

Section 903. General Repeal.—All other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

APPROVED—The 22d day of June, A. D. 1964.

WILLIAM W. SCRANTON

No. 7

AN ACT

Amending the act of December 5, 1936 (1937 P. L. 2897), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," deleting obsolete definitions and provisions, redefining certain terms, correcting certain references to the Internal Revenue Code, clarifying certain definitions, consolidating rate tables, recodifying certain content, revising provisions concerning refunds, collection, benefit overpayments, appeals modifying transfer provisions and modifying penalty provisions.

Unemployment
Compensation
Law.

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

Section 1. Subsection (e) of section 4, act of December 5, 1936 (1937 P. L. 2897), known as the "Unemployment Compensation Law," amended May 23, 1949 (P. L. 1738), is repealed.

Section 2. Subsection (j) of section 4 of the act, amended May 23, 1949 (P. L. 1738), is amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * * * *

(j) (1) "Employer" means every [(1)] individual [(2)] copartnership, [(3)] association, [(4)] corporation (domestic or foreign), [(5)] the legal representative, trustee in bankruptcy, receiver or trustee of any individual, copartnership, association or corporation, or [(6)] the legal representative of a deceased person, who or which employed or employs any employe in employment subject to this act for some portion of a day during a calendar year, or who or which has elected to become

fully subject to this act, and whose election remains in force.

(2) Each individual employed to perform or to assist in performing work of any agent or employe of an employer shall be deemed to be employed by such employer for all the purposes of this act, whether such individual was hired or paid directly by such employer or by such agent or employe, provided the employer had actual or constructive knowledge of the work.

(3) Where an employer maintains more than one place of employment within this Commonwealth, all of the employes at the several places of employment shall be treated, for the purposes of this act, as if employed by a single employer.

(4) Any individual, copartnership, association, [or] corporation *or other entity* who or which is not subject to this act may elect to become subject thereto by filing with the department his or its written application. [and if such application is approved by the department, the election shall become binding for not less than two calendar years]

(5) An employer subject to this act may elect to include within the term "employment," subject to this act, services performed by his or its employes with respect to which no contributions are required and paid under an unemployment compensation law of any other state, [(1)] (a) if the employe or employes, included in such election, maintain a domicile within this Commonwealth and the services of such employe or employes, are performed entirely without this Commonwealth, or [(2)] (b) if the employe or employes included in the election maintains no domicile within this Commonwealth but the services of such employe or employes are (A) performed without this Commonwealth and (B) are directed from this Commonwealth.

[Such election shall be subject to the approval of the department and shall become binding for not less than two calendar years.]

(6) An employer, subject to this act, may elect to include within the term "employment," subject to this act, services performed by his or its employes which are exempt under the provisions of subsection (1) of section four of this act. [Such election shall be subject to the approval of the department, and if such election is approved by the department, the election shall become binding for not less than two calendar years.]

(7) *Any election shall be subject to the approval of the department and shall become binding for not less than two calendar years.*

(8) Any services performed for an employer covered by an election, pursuant to this subsection, shall, during the effective period of such election, be deemed to be employment for all the purposes of this act. Any election approved by the department, pursuant to this subsection, shall cease to be effective only as of the first day of January of any calendar year subsequent to the initial two calendar years thereof, and only if, at least thirty (30) days prior to such first day of January, the employer has filed with the department a notice of termination of his election. Notwithstanding any provisions of this subsection to the contrary, the department may at any time, on its own motion, cancel an election approved under the provisions of this subsection.

* * * * *

Section 3. Subparagraphs (2) to (13) inclusive of paragraphs (4) and (5) of subsection (1) of section 4 of the act, amended May 23, 1949 (P. L. 1738), are amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * * * *

(1) * * *

(4) The word "employment" shall not include—

* * * * *

(2) [Casual labor not in course of employer's trade or business, and domestic] *Domestic* service in a private home, local college club or local chapter of a college fraternity or sorority.

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

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

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

[(3)] (4) *Service performed [as an officer or member of the crew of a vessel not an American vessel.] on or in connection with a vessel or aircraft not an*

American vessel or American aircraft if the employe is employed on or in connection with such vessel or aircraft when outside the United States.

