employers.--(a)
2 An employer that makes payments in lieu of contributions
3 pursuant to Article X, XI or XII shall be relieved of charges in
4 accordance with section [302(a)] 302.1 and regulations of the
5 department, for compensation paid on applications for benefits
6 effective during a calendar year, if the employer satisfies the
7 following requirements:

8 (1) The employer pays a nonrefundable solvency fee under
9 subsection (b) for the calendar year within thirty (30) days
10 after notice of the fee is sent to the employer's last known
11 address. The department may for good cause extend the period
12 within which the fee must be paid.

13 (2) All reports required by this act and regulations of the
14 department for calendar quarters through the second calendar
15 quarter of the preceding calendar year are filed.

16 (b) An employer's solvency fee for a calendar year shall be
17 the monetary amount determined by multiplying the solvency fee
18 rate for the year by the amount of wages paid, without regard to
19 the exclusion in section 4(x)(1), by the employer in the four
20 consecutive calendar quarters ending on June 30 of the preceding
21 calendar year, provided that an employer's solvency fee for a
22 year shall not be less than twenty-five dollars (\$25).

23 (1) For calendar years 2003, 2004 and 2005, the solvency fee
24 rate shall be three ten thousandths (.0003).

25 (2) In 2005 the secretary shall redetermine the solvency fee
26 rate. The secretary shall redetermine the rate so that the
27 unrounded rate yields solvency fees approximately equal to the
28 amount of compensation for which charges are relieved under this
29 section. For purposes of redetermining the rate, the secretary
30 shall use the amount of compensation for which charges are

1 relieved under this section paid during 2003 and 2004 and the
2 amount of wages paid, without regard to the exclusion in section
3 4(x)(1), during the same time period by employers who paid a
4 solvency fee under this section. The rate as redetermined shall
5 take effect for the next calendar year and shall remain in
6 effect for three years.

7 (3) Beginning in 2008 and each fifth year thereafter, the
8 secretary shall redetermine the solvency fee rate. The secretary
9 shall redetermine the rate so that the unrounded rate yields
10 solvency fees approximately equal to the amount of compensation
11 for which charges are relieved under this section. For purposes
12 of redetermining the rate, the secretary shall use the amount of
13 compensation for which charges are relieved under this section
14 paid during the five calendar years immediately preceding the
15 year in which the redetermination occurs and the amount of wages
16 paid, without regard to the exclusion in section 4(x)(1), during
17 the same time period by employers who paid a solvency fee under
18 this section. The rate as redetermined shall take effect for the
19 next calendar year and shall remain in effect for five years.

20 (4) If the solvency fee rate redetermined under paragraphs
21 (2) and (3) is not a multiple of one-hundredth of one per cent,
22 it shall be rounded to the next higher multiple of one-hundredth
23 of one per cent.

24 (c) Solvency fees paid by employers under this section shall
25 be deposited in the Unemployment Compensation Fund. Compensation
26 for which charges are relieved under this section shall not be
27 used in the calculation of the State adjustment factor under
28 section 301.1(e).

29 (d) The provisions of this section shall constitute the
30 exclusive means by which an employer who makes payments in lieu

1 of contributions pursuant to Article X, XI or XII may be excused
2 from reimbursing the Unemployment Compensation Fund for
3 compensation paid to an individual that is based on wages paid
4 by the employer or that portion of the individual's compensation
5 determined in accordance with section 1108.

6 (e) A group account under section 1109 shall constitute an
7 employer for purposes of this section.

8 Section 2. Section 302 of the act, amended March 24, 1964
9 (Sp.Sess., P.L.53, No.1), July 6, 1977 (P.L.41, No.22), July 21,
10 1983 (P.L.68, No.30), December 19, 1996 (P.L.1476, No.189) and
11 December 9, 2002 (P.L.1330, No.156), is amended to read:

12 Section 302. Establishment and Maintenance of Employer's
13 Reserve Accounts.--The department shall establish and maintain
14 for each employer a separate employer's reserve account in the
15 following manner:

16 (a) [(1) Such account shall be credited with all
17 contributions paid by such employer for periods subsequent to
18 June thirtieth, one thousand nine hundred forty-eight. Such
19 account shall be charged with an amount determined by
20 multiplying the wages of compensated employes of such employer
21 for the twelve month period ended June thirtieth, one thousand
22 nine hundred forty-nine, by the state experience heretofore used
23 in determining rates of contributions for the year one thousand
24 nine hundred forty-nine. Subsequent to January 1, 1984, such] An
25 employer's account shall be charged with all compensation,
26 including dependents' allowances, paid to each individual who
27 received from such employer wage credits constituting the base
28 of such compensation, in the proportion that such wage credits
29 with such employer bears to the total wage credits received by
30 such individual from all employers[: Provided, That if the

1 department finds that such individual was separated from his
2 most recent work for such employer due to being discharged for
3 willful misconduct connected with such work, or due to his
4 leaving such work without good cause attributable to his
5 employment, or due to his being separated from such work under
6 conditions which would result in disqualification for benefits
7 under the provisions of section 3 or section 402(e.1),
8 thereafter no compensation paid to such individual with respect
9 to any week of unemployment occurring subsequent to such
10 separation, which is based upon wages paid by such employer with
11 respect to employment prior to such separation, shall be charged
12 to such employer's account under the provisions of this
13 subsection (a); provided, such employer has filed a notice with
14 the department in accordance with its rules and regulations and
15 within the time limits prescribed therein; and provided if the
16 department finds that such individual's unemployment is directly
17 caused by a major natural disaster declared by the President
18 pursuant to section 102(1) of the Disaster Relief Act of 1970
19 (P.L.91-606) and such individual would have been eligible for
20 disaster unemployment assistance as provided in section 240 of
21 that act with respect to such unemployment but for the receipt
22 of unemployment compensation, no compensation paid to such
23 individual with respect to any week of unemployment occurring
24 due to such natural disaster, to a maximum of the eight weeks
25 immediately following the President's declaration of emergency,
26 shall be charged to the employer's account under the provisions
27 of this subsection.

