

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 REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 12, 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 CERTAIN AGREEMENTS
17 VOID AND PENALTY, for false statements and representations to <--
18 obtain or increase compensation, FOR FALSE STATEMENTS AND
19 REPRESENTATIONS TO PREVENT OR REDUCE COMPENSATION AND OTHER
20 OFFENSES and for violation of act and rules and regulations.

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

23 ~~Section 1. Sections 801 and 803 of the act of December 5, <--~~
24 ~~1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the~~
25 ~~Unemployment Compensation Law, amended December 9, 2002-~~

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

2 SECTION 1. SECTION 206 OF THE ACT OF DECEMBER 5, 1936 (2ND <--
3 SP.SESS., 1937 P.L.2897, NO.1), KNOWN AS THE UNEMPLOYMENT
4 COMPENSATION LAW, AMENDED JULY 21, 1983 (P.L.68, NO.30) AND
5 NOVEMBER 17, 1995 (P.L.615, NO.64), IS AMENDED TO READ:

6 SECTION 206. RECORDS OF AND REPORTS BY EMPLOYERS.--(A) EACH
7 EMPLOYER (WHETHER OR NOT LIABLE FOR THE PAYMENT OF CONTRIBUTIONS
8 UNDER THIS ACT) SHALL KEEP ACCURATE EMPLOYMENT RECORDS
9 CONTAINING SUCH INFORMATION, AS MAY BE PRESCRIBED BY THE RULES
10 AND REGULATIONS ADOPTED BY THE DEPARTMENT. SUCH RECORDS SHALL BE
11 OPEN TO INSPECTION BY THE DEPARTMENT AND ITS AGENTS AT ANY
12 REASONABLE TIME, AND AS OFTEN AS MAY BE DEEMED NECESSARY, BUT
13 EMPLOYERS NEED NOT RETAIN SUCH RECORDS MORE THAN FOUR (4) YEARS
14 AFTER CONTRIBUTIONS RELATING TO SUCH RECORDS HAVE BEEN PAID. THE
15 DEPARTMENT MAY REQUIRE FROM SUCH EMPLOYERS SUCH REPORTS AS IT
16 DEEMS NECESSARY, WHICH SHALL BE SWORN TO, IF REQUIRED BY THE
17 DEPARTMENT.

18 (B) INFORMATION THUS OBTAINED SHALL NOT BE MADE PUBLIC OR BE
19 OPEN TO PUBLIC INSPECTION, OTHER THAN TO THE MEMBERS OF THE
20 BOARD, THE OFFICERS AND EMPLOYEES OF THE DEPARTMENT AND OTHER
21 PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR PUBLIC DUTIES, BUT
22 ANY EMPLOYEE OR EMPLOYER AT A HEARING ON AN APPEAL SHALL, UPON
23 REQUEST, BE SUPPLIED WITH INFORMATION FROM SUCH RECORDS TO THE
24 EXTENT NECESSARY FOR THE PROPER PRESENTATION AND CONSIDERATION
25 OF THE APPEAL.

26 (C) ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OR THE BOARD,
27 OR ANY OTHER PUBLIC EMPLOYEE, WHO SHALL VIOLATE ANY OF THE
28 PROVISIONS OF THIS SECTION SHALL, UPON CONVICTION THEREOF IN A
29 SUMMARY PROCEEDING, BE SENTENCED TO PAY A FINE OF NOT LESS THAN
30 [TWENTY DOLLARS (\$20)] ONE HUNDRED DOLLARS (\$100) NOR MORE THAN

1 [TWO HUNDRED DOLLARS (\$200)] THREE HUNDRED DOLLARS (\$300) AND IN
2 DEFAULT OF THE PAYMENT OF SUCH FINE AND COST OF PROSECUTION
3 SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LONGER THAN THIRTY
4 (30) DAYS.