[(4)] (5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother.

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

[(6)] (7) Service performed in the employ of a state, a political subdivision thereof, or an instrumentality of *any one or more of the foregoing which is wholly owned by one or more states or political subdivisions.*

[(7)] (8) Service performed in the employ of [an organization operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.] *a religious, charitable, educational or other organization described in section 501 (c) (3) of the Federal Internal Revenue Code of 1954, as amended, which is exempt from income tax under section 501 (a) of said code.*

[(8)] (9) Service performed after June thirtieth, one thousand nine hundred and thirty-nine, either as an employe, representative, or service performed in the employ of an employer when such employe, representative, or employer is determined to be subject to the

Act of Congress known as the Railroad Unemployment Insurance Act (52 U. S. Stat. 1094) or to an Act of Congress establishing an unemployment compensation system for maritime employes by the agency or agencies empowered to make such determinations.

[(9)] (10) (A) Service performed in any calendar quarter in the employ of an organization exempt from income tax under section [101] 501 (a) of the Federal Internal Revenue Code of 1954, as amended, (*other than an organization described in section 401 (a) of said code*) or under section 521 of said code if [(i)] the remuneration for such service [does not exceed forty-five] *is less than fifty* dollars, or [(ii)] such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order or association and is performed away from the home office or is ritualistic service in connection with any such society, order or association, or (iii)]

(B) *Service performed in the employ of a school, college or university* if such service is performed by a student who is enrolled and is regularly attending classes at a school, college or university.

[(10)] Service performed in the employ of an agricultural or horticultural organization exempt from income tax under Section 101 (1) of the Federal Internal Revenue Code as amended.

(11) Service performed in the employ of a voluntary employes beneficiary association providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) eighty-five per centum or more of the income consist of amounts collected from members for the sole purpose of making such payments and meeting expenses.

(12) Service performed in the employ of a voluntary employes' beneficiary association providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employes of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(13) Service performed in any calendar quarter in the employ of a school, college or university not exempt from income tax under Section 101 of the Internal Revenue Code, as amended, if such service is performed

by a student who is enrolled and is regularly attending classes at such school, college or university and the remuneration for such service does not exceed forty-five dollars (exclusive of room, board and tuition).]

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

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

* * * * *

(5) If the services performed during one-half or more of any pay period by an employe for the person employing him constitute employment, all the services of such employe for such period shall be deemed to be employment, but, if the services performed during more than one-half of any such pay period by an employe for the person employing him do not constitute employment, then none of the services of such employe for such period shall be deemed to be employment. As used in this paragraph the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employe by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employe for the person employing him where any of such service is excepted by paragraph [(8)] (9) of subsection (1) (4) of this section.

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Section 4. Subsection (s) of section 4 of the act, amended May 23, 1949 (P. L. 1738), is repealed.

Section 5. Paragraphs (3) and (9) of subsection (x) of section 4 of the act, amended September 29, 1951 (P. L. 1580), paragraph (10) of subsection (x) of section 4, added September 14, 1961 (P. L. 1301), are amended and a new paragraph is added to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * * * *

(x) "Wages" means all remuneration, (including the cash value of mediums of payment other than cash), paid by an employer to an individual with respect to

* "this" in original.

his employment, except that the term "wages" shall not include:

* * * * *

(3) The payment by an employer (without deduction from remuneration of the employe) of the tax imposed upon an employe under section [one thousand four hundred (1400)] *three thousand one hundred one* of the Federal Internal Revenue Code of 1954, as amended.