28 (2) Notwithstanding the provisions of paragraph (1) of this
29 subsection, if the department finds that an individual
30 subsequent to separation from his work is engaged in part-time

1 work for a base year employer, other than a base year employer
2 from whom he has separated, compensation paid to such individual
3 with respect to any week of unemployment occurring subsequent to
4 such separation and while such part-time work continues without
5 material change, shall not be charged to the account of such
6 part-time employer; provided, such part-time employer has filed
7 a notice with the department in accordance with its rules and
8 regulations and within the time limits prescribed therein.

9 (2.1) Notwithstanding the provisions of paragraph (1) of
10 this subsection, if the department finds that an individual was
11 separated from his most recent work for such employer due to a
12 cessation of business of eighteen months or less caused by a
13 disaster, compensation paid to such individual with respect to
14 any week of unemployment occurring subsequent to such separation
15 shall not be charged to the account of such employer; provided,
16 such employer has filed a notice with the department in
17 accordance with its rules and regulations and within the time
18 limits prescribed therein.

19 (3) The findings and determinations of the department under
20 this subsection (a) shall be subject to appeal in the manner
21 provided in this act for appeals from determinations of
22 compensation: Provided, That where the individual's eligibility
23 for compensation has been finally determined under the
24 provisions of Article V of this act, such determination shall
25 not be subject to attack in proceedings under this section.

26 (4) The reserve account of any employer who pays
27 contributions under this section shall not be charged with
28 respect to benefits paid to any individual whose base period
29 wages include wages for previously uncovered services as defined
30 in section 401(g) to the extent that the unemployment insurance

1 fund is reimbursed for such benefits pursuant to section 121 of
2 Public Law 94-566].

3 (b) Any employer, at any time, may voluntarily pay into the
4 Unemployment Compensation Fund an amount in excess of the
5 contributions required to be paid under the provisions of this
6 act, and such amount shall be forthwith credited to his reserve
7 account. His rate of contribution shall be computed or
8 recomputed, as the case may be, with such amount included in the
9 calculation. To affect such employer's rate of contribution for
10 any year, such amount shall be paid not later than thirty days
11 following the mailing of notice of his rate of contribution for
12 such year: Provided, That for good cause, such time may be
13 extended by the department: And provided further, That such
14 amount, when paid as aforesaid, shall not be refunded or used as
15 a credit in the payment of contributions in whole or in part. In
16 no event shall any such amount be included in the computation or
17 recomputation for any year unless it is paid within one hundred
18 twenty days after the beginning of such year.

19 (c) (1) For the purpose of determining any employer's rate
20 of contribution for any year, the phrase "balance in an
21 employer's reserve account" as used in sections 301, 301.1 and
22 301.2 of this act shall mean the amount ascertained as of the
23 computation date by subtracting the amounts charged to his
24 reserve account from the amounts credited thereto including
25 voluntary contributions. If, as of the computation date, the
26 amounts charged to his reserve account exceed the amounts
27 credited by an amount equivalent to more than twenty per centum
28 (20%) of his average annual payroll, the employer may elect,
29 subject to the provisions of section 301.1(f) of this act to
30 have his reserve account balance adjusted to a negative balance

1 equal to twenty per centum (20%) of his average annual payroll.
2 This subsection as amended shall apply to elections made after
3 December 31, 1986.

4 (2) Notwithstanding the provisions of section 301.1(f) and
5 paragraph (1) of this subsection, for elections made on or after
6 January 1, 1984 and before May 1, 1986, if the amounts charged
7 to the employer's reserve account exceed the amounts credited by
8 an amount equivalent to more than ten per centum (10%) of his
9 average annual payroll, the department, after determining his
10 Reserve Ratio Factor shall, upon the election of the employer,
11 adjust his reserve account balance to a negative balance equal
12 to ten per centum (10%) of his average annual payroll. With
13 respect to future adjustments of negative balance accounts, the
14 secretary shall, upon the election of the employer, make
15 adjustments as follows:

16 (i) In relation to adjustments made for the second time
17 after January 1, 1984 and before May 1, 1986, if the amounts
18 charged to his reserve account exceed the amounts credited by an
19 amount equivalent to more than fifteen per centum (15%) of his
20 average annual payroll, the department shall, upon the election
21 of the employer, adjust the reserve account balance to a
22 negative balance equal to fifteen per centum (15%) of his
23 average annual payroll.

24 (ii) In relation to adjustments made for the third time
25 after January 1, 1984 and before May 1, 1986, if the amounts
26 charged to his reserve account exceed the amounts credited by an
27 amount equivalent to more than twenty per centum (20%) of his
28 average annual payroll, the department shall, upon the election
29 of the employer, adjust his reserve account balance to a
30 negative balance equal to twenty per centum (20%) of his average

1 annual payroll.

2 (d) The department shall terminate the reserve account of
3 any employer who has not paid contributions for a period of four
4 consecutive twelve month periods, ending June thirtieth in any
5 year.

6 (e) Nothing contained in this act shall be construed to
7 grant to any employer any claim or right of withdrawal with
8 respect to any amount allocated to him from, or paid by him
9 into, the Unemployment Compensation Fund, except as provided in
10 section three hundred eleven hereof.

11 Section 3. The act is amended by adding a section to read:

12 Section 302.1. Relief from Charges.--Notwithstanding any
13 other provisions of this act assigning charges for compensation
14 paid to employes, the department shall relieve an employer of
15 charges for compensation in accordance with this section and
16 section 213 of this act.