5 (D) ANY EMPLOYER WHO HAS BEEN DETERMINED BY THE DEPARTMENT
6 TO BE SUBJECT TO THE REPORTING PROVISIONS OF THIS ACT AND HAS
7 BEEN SO NOTIFIED, AND WHO NEGLECTS OR REFUSES TO FILE OR TO
8 COMPLETE IN SUCH MANNER AS THE DEPARTMENT MAY PRESCRIBE EITHER
9 THE PERIODIC REPORT REQUIRED BY THE DEPARTMENT TO ESTABLISH THE
10 AMOUNT OF SUCH CONTRIBUTIONS OR THE PERIODIC REPORT REQUIRED BY
11 THE DEPARTMENT SHOWING THE AMOUNT OF WAGES PAID TO EACH EMPLOYEE,
12 OR BOTH, ON OR BEFORE THE DATE SUCH REPORTS ARE REQUIRED TO BE
13 FILED, SHALL PAY A PENALTY OF [TEN PER CENTUM (10%)] FIFTEEN PER
14 CENTUM (15%) OF THE TOTAL AMOUNT OF CONTRIBUTIONS PAID OR
15 PAYABLE BY THE EMPLOYER OR EMPLOYEE AS THE CASE MAY BE FOR THE
16 PERIOD: PROVIDED, THAT SUCH PENALTY SHALL BE NOT LESS THAN
17 [TWENTY-FIVE DOLLARS (\$25)] ONE HUNDRED TWENTY-FIVE DOLLARS
18 (\$125) OR MORE THAN [TWO HUNDRED AND FIFTY DOLLARS (\$250)] FOUR
19 HUNDRED FIFTY DOLLARS (\$450). SUCH PENALTY SHALL APPLY TO THE
20 REPORTS FOR EACH PERIOD WITH RESPECT TO WHICH SUCH REPORTS ARE
21 REQUIRED TO BE FILED: PROVIDED, THAT SUCH PENALTY SHALL NOT
22 APPLY TO REPORTS FOR ANY PERIOD WITH RESPECT TO WHICH THE LAST
23 DAY FOR FILING SUCH REPORTS IS PRIOR TO A DATE ON WHICH THE
24 DEPARTMENT HAS NOTIFIED THE EMPLOYER THAT HE HAS BEEN DETERMINED
25 AN EMPLOYER SUBJECT TO THE REPORTING PROVISIONS OF THIS ACT,
26 UNLESS THE REPORTS FOR SUCH PRIOR PERIODS ARE NOT FILED WITHIN
27 THIRTY (30) DAYS AFTER THE EMPLOYER HAS BEEN SO NOTIFIED. THE
28 PENALTIES PROVIDED BY THIS SECTION SHALL BE IN ADDITION TO ALL
29 OTHER PENALTIES PROVIDED FOR IN THIS ACT.

30 SECTION 2. SECTION 701 OF THE ACT IS AMENDED TO READ:

1 SECTION 701. CERTAIN AGREEMENTS VOID; PENALTY.--NO AGREEMENT
2 BY AN EMPLOYE TO WAIVE, RELEASE, OR COMMUTE HIS RIGHTS TO
3 COMPENSATION, OR ANY OTHER RIGHTS UNDER THIS ACT, SHALL BE
4 VALID. NO AGREEMENT BY AN EMPLOYE OR BY EMPLOYES TO PAY ALL OR
5 ANY PORTION OF AN EMPLOYER'S CONTRIBUTIONS, REQUIRED UNDER THIS
6 ACT FROM SUCH EMPLOYER, SHALL BE VALID. NO EMPLOYER SHALL,
7 DIRECTLY OR INDIRECTLY, MAKE OR REQUIRE OR ACCEPT ANY DEDUCTION
8 FROM THE REMUNERATION OF INDIVIDUALS IN HIS EMPLOY TO FINANCE
9 CONTRIBUTIONS REQUIRED FROM HIM UNDER THIS ACT, OR REQUIRE OR
10 ACCEPT ANY WAIVER BY AN EMPLOYE OF ANY RIGHT HEREUNDER. ANY
11 EMPLOYER OR OFFICER OR AGENT OF AN EMPLOYER WHO VIOLATES ANY
12 PROVISION OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR, AND,
13 UPON CONVICTION THEREOF, SHALL BE SENTENCED FOR EACH OFFENSE TO
14 PAY A FINE OF NOT LESS THAN [ONE HUNDRED DOLLARS] FIVE HUNDRED
15 DOLLARS NOR MORE THAN [ONE THOUSAND DOLLARS] ONE THOUSAND FIVE
16 HUNDRED DOLLARS, OR BE IMPRISONED FOR NOT MORE THAN SIX MONTHS,
17 OR BOTH.