* * * * *

(9) The amount of any payment made after the thirty-first day of December, one thousand nine hundred fifty, by an employer to or on behalf of an individual performing services for it, or his beneficiary, (i) from or to a trust exempt from tax under section [165 (a)] *401 (a)* of the Federal Internal Revenue Code of 1954, as amended, at the time of such payment, unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (ii) under or to an annuity plan which at the time of such payments [meets the requirements of] *is a plan described in* section [165 (a) (3), (4), (5) and (6)] of the Federal Internal Revenue Code] *403 (a) of said code, or (iii) under or to a bond purchase plan which at the time of such payment is a qualified bond purchase plan described in section 405 (a) of said code.*

(10) The amount of any payment made after October first, 1961, to an individual by any corporation, partnership, association or other business entity in which fifty per centum (50%), or more, of the proprietary interest is owned by such individual, his spouse, father, mother, *son, daughter*, brother, sister, or any combination of such persons, unless the tax imposed by the Federal Unemployment Tax Act is payable with respect to such payment or payments.

(11) *The amount of any remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business.*

* * * * *

Section 6. Subsection (y) of section 4 of the act, amended May 26, 1949 (P. L. 1854), is repealed.

Section 7. Subsection (z.1) of section 4 of the act, amended May 23, 1949 (P. L. 1738), is amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * * * *

(z.1) "American Vessel" means any vessel documented and numbered under the laws of the United

States, including any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state *and the term "American aircraft" means an aircraft registered under the laws of the United States.*

* * * * *

Section 8. Section 208.1 of the act, added August 24, 1953 (P. L. 1397) is repealed.

Section 8.1. Paragraphs (A) and (B) of subsection (d) (1) of section 301 of the act, amended March 24, 1964, Act No. 1, Special Session 1964, are amended to read:

Section 301. Contributions by Employers; Successors-in-Interest; Appeals.—

* * * * *

(d) (1) (A) Where an employer, subsequent to the thirtieth day of June, one thousand nine hundred and forty-nine, transfers his or its organization, trade or business, in whole or in part, to a successor-in-interest *who continues essentially the same business activity of the whole or part transferred*, such successor-in-interest may, prior to the end of the calendar year subsequent to the calendar year in which the transfer occurred, make application for transfer of the whole, or appropriate part, of the experience record and reserve account balance of the preceding employer to the successor-in-interest, including credit for the years during which contributions were paid by the preceding employer. The department shall transfer the whole or appropriate part of such experience record and reserve account balance of the preceding employer only if such preceding employer has joined in such application and has filed with the department such supporting schedules or other information with respect to such experience record and reserve account balance as the department may require. If the application for such transfer is filed in accordance with the rules and regulations of the department, the department may allow such transfer only if all contributions, interest and penalties owing by the predecessor have been or are paid at the time such application is filed with the department.

(B) Notwithstanding the provisions of paragraph (A) of this subsection, with respect to any transfer [occurring on or after the first day of July, one thousand nine hundred sixty-four,] by an employer subject to the contribution provisions of this act of its organization, trade or business, in whole or in part, whether

such transfer was by merger, consolidation, sale or transfer, descent or otherwise, the department shall transfer the experience record and reserve account balance (whether positive or negative) of such employer to its successor-in-interest if it finds that (I) such employer was owned or controlled by or owned or controlled the successor-in-interest either directly or indirectly, by legally enforceable means or otherwise, or (II) both such employer and successor-in-interest were owned or controlled either directly or indirectly, by legally enforceable means or otherwise, by the same interest or interests.

* * * * *

Section 8.2. Paragraph (E) of subsection (d) (1) of section 301 of the act is repealed.

Section 9. Subsections (f) and (g) of section 301 of the act, amended May 26, 1949 (P. L. 1854), are amended to read:

Section 301. Contributions by Employers; Successors-in-Interest; Appeals.—

* * * * *

(f) *If the application for redetermination be denied, such denial shall become final and conclusive within thirty days after the mailing of notice thereof to the employer's last known post office address, unless the employer shall appeal by petition from the action of the department to the Court of Common Pleas of Dauphin County within such time.* The petition filed in the Court of Common Pleas of Dauphin County shall set forth the reasons why the employer deems the rate of contribution determined by the department is incorrect. No questions shall be raised in any such petition, except such as were set forth in the application for review and redetermination by the department. A copy of the petition shall be served on the secretary or his deputy. The court shall fix a time for hearing the petition, and after hearing shall enter such order affirming or changing the rate of contribution determined by the department as to it appears just and proper. From the decision of the court an appeal may be taken by the department or the employer to the [Supreme or] Superior Court as in [other cases] *appeals taken under the provisions of Article V of this act.*

(g) Pending the determination of the correct rate of contribution payable by an employer [where] *when an application for redetermination has been filed with the department or when an appeal to court has been taken,* the employer shall be liable to the payment of the contributions at the rate as determined by the department. But if the rate of contribution is changed by *redetermination of the department or order of court* then the department shall, without application by the em-

ployer, make an adjustment thereof in connection with subsequent contribution payments as provided in section three hundred eleven of this act, or the employer may apply for a refund in accordance with said action.