17 (a) Circumstances allowing relief:

18 (1) If an individual was separated from his most recent work
19 for an employer due to being discharged for willful misconduct
20 connected with that work, or due to his leaving that work
21 without good cause attributable to his employment, or due to his
22 being separated from such work under conditions which would
23 result in disqualification for benefits under the provisions of
24 section 3 or section 402(e.1), the employer shall be relieved of
25 charges for compensation paid to the individual with respect to
26 any week of unemployment occurring subsequent to such
27 separation. Relief from charges under this paragraph terminates
28 if the employe returns to work for the employer.

29 (2) If an individual's unemployment is directly caused by a
30 major natural disaster declared by the President of the United

1 States pursuant to section 102(1) of the Disaster Relief Act of
2 1970 (Public Law 91-606, 42 U.S.C. § 4401 et seq.) and the
3 individual would have been eligible for disaster unemployment
4 assistance as provided in section 240 of the Disaster Relief Act
5 of 1970 with respect to that unemployment but for the receipt of
6 unemployment compensation, an employer shall be relieved of
7 charges for compensation paid to such individual with respect to
8 any week of unemployment occurring due to the natural disaster,
9 to a maximum of the eight weeks immediately following the
10 declaration of emergency by the President of the United States.

11 (3) If an individual subsequent to separation from his work
12 is engaged in part-time work for a base year employer, other
13 than a base year employer from whom he has separated, the part-
14 time employer shall be relieved of charges for compensation paid
15 to the individual with respect to any week of unemployment
16 occurring subsequent to the separation and while such part-time
17 work continues without material change.

18 (4) If the department finds that an individual was separated
19 from his most recent work for an employer due to a cessation of
20 business of eighteen months or less caused by a disaster, the
21 employer may be relieved of charges for compensation paid to
22 such individual with respect to any week of unemployment
23 occurring subsequent to that separation. Relief from charges
24 under this paragraph terminates if the employe returns to work
25 for the employer.

26 (b) Requests for relief from charges:

27 (1) Except as provided in subsection (c), in order to be
28 granted relief from charges for compensation an employer must
29 file a request with the department in the manner provided, and
30 containing all information required, by the department's

1 regulations.

2 (2) If an employer is requesting relief from charges on the
3 basis of a separation that occurs on or before the date the
4 claimant files an application for benefits or on the basis of
5 continuing part-time work, the following shall apply:

6 (i) If the request is filed within fifteen (15) days after
7 the date of the earliest notice issued by the department under
8 section 501(a) indicating that the claimant is eligible under
9 section 401(a) and relief is granted, relief shall begin with
10 the earliest week for which the claimant is eligible for
11 benefits pursuant to the claimant's application for benefits.

12 (ii) If the request is not filed within the time period
13 provided in subparagraph (i), relief, if granted by the
14 department, shall begin with the earliest week ending fifteen
15 (15) or more days subsequent to the date the request is filed.

16 (3) If an employer is requesting relief from charges on the
17 basis of a separation that occurs after the claimant files an
18 application for benefits, the following shall apply:

19 (i) If the request is filed within fifteen (15) days after
20 the date of the earliest notice issued by the department
21 indicating that the claimant is claiming benefits subsequent to
22 the separation and relief is granted, relief shall begin with
23 the earliest week for which the claimant is eligible for
24 benefits following the last day worked.

25 (ii) If the request is not filed within the time period
26 provided in subparagraph (i), relief, if granted by the
27 department, shall begin with the earliest week ending fifteen
28 (15) or more days subsequent to the date the request is filed.

29 (c) Relief from charges without a request:

30 (1) If a claimant is determined ineligible for benefits

1 under section 3 or section 402(b), (e) or (e.1) pursuant to a
2 notice of determination that has become final, the department
3 shall grant relief from charges in accordance with subsection
4 (a)(1) to the employer from whom the claimant was separated,
5 beginning with the earliest week for which the claimant is
6 eligible for benefits following the week or weeks governed by
7 the notice of determination.

8 (2) If a claimant is determined eligible for benefits under
9 section 402(b) pursuant to a notice of determination that has
10 become final, the department shall grant or deny relief from
11 charges in accordance with subsection (a)(1) to the employer
12 from whom the claimant was separated, beginning with the
13 earliest week governed by the notice of determination, in
14 accordance with the following:

15 (i) The department shall grant relief from charges if the
16 claimant left work for the employer without good cause
17 attributable to the claimant's employment.

18 (ii) The department shall deny relief from charges if the
19 claimant left work for the employer with good cause attributable
20 to the claimant's employment.

21 (3) Relief from charges granted to an employer remains in
22 effect for the purpose of benefits paid to the claimant pursuant
23 to a subsequent application for benefits if the relief has not
24 terminated in accordance with the provisions of this section.

25 (d) Employer information:

26 (1) An employer that is granted relief from charges on the
27 basis of a claimant's separation from employment shall notify
28 the department within fifteen (15) days if the claimant returns
29 to work for the employer. The employer shall include with the
30 notification the claimant's name and Social Security number, the

1 employer's name and account number and the date when
2 reemployment commenced.

3 (2) An employer that is granted relief from charges on the
4 basis of continuing part-time work shall notify the department
5 within fifteen (15) days if the employment situation of the
6 claimant changes. The employer shall include with the
7 notification the claimant's name and Social Security number and
8 the employer's name and account number.

9 (e) General provisions:

10 (1) Where the individual's eligibility for compensation has
11 been finally determined under the provisions of Article V, such
12 determination shall not be subject to attack in proceedings
13 under this section.

14 (2) The findings and determinations of the department under
15 this section shall be subject to appeal in the manner provided
16 in this act for appeals from determinations of compensation.