18 SECTION 3. SECTION 801 OF THE ACT, AMENDED DECEMBER 9, 2002
19 (P.L.1336, NO.158), IS AMENDED TO READ:

20 Section 801. False Statements and Representations to Obtain
21 or Increase Compensation.--(a) Whoever makes a false statement
22 or representation knowing it to be false, or knowingly fails to
23 disclose a material fact to obtain or increase any compensation
24 or other payment under this act or under an employment security
25 law of any other state or of the Federal Government or of a
26 foreign government, either for himself or for any other person,
27 shall upon conviction thereof in a summary proceeding, be
28 sentenced to pay a fine of not less than [one] five hundred
29 dollars nor more than one thousand five hundred dollars, or
30 shall be sentenced to imprisonment for not longer than thirty

1 days, or both, and each such false statement or representation
2 or failure to disclose a material fact shall constitute a
3 separate offense. In addition to any other sanction, an
4 individual convicted under this subsection shall be ordered to
5 make restitution of the compensation to which the individual was
6 not entitled and of interest on that compensation in accordance
7 with section 804(a).

8 (b) Whoever makes a false statement knowing it to be false,
9 or knowingly fails to disclose a material fact to obtain or
10 increase any compensation or other payment under this act or
11 under an employment security law of any other state or of the
12 Federal Government or of a foreign government, may be
13 disqualified in addition to such week or weeks of improper
14 payments for a penalty period of [two] ten weeks and for not
15 more than one additional week for each such week of improper
16 payment: Provided, That no additional weeks of disqualification
17 shall be imposed under this section if prosecution proceedings
18 have been instituted against the claimant because of such
19 misrepresentation or non-disclosure. The departmental
20 determination imposing penalty weeks under the provisions of
21 this subsection shall be subject to appeal in the manner
22 provided in this act for appeals from determinations of
23 compensation. The penalty weeks herein provided for shall be
24 imposed against any weeks with respect to which the claimant
25 would otherwise be eligible for compensation[, under the
26 provisions of this act, which begin within the four year period
27 following the end of the benefit year with respect to which the
28 improper payment or payments occurred].

29 (c) Whoever makes a false statement knowing it to be false,
30 or knowingly fails to disclose a material fact to obtain or

1 increase any compensation or other payment under this act or
2 under an employment security law of the Federal Government, and
3 as a result receives compensation to which he is not entitled,
4 shall be liable to pay to the Unemployment Compensation Fund a
5 sum equal to fifteen percentum (15%) of the amount of such
6 compensation. The sum shall be collectible in the manner
7 provided in section 308.1 or 309 for the collection of past due
8 contributions and by any other means available under Federal or
9 State law. No administrative or legal proceeding for the
10 collection of such sum shall be instituted after the expiration
11 of twelve years following the end of the benefit year with
12 respect to which such sum was paid.

13 (d) Subsection (b) shall be applied by substituting fifty-
14 two weeks for ten weeks and the prohibition in subsection (b) on
15 the imposition of penalty weeks if prosecution proceedings have
16 been instituted shall not apply in any of the following
17 circumstances:

18 (1) An incarcerated individual makes a false statement
19 knowing it to be false, or knowingly fails to disclose a
20 material fact to obtain or increase any compensation or other
21 payment under this act, or under an employment security law of
22 the Federal Government for which he is ineligible under section
23 401(b) or 402.6.

24 (2) An incarcerated individual knowingly provides
25 information or other means to another person whereby the other
26 person claims compensation in the name of the incarcerated
27 individual for which the incarcerated individual is ineligible
28 under section 401(d) or 402.6.