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Section 10. Subsection (e) of section 301.1 of the act, added December 17, 1959 (P. L. 1893), is amended to read:

Section 301.1. Determination of Contribution Rate; Experience Rating.—

* * * * *

(e) The State Adjustment Factor for the calendar year beginning January one, one thousand nine hundred sixty, shall be six-tenths of one per centum and for the year beginning January one, one thousand nine hundred sixty-one, and for each calendar year thereafter, shall be computed as of the computation date for such year to a tenth of a per centum, rounding all fractional parts of a tenth of a per centum to the next higher tenth of a per centum, but in no event in excess of one per centum, according to the following formula:

$$\frac{\text{Bdr—Der}}{\text{Wt}} \times 100 = \text{State Adjustment Factor}$$

in which factor "Bdr" equals the aggregate of (A) all benefits paid but not charged to employers' accounts, plus, (B) all benefits paid and charged to inactive and terminated employers' accounts, plus, (C) all benefits paid and charged to accounts of *active* employers *who were* assigned the maximum Experience Factor *for the preceding calendar year* to the extent such benefits exceed the amount of contributions payable by such employers on the basis of such factor [, plus, (D) the aggregate amount by which the contributions estimated to be due under the State Adjustment Factor for the calendar year 1961 and any year thereafter was in excess of one per centum of the total wages for such calendar year]. Factor "Der" equals the aggregate of (A) interest credited to the Unemployment Compensation Fund, plus, (B) amounts transferred from the Special Administration Fund to the Unemployment Compensation Fund, plus, (C) refunds of benefits unlawfully paid, plus, (D) amounts credited to the Unemployment Compensation Fund by the Federal Government other than by loan; and factor "Wt" equals the wages paid by all employers. Each item in each factor shall be computed with respect to the twelve-month period ending on the computation date [, except that item (D) under factor "Bdr" shall be computed on a calendar year basis.] : *Pro-*

*vided, That *should the computed State Adjustment Factor for calendar year one thousand nine hundred sixty-two, and any year thereafter exceed one per centum, such excess over one per centum shall be added to the computed State Adjustment Factor for the following year.*

* * * * *

Section 10.1. Paragraph (1) of section 302 (a) of the act, amended March 24, 1964, Act No. 1, Special Session 1964, is amended to read:

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

(a) (1) Such account shall be credited with all contributions paid by such employer for periods subsequent to June thirtieth, one thousand nine hundred forty-eight. *Such account shall be charged with an amount determined by multiplying the wages of compensated employes of such employer for the twelve month period ended June thirtieth, one thousand nine hundred forty-nine, by the state experience heretofore used in determining rates of contributions for the year one thousand nine hundred forty-nine.* Subsequent to June thirtieth, one thousand nine hundred forty-nine, such account shall be charged with all compensation, paid to each individual who received from such employer wage credits constituting the base of such compensation, in the proportion that such wage credits with such employer bears to the total wage credits received by such individual from all employers: Provided, That if the department finds that such individual was separated from his most recent work for such employer due to being discharged for willful misconduct connected with such work, or due to his leaving such work without good cause attributable to his employment, thereafter no compensation paid to such individual with respect to any week of unemployment occurring subsequent to such separation, which is based upon wages paid by such employer with respect to employment prior to such separation, shall be charged to such employer's account under the provisions of this subsection (a); provided, such employer has filed a notice with the department in accordance with its rules and regulations and within the time limits prescribed therein.