17 Section 4. Section 401(b) of the act, amended July 9, 1976
18 (P.L.842, No.147), is amended to read:

19 Section 401. Qualifications Required to Secure
20 Compensation.--Compensation shall be payable to any employe who
21 is or becomes unemployed, and who--

22 * * *

23 (b) [Has registered for work at, and thereafter continued to
24 report to an employment office in accordance with such
25 regulations as the secretary may prescribe, except that the
26 secretary may by regulation waive or alter either or both of the
27 requirements of this clause as to individuals attached to
28 regular jobs and as to such other types of cases or situations
29 with respect to which he finds that compliance with such
30 requirements would be oppressive or would be inconsistent with

1 the purposes of the act: Provided, however, That no such
2 regulation shall conflict with section four hundred and one (c)
3 of this act;] (1) Is making an active search for suitable
4 employment. The requirements for "active search" shall be
5 established by the department and shall include, at a minimum,
6 all of the following:

7 (i) Registration by a claimant for employment search
8 services offered by the Pennsylvania CareerLink system or its
9 successor agency within thirty (30) days after initial
10 application for benefits.

11 (ii) Posting a resume on the system's database, unless the
12 claimant is seeking work in an employment sector in which
13 resumes are not commonly used.

14 (iii) Applying for positions that offer employment and wages
15 similar to those the claimant had prior to his unemployment and
16 which are within a forty-five (45) minute commuting distance.

17 (2) The Pennsylvania CareerLink system or its successor
18 agency shall provide documentation, ON A QUARTERLY BASIS OR MORE ←
19 FREQUENTLY, as the secretary deems appropriate, to the
20 Pennsylvania Unemployment Compensation Service Center system so
21 the system can conduct the necessary cross reference checks.

22 (3) For the purposes of paragraph (1), the department may
23 determine that a claimant has made an active search for suitable
24 work if the claimant's efforts include actions comparable to
25 those traditional actions in their trade or occupation by which
26 jobs have been found by others in the community and labor market
27 in which the claimant is seeking employment.

28 (4) The requirements of this subsection do not apply to any
29 week in which the claimant is in training approved under section
30 236(a) (1) of the Trade Act of 1974 (Public Law 93-618, 19 U.S.C.

1 § 2101 et seq.) or any week in which the claimant is required to
2 participate in reemployment services under section 402(j).

3 (5) The requirements of this subsection shall not apply to a
4 claimant who is laid off for lack of work and advised by the
5 employer of the date on which the claimant will return to work.

6 (6) The department may waive or alter the requirements of
7 this subsection in cases or situations with respect to which the
8 secretary finds that compliance with such requirements would be
9 oppressive or which would be inconsistent with the purposes of
10 this act.

11 * * *

12 Section 5. Section 404 introductory paragraph, (d) and
13 (e) (2) of the act, amended October 19, 1988 (P.L.818, No.109)
14 and December 16, 2005 (P.L.437, No.80), are amended to read:

15 Section 404. Rate and Amount of Compensation.--Compensation
16 shall be paid to each eligible employe in accordance with the
17 following provisions of this section except that compensation
18 payable with respect to weeks ending in benefit years which
19 begin prior to the first day of January [1989] ~~2012~~ 2013 shall ←
20 be paid on the basis of the provisions of this section in effect
21 at the beginning of such benefit years.

22 * * *

23 (d) (1) Notwithstanding any other provisions of this
24 section each eligible employe who is unemployed with respect to
25 any week ending subsequent to July 1, 1980 shall be paid, with
26 respect to such week, compensation in an amount equal to his
27 weekly benefit rate less the total of (i) the remuneration, if
28 any, paid or payable to him with respect to such week for
29 services performed which is in excess of his partial benefit
30 credit [and] (ii) vacation pay, if any, which is in excess of

1 his partial benefit credit, except when paid to an employe who
2 is permanently or indefinitely separated from his employment[.]
3 and (iii) the amount of severance pay that is attributed to the
4 week.

5 (1.1) For purposes of clause (1)(iii), all of the following
6 apply:

7 (i) "Severance pay" means one or more payments made by an
8 employer to an employe on account of separation from the service
9 of the employer, regardless of whether the employer is legally
10 bound by contract, statute or otherwise to make such payments.
11 The term does not include payments for pension, retirement or
12 accrued leave or payments of supplemental unemployment benefits.

13 (ii) The amount of severance pay attributed pursuant to
14 subclause (iii) shall be an amount not less than zero determined
15 by subtracting one-half of the average annual wage as calculated
16 under subsection (e) as of June 30 immediately preceding the
17 calendar year in which the claimant's benefit year begins from
18 the total amount of severance pay paid or payable to the
19 claimant by the employer.

20 (iii) Severance pay is attributed as follows:

21 (A) Severance pay is attributed to the day, days, week or
22 weeks immediately following the employe's separation.

23 (B) The number of days or weeks to which severance pay is
24 attributed is determined by dividing the total amount of
25 severance pay by the regular full-time daily or weekly wage of
26 the claimant.

27 (C) The amount of severance pay attributed to each day or
28 week equals the regular full-time daily or weekly wage of the
29 claimant.

30 (D) When the attribution of severance pay is made on the

1 basis of the number of days, the pay shall be attributed to the
2 customary working days in the calendar week.

3 (2) (i) In addition to the deductions provided for in
4 clause (1), for any week with respect to which an individual is
5 receiving a pension, including a governmental or other pension,
6 retirement or retired pay, annuity or any other similar periodic
7 payment, under a plan maintained or contributed to by a base
8 period or chargeable employer, the weekly benefit amount payable
9 to such individual for such week shall be reduced, but not below
10 zero, by the pro-rated weekly amount of the pension as
11 determined under subclause (ii).

12 (ii) If the pension is entirely contributed to by the
13 employer, then one hundred per centum (100%) of the pro-rated
14 weekly amount of the pension shall be deducted. Except as set
15 forth in clause (4), if the pension is contributed to by the
16 individual, in any amount, then fifty per centum (50%) of the
17 pro-rated weekly amount of the pension shall be deducted.

18 (iii) No deduction shall be made under this clause by reason
19 of the receipt of a pension if the services performed by the
20 individual during the base period or remuneration received for
21 such services for such employer did not affect the individual's
22 eligibility for, or increase the amount of, such pension,
23 retirement or retired pay, annuity or similar payment.