29 SECTION 4. SECTION 802(A) OF THE ACT, AMENDED JUNE 15, 2005 <--
30 (P.L.8, NO.5), IS AMENDED TO READ:

1 SECTION 802. FALSE STATEMENTS AND REPRESENTATIONS TO PREVENT
2 OR REDUCE COMPENSATION; OTHER OFFENSES.-- (A) ANY EMPLOYER
3 (WHETHER OR NOT LIABLE FOR THE PAYMENT OF CONTRIBUTIONS UNDER
4 THIS ACT) OR ANY OFFICER OR AGENT OF SUCH EMPLOYER OR ANY OTHER
5 PERSON WHO DOES ANY OF THE FOLLOWING COMMITS A SUMMARY OFFENSE
6 AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY A FINE OF NOT
7 LESS THAN [ONE] FIVE HUNDRED DOLLARS NOR MORE THAN FIFTEEN
8 HUNDRED DOLLARS OR TO IMPRISONMENT FOR NOT LONGER THAN THIRTY
9 DAYS, OR BOTH:

10 (1) MAKES A FALSE STATEMENT OR REPRESENTATION KNOWING IT TO
11 BE FALSE, OR WHO KNOWINGLY FAILS TO DISCLOSE A MATERIAL FACT TO
12 PREVENT OR REDUCE THE PAYMENT OF COMPENSATION TO ANY EMPLOYEE
13 ENTITLED THERETO, OR TO AVOID BECOMING OR REMAINING SUBJECT
14 HERETO, OR TO AVOID OR REDUCE ANY CONTRIBUTION OR OTHER PAYMENT
15 REQUIRED FROM AN EMPLOYER UNDER THIS ACT;

16 (2) WILFULLY FAILS OR REFUSES TO MAKE ANY SUCH CONTRIBUTION
17 OR OTHER PAYMENT REQUIRED HEREUNDER;

18 (3) WILFULLY FAILS OR REFUSES TO PRODUCE OR PERMIT THE
19 INSPECTION OR COPYING OF RECORDS AS REQUIRED HEREUNDER;

20 (4) WILFULLY FAILS OR REFUSES TO FURNISH ANY REPORT REQUIRED
21 BY SECTION 304 OR 315 OF THIS ACT OR ANY OTHER PROVISION OF THIS
22 ACT OR THE RULES OR REGULATIONS OF THE DEPARTMENT; OR

23 (5) WILFULLY REPORTS OR ATTEMPTS TO REPORT THE WAGES OF ONE
24 OR MORE EMPLOYEES TO THE DEPARTMENT ON AN UNEMPLOYMENT
25 COMPENSATION ACCOUNT OTHER THAN THE ACCOUNT OF THE EMPLOYER
26 UNDER THIS ACT; OR

27 (6) WILFULLY ADVISES, SOLICITS, ENCOURAGES OR COMMANDS AN
28 EMPLOYER OR AN OFFICER OR AGENT OF AN EMPLOYER OR ANY OTHER
29 PERSON TO ENGAGE IN AN ACT OR OMISSION THAT IS AN OFFENSE UNDER
30 THIS SECTION.

1 * * *

2 SECTION 5. SECTION 803 OF THE ACT, AMENDED DECEMBER 9, 2002
3 (P.L.1336, NO.158), IS AMENDED TO READ:

4 Section 803. Violation of Act and Rules and Regulations.--

5 Any person who shall wilfully violate any provision of this act
6 or any rule or regulation thereunder, the violation of which is
7 made unlawful, or the observance of which is required under the
8 terms of this act, and for which a penalty is neither prescribed
9 herein nor provided by any other applicable statute, shall, upon
10 conviction thereof in a summary proceeding, be sentenced to pay
11 a fine of not less than [one] five hundred dollars nor more than
12 one thousand five hundred dollars or to imprisonment for not
13 longer than thirty days, or both. Each day such violation
14 continues shall be deemed to be a separate offense.

15 Section ~~2~~ 6. This act shall apply as follows: <--

16 (1) The amendment of sections ~~801(a)~~ 206(C), 701, <--
17 801(A), 802(A) and 803 of the act shall apply to offenses
18 committed on or after the effective date of this section.

19 (2) THE AMENDMENT OF SECTION 206(D) OF THE ACT SHALL <--
20 APPLY TO REPORTS REQUIRED ON OR AFTER THE EFFECTIVE DATE OF
21 THIS SECTION.

22 ~~(2)~~ (3) The amendment or addition of section 801(b), (c) <--
23 and (d)(1) of the act shall apply to false statements and
24 failures to disclose that occur on or after the effective
25 date of this section.

26 ~~(3)~~ (4) The addition of section 801(d)(2) of the act <--
27 shall apply to information or other means provided on or
28 after the effective date of this section.

29 Section ~~3~~ 7. This act shall take effect immediately. <--