* * * * *

Section 11. Section 305 of the act, amended May 27, 1943 (P. L. 717), is amended to read:

* "should" not in original.

Section 305. Payment of Contributions; *Jeopardy Assessments*.—(a) Concurrently with each report, the employer shall pay to the department the amount of contributions imposed by this act for the period covered by the report; but the department may, in proper cases, upon request made, permit an extension of time for the payment of contributions due. The amount of the contribution in respect of which an extension is granted shall be paid (with interest at the rate of one-half of one per centum per month), or fraction of a month, on or before the expiration of the period of extension.

(b) *For the purposes of this act, contributions due by an employer with respect to wages for employment under this act (i) which have been paid as contributions required under another state or Federal unemployment compensation law and (ii) which have been subsequently credited to the account of such employer under this act, shall be deemed to have been paid into the Unemployment Compensation Fund as of the date payment thereof was made under such other state or Federal unemployment compensation law.*

(c) *Whenever the secretary shall determine that the collection of any contributions under the provisions of this act will be jeopardized by reason of the fact that the employer is insolvent or has discontinued business at any of its known places of business or the business is temporary or seasonal in nature, he may immediately assess such contributions, together with all interest and penalties which may have accrued whether or not the date otherwise prescribed for the filing of reports or for making payment of such contributions has arrived. Such contributions, interest and penalties shall thereupon become immediately due and payable and notice of demand shall be made upon the employer for the payment thereof.*

Section 12. Section 308.1 of the act, amended August 27, 1963 (P. L. *1281, Act No. 522), is amended to read:

Section 308.1. Contributions to be Liens; Entry and Enforcement Thereof.—(a) All contributions and the interest and penalties thereon due and payable by an employer under the provisions of this act shall be a lien upon the franchises and property, both real and personal, including after-acquired property of the employer liable therefor and **shall attach thereto from the date a lien for such contributions, interest and penalties is entered of record in the manner hereinafter provided. The lien imposed hereunder shall have priority from the date of such entry of record and shall be fully paid and satisfied out of the proceeds of any judicial sale of prop-

* "1281" not in original.

** "shall" not in original.

erty subject thereto, before any other obligation, judgment, claim, lien or estate to which said property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property subject to a lien imposed hereunder, upon a lien or claim over which the lien imposed hereunder has priority, as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only, that the proceeds are applied to its payment and such lien shall continue in full force and effect as to the balance remaining unpaid.

(b) The department may at any time transmit to the prothonotaries of the respective counties of the Commonwealth, to be by them entered of record and indexed as judgments are now indexed, certified copies of all liens imposed hereunder, upon which record it shall be lawful for writs of execution to be directly issued without the issuance and prosecution to judgment of writs of scire facias: Provided, That not less than ten (10) days before the issuance of any execution on the lien, notice of the filing and the effect of the lien shall be sent by registered or certified mail to the employer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens the payment of the costs incident thereto.

[Such] (c) *The liens shall continue for five years from the date of entry and may be revived and continued in the manner now or hereafter provided for the renewal of judgments or as may be provided in The Fiscal Code, as amended.*

(d) *Notwithstanding any other provisions of this section, the lien herein provided for shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the employer against whom said lien has been entered unless and until a writ of execution has been issued and levy made upon said stock of goods, wares and merchandise.*

Section 13. Article III of the act is amended by adding after section 308.2, a new section to read:

Section 308.3. Transfer of Assets; Liability of Purchaser.—(a) Every employer subject to the provisions of this act, who shall sell in bulk fifty-one per centum or more of his assets, including but not limited to, any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, shall give the department ten (10) days' notice of the

sale prior to the completion of the transfer of such property. It shall be the duty of such employer to file all contribution reports with the department to the date of such proposed transfer of property and pay all contributions, interest and penalties due and payable thereon. The employer shall present to the purchaser of such property, a certificate which shall be furnished forthwith by the department showing that all reports have been filed and contributions, interest and penalties paid to the date of the proposed transfer. The failure of the purchaser to require such certificate shall render such purchaser liable to the department for the unpaid contributions, interest and penalties owing by the employer.