24 (3) The provisions of this subsection shall be applicable
25 whether or not such vacation pay, retirement pension or
26 annuities or wages are legally required to be paid. If such
27 retirement pension or annuity payments deductible under the
28 provisions of this subsection are received on other than a
29 weekly basis, the amount thereof shall be allocated and pro-
30 rated in accordance with the rules and regulations of the

1 department. Vacation pay or other remuneration deductible under
2 the provisions of this subsection shall be pro-rated on the
3 basis of the employe's normal full-time weekly wage and as so
4 pro-rated shall be allocated to such period or periods of
5 unemployment as shall be determined by rules and regulations of
6 the department. Such compensation, if not a multiple of one
7 dollar (\$1), shall be computed to the next lower multiple of one
8 dollar (\$1).

9 (4) No deductions shall be made under this subsection for
10 pensions paid under the Social Security Act (Public Law 74-271,
11 42 U.S.C. § 301 et seq.), or the Railroad Retirement Act of 1974
12 (Public Law 93-445, 88 Stat. 1305), if the pension is
13 contributed to by the individual in any amount.

14 (e) * * *

15 (2) (i) The Table Specified for the Determination of Rate
16 and Amount of Benefits shall be extended or contracted annually,
17 automatically by regulations promulgated by the secretary in
18 accordance with the following procedure: for calendar year one
19 thousand nine hundred seventy-two and for all subsequent
20 calendar years, to a point where the maximum weekly benefit rate
21 [equals] shall equal sixty-six and two-thirds per centum of the
22 average weekly wage for the [twelve-month] thirty-six-month
23 period ending June 30 preceding each calendar year. If the
24 maximum weekly benefit rate is not a multiple of one dollar
25 (\$1), it shall be [increased by one dollar (\$1) and then]
26 rounded to the next lower multiple of one dollar (\$1): Provided,
27 however, That effective with benefit years beginning the first
28 Sunday at least thirty days after the effective date of this
29 amendatory act, the per centum stated in this paragraph for
30 establishing the maximum weekly benefit rate shall be sixty-two

1 and two-thirds per centum for the remainder of calendar year one
2 thousand nine hundred seventy-four, sixty-four and two-thirds
3 per centum for the calendar year one thousand nine hundred
4 seventy-five, and sixty-six and two-thirds per centum for the
5 calendar year one thousand nine hundred seventy-six and for all
6 subsequent calendar years.

7 The Table Specified for the Determination of Rate and Amount
8 of Benefits as so extended or contracted shall be effective only
9 for those claimants whose benefit years begin on or after the
10 first day of January of such calendar year.

11 (ii) For the purpose of determining the maximum weekly
12 benefit rate, the Pennsylvania average weekly wage in covered
13 employment shall be computed on the basis of the AVERAGE ANNUAL ←
14 total wages reported (irrespective of the limit on the amount of
15 wages subject to contributions) for the [twelve-month] thirty-
16 six-month period ending June 30 (DETERMINED BY DIVIDING THE ←
17 TOTAL WAGES REPORTED FOR THE THIRTY-SIX-MONTH PERIOD BY THREE)
18 and this amount shall be divided by the average monthly number
19 of covered workers (determined by dividing the total covered
20 employment reported for the same [fiscal year by twelve] thirty-
21 six-month period by thirty-six) to determine the average annual
22 wage. The average annual wage thus obtained shall be divided by
23 fifty-two and the average weekly wage thus determined rounded to
24 the nearest cent. If the maximum weekly benefit rate as
25 determined under subclause (i) is less than the maximum weekly
26 benefit rate established for calendar year ~~2011~~ 2012, the ←
27 maximum weekly benefit rate will be frozen until the calendar
28 year in which the new maximum weekly benefit rate as determined
29 under subclause (i) exceeds the maximum weekly benefit rate for
30 calendar year ~~2011~~ 2012. ←

1 * * *

2 Section 6. Section 401-A(b) and (c) of the act, amended
3 August 4, 2009 (P.L.114, No.30), are amended to read:

4 Section 401-A. Definitions.--As used in this article:

5 * * *

6 (b) (1) There is a "State 'on' indicator" for this State
7 for a week if the Secretary of Labor and Industry determines in
8 accordance with the regulations of the United States Secretary
9 of Labor, that for the period consisting of such week and the
10 immediately preceding twelve weeks, the rate of insured
11 unemployment (not seasonally adjusted) under this act:

12 (i) (A) equaled or exceeded one hundred twenty per centum
13 of the average of such rates for the corresponding thirteen-week
14 period ending in each of the preceding two calendar years, or
15 (B) with respect to compensation for weeks of unemployment
16 beginning after December 17, 2010, and ending on or before
17 December 31, 2011, equaled or exceeded one hundred twenty per
18 centum of the average of such rates for the corresponding
19 thirteen-week period ending in each of the preceding three
20 calendar years, and

21 (ii) equaled or exceeded five per centum: Provided, That
22 with respect to benefits for weeks of unemployment beginning
23 with the passage of this amendment but no earlier than April 3,
24 1977, the determination of whether there has been a State "on"
25 or "off" indicator beginning or ending any extended benefit
26 period shall be made under this paragraph as if (A) this
27 paragraph did not contain subparagraph (i) thereof, and (B) the
28 per centum rate indicated in this paragraph were six, except
29 that, notwithstanding any such provision of this paragraph, any
30 week for which there would otherwise be a State "on" indicator

1 shall continue to be such a week and shall not be determined to
2 be a week for which there is a State "off" indicator.

3 (2) There is a "State 'off' indicator" for this State for a
4 week if the Secretary of Labor and Industry determines in
5 accordance with the regulations of the United States Secretary
6 of Labor, that for the period consisting of such week and the
7 immediately preceding twelve weeks, the rate of insured
8 unemployment (not seasonally adjusted) under this act:

9 (i) was less than one hundred twenty per centum of the
10 average of such rates for the corresponding thirteen-week period
11 ending in each of the preceding two calendar years, if paragraph
12 (1)(i)(A) applies or, the preceding three calendar years, if
13 paragraph (1)(i)(B) applies, or

14 (ii) was less than five per centum.

15 (3) Notwithstanding the provisions of this subsection, any
16 week for which there would otherwise be a State "on" indicator
17 shall continue to be such a week and shall not be determined to
18 be a week for which there is a State "off" indicator.

19 (c) (1) There is a "State 'on' indicator" for this State
20 for a week if:

21 (i) the average rate of total unemployment in this State,
22 seasonally adjusted, for the period consisting of the most
23 recent three months for which data for all states are published
24 before the close of such week equals or exceeds six and one-half
25 per centum; and

26 (ii) (A) the average rate of total unemployment in this
27 State, seasonally adjusted, for the three-month period referred
28 to in subparagraph (i) equals or exceeds one hundred ten per
29 centum of such average rate for either, or both, of the
30 corresponding three-month periods ending in the two preceding

1 calendar years, or

2 (B) with respect to compensation for weeks of unemployment
3 beginning after December 17, 2010, and ending on or before
4 December 31, 2011, the average rate of total unemployment in
5 this State, seasonally adjusted, for the three-month period
6 referred to in subparagraph (i) equals or exceeds one hundred
7 ten per centum of such average rate for any, or all, of the
8 corresponding three-month periods ending in the three preceding
9 calendar years.

10 (2) There is a State "off" indicator for this State for a
11 week if the requirements of paragraph (1)(i) or (ii) are not
12 satisfied.

13 (3) This subsection shall be applicable only with respect to
14 weeks of unemployment for which one hundred per centum Federal
15 sharing of extended benefits is available under section 2005(a)
16 of the American Recovery and Reinvestment Act of 2009 (Public
17 Law 111-5, 123 Stat. 115), without regard to the extension of
18 Federal sharing for certain claims as provided under section
19 2005(c) of the American Recovery and Reinvestment Act of 2009,
20 or under a subsequently enacted provision of Federal law.

21 (4) Notwithstanding the provisions of this subsection, any
22 week for which there would otherwise be a State "on" indicator
23 shall continue to be such a week and shall not be determined to
24 be a week for which there is a State "off" indicator.

25 (5) For purposes of this subsection, determinations of the
26 rate of total unemployment for any period, and of any seasonal
27 adjustment, shall be made by the United States Secretary of
28 Labor.

29 * * *

30 Section 7. Section 505 of the act, amended April 23, 1942

1 (Sp.Sess., P.L.60, No.23), is amended to read:

2 Section 505. Rules of Procedure.--The manner in which
3 appeals shall be taken, the reports thereon required from the
4 department, the claimant and employers, and the conduct of
5 hearings and appeals, shall be in accordance with rules of
6 procedure prescribed by the board whether or not such rules
7 conform to common law or statutory rules of evidence and other
8 technical rules of procedure. Rules established by the board
9 shall permit either party to a hearing to testify via telephone,
10 without regard to distance of hearing location from either
11 party.

12 When the same or substantially similar evidence is relevant
13 and material to the matter in issue in applications and claims
14 filed by more than one individual or in multiple applications
15 and claims filed by a single individual the same time and place
16 for considering each such application and claim may be fixed,
17 hearings thereon jointly conducted, a single record of the
18 proceedings made and evidence introduced with respect to any
19 application or claim considered as introduced with respect to
20 all of such applications or claims: Provided, That in the
21 judgment of the board or referee having jurisdiction of the
22 proceeding such consideration will not be prejudicial to any
23 party.

24 Section 8. The act is amended by adding an article to read:

25 ARTICLE XIII

26 SHARED-WORK PROGRAM

27 Section 1301. 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 "Affected unit." A department, shift or other organizational
2 unit of two or more employees that is designated by an employer
3 to participate in a shared-work plan.

4 "Approved shared-work plan." An employer's shared-work plan
5 which meets the requirements of section 1303 and which the
6 department approves in writing.

7 "Fringe benefit." Health insurance, a retirement benefit
8 received under a pension plan, a paid vacation day, a paid
9 holiday, sick leave and any other similar employee benefit
10 provided by an employer.

11 "Participating employee." An employee in the affected unit
12 whose hours of work are reduced by the reduction percentage
13 under the shared-work plan.

14 "Participating employer." An employer who has a shared-work
15 plan in effect.

16 "Reduction percentage." The percentage by which each
17 participating employee's normal weekly hours of work are reduced
18 under a shared-work plan in accordance with section 1303(b).

19 "Shared-work plan." A plan for reducing unemployment under
20 which participating employees of an affected unit share the work
21 remaining after reduction in their normal weekly hours of work.
22 Section 1302. Application to approve A SHARED-WORK plan. ←

23 (a) Requirements.--An employer that meets all of the
24 following requirements may apply to the department for approval
25 of a shared-work plan:

26 (1) The employer has filed all quarterly reports and
27 other reports required under this act and has paid all
28 contribution, reimbursement, interest and penalty due through
29 the date of the employer's application.

30 (2) If the employer is contributory, the employer's

1 reserve account balance as of the most recent computation
2 date preceding the date of the employer's application is a
3 positive number.

4 (3) The employer has paid wages for the 12 consecutive
5 calendar quarters preceding the date of the employer's
6 application.

7 (b) Application.--An application under this section shall be
8 made in the manner prescribed by the department and contain all
9 information required by the department, including the following:

10 (1) The employer's assurance that it will provide
11 reports to the department relating to the operation of its
12 shared-work plan at the times and in the manner prescribed by
13 the department and containing all information required by the
14 department, including the number of hours worked each week by
15 participating employees.

16 (2) The employer's assurance that it will not hire new
17 employees in, or transfer employees to, the affected unit
18 during the effective period of the shared-work plan.