(b) The provisions of subsection (a) of this section shall not apply to sales made under any order of court or to any sales made by assignees for the benefit of creditors, executors, administrators, receivers or any public officer in his official capacity, or by any officer of a court, or to any other transfer excepted under the provisions of section 6-103 of the Uniform Commercial Code.

Section 14. Section 309 of the act, amended April 23, 1942 (P. L. 60), is amended to read:

Section 309. Collection of Contributions and Interest; *Injunctions*.—(a) If, after notice by the department, any employer fails, neglects, or refuses to pay any contributions due, or the interest or penalties due thereon, the amount due may be collected by civil action in the name of the Commonwealth. Civil actions brought under this section to collect contributions, or interest thereon, from any employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other actions, except petitions for judicial review under this act and cases arising under The Workmen's Compensation Act of one thousand nine hundred fifteen, and its amendments and supplements. No court costs shall be imposed on the Commonwealth in any such civil actions. Judgments obtained in such civil actions to collect any of the contributions aforesaid shall include interest and penalties, as provided in this act.

(b) When a lien shall have been entered pursuant to the provisions of section 308.1 of this act, or judgment entered pursuant to the provisions of subsection (a) of this section and the same shall remain unpaid sixty days after notice in writing of the entry of such lien or judgment has been sent by the department by registered mail to the employer's last known address, the employer against whom such lien or judgment has been

entered may be enjoined from continuing in business in the Commonwealth or employing persons therein upon complaint of the secretary to the Court of Common Pleas of Dauphin County.

Such injunction shall remain in full force and effect until (1) the delinquent contributions, interest or penalties have been paid, or (2) the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court, or (3) the employer has entered into a plan for the liquidation of such delinquencies as the court may approve: Provided, That such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

Section 15. Section 311 of the act, amended December 17, 1959 (P. L. 1893), is amended to read:

Section 311. Refunds and Adjustments.—If any individual or organization shall make application for refund or credit of any amount paid as contribution, interest or penalties, under this act, and the department shall determine that such amount, or any portion thereof, was erroneously collected, the department may at its discretion either allow a credit therefor, without interest, in connection with subsequent contribution payments or shall refund from the Unemployment Compensation Fund, without interest, the amount erroneously paid: Provided, That an amount equal to any refund or credit of interest and penalties allowed, as provided herein, shall be transferred from the Special Administration Fund to the Unemployment Compensation Fund, irrespective of whether such interest or penalties were paid into the Unemployment Compensation Fund or into the Special Administration Fund: *And provided further, That any refund or credit allowable under the provisions of this section, of contributions paid with respect to remuneration (1) exempt under the provisions of section 4, subsection (x) of this act, or (2) paid with respect to services exempt under the provisions of section 4, subsection (l) (4) of this act, shall be reduced by the amount of unrefunded compensation paid to any claimant by reason of the inclusion of such remuneration in the base-year wage credits of such claimant.* No refund or credit shall be allowed with respect to a payment as contributions, interest or penalties, unless an application therefor shall be made on or before, whichever of the following dates shall be the later: (a) one year from the date on which such payment was made, or (b) four years from the reporting due date of the reporting period with respect to which such payment was made. For a like cause

and within the same period, a refund may be so made or a credit allowed on the initiative of the department.

An amount paid as contribution, interest or penalties shall not be deemed to have been erroneously collected within the meaning of this section if such amount was collected under and pursuant to a notice of contribution rate or a notice of assessment which, because of the applicant's failure to file a timely appeal therefrom, shall have become binding and final against the applicant under the provisions of this act.

In any proceeding instituted to obtain a refund alleged to be due and owing under the provisions of this section, the Adjustment Factor as determined by the department under the provisions of section three hundred one point one (301.1) of this act for the calendar year one thousand nine hundred sixty, and any calendar year thereafter, shall not be subject to review or redetermination.

Section 16. Section 403 of the act, amended April 23, 1942 (P. L. 60), is amended to read:

Section 403. Payment of Compensation [to Heirs of] *Due Deceased Claimants.*—All accrued benefits due any deceased [employee] *claimant* may, in the discretion of the department, be paid to [the surviving spouse, children or parents] *such persons having an interest in the estate of the deceased, without letters testamentary or of administration, as the department by rule and regulation shall determine.*

Section 17. Section 407 of the act, amended September 29, 1951 (P. L. 1580), is repealed.