19 (3) The employer's assurance that it will not lay off
20 participating employees during the effective period of the
21 shared-work plan, or reduce participating employees' hours of
22 work by more than the reduction percentage during the
23 effective period of the shared-work plan, except in cases of
24 holidays, designated vacation periods, equipment maintenance
25 or similar circumstances.

26 (4) A list of the week or weeks within the requested
27 effective period of the SHARED-WORK plan during which
28 participating employees are anticipated to work fewer hours
29 than the number of hours determined under section 1303(a)(5)
30 due to circumstances included in paragraph (3).



1 (5) The employer's certification that the implementation
2 of a shared-work plan is in lieu of temporary layoffs that
3 would affect at least 10% of the employees in the affected
4 unit and would result in an equivalent reduction in work
5 hours.

6 (6) The employer's assurance that it will abide by all
7 terms and conditions of this article.

8 (c) Multiple SHARED-WORK plans.--An employer may apply to ←
9 the department for approval of more than one shared-work plan.

10 Section 1303. ~~Plan~~ SHARED-WORK PLAN requirements. ←

11 (a) General rule.--The department may approve a shared-work
12 plan only if the plan meets all of the following requirements:

13 (1) The shared-work plan applies to one affected unit.

14 (2) All employees in the affected unit are participating
15 employees, except that the following employees may not be
16 participating employees:

17 (i) An employee who has been employed in the
18 affected unit for less than three months prior to the
19 date the employer applies for approval of the shared-work
20 plan.

21 (ii) An employee whose hours of work per week
22 determined under paragraph (5) is 40 or more hours.

23 (3) There are no fewer than two participating employees,
24 determined without regard to corporate officers.

25 (4) The participating employees are identified by name
26 and Social Security number.

27 (5) The number of hours a participating employee will
28 work each week during the effective period of the SHARED-WORK ←
29 plan is determined by the following formula:

30 employee's normal weekly hours of

1 work x (100% - reduction percentage)

2 (6) As a result of a decrease in the number of hours
3 worked by each participating employee, there is a
4 corresponding reduction in wages.

5 (7) If any participating employee is covered by a
6 collective bargaining agreement, the SHARED-WORK plan is ←
7 approved in writing by the collective bargaining
8 representative.

9 (8) The SHARED-WORK plan does not affect the fringe ←
10 benefits of any participating employee not covered by a
11 collective bargaining agreement.

12 (9) The effective period of the SHARED-WORK plan is not ←
13 more than 52 consecutive weeks.

14 (10) The effective period of the SHARED-WORK plan ←
15 combined with effective periods of the participating
16 employer's prior SHARED-WORK plans does not equal more than ←
17 104 weeks out of a 156-week period.

18 (11) The reduction percentage satisfies the requirements
19 of subsection (b).

20 (b) Reduction percentage.--The reduction percentage under an
21 approved shared-work plan shall meet all of the following
22 requirements:

23 (1) The reduction percentage shall be no less than 20%
24 and no more than 40%.

25 (2) The reduction percentage shall be the same for all
26 participating employees.

27 (3) The reduction percentage shall not change during the
28 period of the shared-work plan unless the plan is modified in
29 accordance with section 1308.

30 Section 1304. Approval or disapproval of shared-work plan.

1 The department shall approve or disapprove a shared-work plan
2 no later than 15 days after the date the employer's shared-work
3 plan application that meets the requirements of section 1302(b)
4 is received by the department. The department's decision shall
5 be made in writing and, if the shared-work plan is disapproved,
6 shall include the reasons for the disapproval.

7 Section 1305. Effective period of SHARED-WORK plan. ←

8 (a) Number of weeks.--A shared-work plan is effective for
9 the number of consecutive weeks indicated in the employer's
10 application, or a lesser number of weeks as approved by the
11 department, unless sooner terminated in accordance with section
12 1309.

13 (b) Start date.--The effective period of the shared-work
14 plan shall begin with the first calendar week following the date
15 on which the department approves the plan.

16 Section 1306. Criteria for compensation.

17 (a) General rule.--Compensation shall be payable to a
18 participating employee for a week within the effective period of
19 an approved shared-work plan during which the employee works the
20 number of hours determined under section 1303(a)(5) for the
21 participating employer on the same terms, in the same amount and
22 subject to the same conditions that would apply to the
23 participating employee without regard to this article, except as
24 follows:

25 (1) A participating employee shall not be required to be
26 unemployed within the meaning of section 4(u) or file claims
27 for compensation under section 401(c).

28 (2) Notwithstanding section 404(d)(1), a participating
29 employee shall be paid compensation in an amount equal to the
30 product of his weekly benefit rate and the reduction

1 percentage, rounded to the next lower whole dollar amount.

2 (3) The department shall not deny compensation to a
3 participating employee for any week during the effective
4 period of the shared-work plan by reason of the application
5 of any provision of this act relating to active search for
6 work or refusal to apply for or accept work other than work
7 offered by the participating employer.

8 (4) A participating employee satisfies the requirements
9 of section 401(d)(1) if the employee is able to work and is
10 available for the employee's normal weekly hours of work with
11 the participating employer.

12 (b) Equivalent remuneration.--For purposes of subsection
13 (a), if a participating employee works fewer hours than the
14 number of hours determined under section 1303(a)(5) for the
15 participating employer during a week within the effective period
16 of the approved shared-work plan, but receives remuneration
17 equal to remuneration the employee would have received if the
18 employee had worked the number of hours determined under section
19 1303(a)(5), the employee will be deemed to have worked the
20 number of hours determined under section 1303(a)(5) during that
21 week.

22 (c) Inapplicability of article.--A participating employee's
23 eligibility for compensation for a week within the effective
24 period of an approved shared-work plan shall be determined
25 without regard to this article under any of the following
26 circumstances:

27 (1) The employee works fewer hours than the number of
28 hours determined under section 1303(a)(5) for the
29 participating employer during the week and subsection (b)
30 does not apply.

1 (2) The employee works more hours than the number of
2 hours determined under section 1303(a) (5) for the
3 participating employer during the week.

4 (3) The employee receives remuneration for the week from
5 the participating employer for hours in excess of the number
6 of hours determined under section 1303(a) (5).

7 Section 1307. Participating employer responsibilities.

8 (a) Filing claims.--The department shall establish a
9 schedule of consecutive two-week periods within the effective
10 period of the shared-work plan. The department may, as
11 necessary, include one-week periods in the schedule and revise
12 the schedule. At the end of each scheduled period, the
13 participating employer shall file claims for compensation for
14 the week or weeks within the period on behalf of the
15 participating employees. The claims shall be filed no later than
16 the last day of the week immediately following the period,
17 unless an extension of time is granted by the department for
18 good cause. The claims shall be filed in the manner prescribed
19 by the department and shall contain all information required by
20 the department to determine the eligibility of the participating
21 employees for compensation.

22 (b) Benefit charges.--Notwithstanding any other provision of
23 this act, compensation paid to participating employees for weeks
24 within the effective period of an approved shared-work plan will
25 be charged to the participating employer.

26 Section 1308. Modification of AN APPROVED SHARED-WORK plan. ←

27 An employer may apply to the department for approval to
28 modify a AN APPROVED shared-work plan to meet changed ←
29 conditions. The department shall reevaluate the plan and may
30 approve the modified plan if it meets the requirements for

1 approval under section ~~1304~~ 1303. If the modifications cause the ←
2 shared-work plan to fail to meet the requirements for approval,
3 the department shall disapprove the proposed modifications.

4 Section 1309. Termination of AN APPROVED SHARED-WORK plan. ←

5 (a) General rule.--The secretary may terminate a AN APPROVED ←
6 shared-work plan for good cause.

7 (b) Good cause.--For purposes of subsection (a), good cause
8 includes any of the following:

9 (1) The APPROVED SHARED-WORK plan is not being executed ←
10 according to its approved terms and conditions.

11 (2) The participating employer fails to comply with the
12 assurances given in the APPROVED SHARED-WORK plan. ←

13 (3) The participating employer or a participating
14 employee violates any criteria on which approval of the
15 SHARED-WORK plan was based. ←

16 (c) Termination by employer.--The employer may terminate a ←
17 AN APPROVED shared-work plan by written notice to the ←
18 department.

19 Section 1310. Department discretion.

20 The decision to approve or disapprove a shared-work plan, to
21 approve or disapprove a modification of a AN APPROVED shared- ←
22 work plan or to terminate a AN APPROVED shared-work plan will be ←
23 made within the department's discretion. Such decisions are not
24 subject to the appeal provisions of Article V.

25 Section 1311. Publication of notice.

26 The department shall transmit to the Legislative Reference
27 Bureau for publication in the Pennsylvania Bulletin notice that
28 the provisions of this article have been approved by the
29 department UNITED STATES DEPARTMENT OF LABOR as required under ←
30 section 3304(a)(4)(E) of the Federal Unemployment Tax Act

1 (Public Law 86-778, 26 U.S.C. § 3304(a)(4)(E)) and section
2 303(a)(5) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
3 503(a)(5)).

4 Section 1312. Severability.

5 Notwithstanding any other section of this act, if any
6 provision or provisions of this article cause the department ←
7 UNITED STATES DEPARTMENT OF LABOR to withhold approval of this ←
8 article as required under section 3304(a)(4)(E) of the Federal
9 Unemployment Tax Act (Public Law 86-778, 26 U.S.C. § 3304(a)(4)
10 (E)) and section 303(a)(5) of the Social Security Act (49 Stat.
11 620, 42 U.S.C. § 503(a)(5)), the department is authorized to
12 permanently suspend the provision or provisions.

13 Section 1313. Expiration.

14 This article shall expire five years from its effective date.

15 Section 9. This act shall apply as follows:

16 (1) The amendment or addition of sections 213, 302 and
17 302.1, other than section 302.1(c), shall apply to charges
18 for compensation corresponding to benefit years that begin on
19 and after the effective date of sections 213, 302 and 302.1
20 of the act.

21 (2) The addition of section 302.1(c)(1) and (2) of the
22 act shall apply to notices of determination regarding
23 eligibility for benefits that are issued on or after the date
24 of implementation of the Department of Labor and Industry's
25 system to provide relief from charges without an employer
26 request, as announced by the Secretary of Labor and Industry
27 in a notice published in the Pennsylvania Bulletin. The
28 addition of section 302.1(c)(3) shall apply to relief from
29 charges that is granted on or after such implementation date.

30 (3) The amendment of section 401(b) shall apply to

1 benefit years that begin on after January 1, 2012.

2 (4) The amendment of section 404, other than the
3 amendment of section 404(d)(1) and the addition of section
4 404(d)(1.1), shall apply to the determination of the maximum
5 weekly benefit rate for benefit years that begin on or after
6 January 1, ~~2012~~ 2013. ←

7 (5) The amendment or addition of section 404(d)(1) and
8 (1.1) shall apply to benefit years that begin on or after the
9 effective date of section 404(d)(1) and (1.1).

10 Section 10. The amendment of section 401-A(b) and (c) shall
11 apply retroactively to December 18, 2010.

12 Section 11. This act shall take effect as follows:

13 (1) The amendment of section 401(b) shall take effect
14 January 1, 2012.

15 (2) The amendment of section 404 introductory paragraph
16 and subsection (e)(2) shall take effect ~~immediately~~ JANUARY ←
17 1, 2013.

18 (3) This section shall take effect immediately.

19 (4) The addition of Article XIII of the act shall take
20 effect upon publication in the Pennsylvania Bulletin of the
21 notice required under section 1311 of the act or July 1,
22 2011, whichever occurs later.

23 (5) The remainder of this act shall take effect in 60
24 days.