Section 18. Subsection (e) of section 501 of the act, amended May 23, 1949 (P. L. 1738), is amended to read:

Section 501. Determination of Compensation Appeals.—

* * * * *

(e) Unless the claimant or last employer or base-year employer of the claimant files an appeal with the board, from the determination contained in any notice required to be furnished by the department under section five hundred and one (a), (c) and (d), within ten (10) calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith. In the event that an appeal is filed with the board, the payment of any contested amount of compensation shall be withheld pending determination of the claim, but any uncontested

amount of compensation allowed in any decision shall be paid notwithstanding any appeal which may thereafter be taken. [: Provided, That when the board affirms a decision of a referee or of the department allowing compensation, such compensation shall be paid notwithstanding any further appeal: And provided further, That when a referee affirms a decision of the department allowing compensation, in the event of a further appeal to the board, such compensation shall be paid after a period of thirty days from the date of such further appeal if the board has not rendered a decision prior thereto.]

Section 18.1. The act is amended by adding after section 505 a new section to read :

Section 505.1. Place of Hearing.—Hearings on appeals shall be held within the county in which the employe regularly reports for work. Such hearings may be held at the county seat or at such other suitable place or places within the county as the board shall designate, and when all of the parties to any appeal and the board agree, such hearings may be held at any suitable place.

Section 19. Section 509 of the act, amended April 23, 1942 (P. L. 60), is amended to read :

Section 509. Finality of Decisions.—Any decision made by the department or any referee or the board shall become final ten days after the date thereof, and shall not be subject to collateral attack as to any application claim or claims covered thereby or otherwise be disturbed, unless appealed from, as hereinbefore provided; but any decision of the board or of a referee, where an appeal has been disallowed by the board, shall nevertheless be subject to appeal to the Superior Court after the same has become final.

Subject to appeal proceedings and judicial review as provided in this act, any right, fact or matter in issue which was directly passed upon or necessarily involved in any decision of a referee or the board or the Superior Court and which has become final shall be conclusive for all purposes of this act and shall not be subject to collateral attack as among all affected parties who had notice of such decision: Provided, however, That whenever an appeal involves a question as to whether services were performed by a claimant in employment or for an employer or whether remuneration paid constituted wages, a decision thereon shall not be conclusive as to an employing entity's liability for contributions unless the employing entity was given special notice of such issue and of the pendency of the appeal and was afforded

a reasonable opportunity by the referee or the board to adduce evidence bearing on such question.

Section 20. Section 604 of the act is amended to read:

Section 604. Budgetary Provisions Not Applicable.—The provisions of *section 214 of article II and the provisions of article [six] VI* of The Administrative Code of one thousand nine hundred twenty-nine, as amended, shall not apply to the funds created under the provisions of *sections 601 and 602* of this act.

Section 21. Section 801 of the act, amended March 30, 1955 (P. L. 6), is amended to read:

Section 801. False Statements and Representations to Obtain or Increase Compensation.—(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any compensation or other payment under this act or under an employment security law of any other state or of the Federal Government or of a foreign government, either for himself or for any other person, shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than thirty nor more than two hundred dollars, or shall be sentenced to imprisonment for not longer than thirty days, or both, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Whoever makes a false statement knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any compensation or other payment under this act or under an employment security law of any other state or of the Federal Government or of a foreign government, may be disqualified [within the one year period immediately following the departmental determination of such offense, for] *in addition to* such week or weeks of improper payments [plus] *for* a penalty period of two weeks and for not more than one additional week for each such week of improper payment: Provided, That no additional weeks of disqualification shall be imposed under this section if prosecution proceedings have been instituted against the claimant because of such misrepresentation or non-disclosure. *The departmental determination imposing penalty weeks under the provisions of this subsection shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation. The penalty weeks herein provided for shall be imposed against any*

weeks with respect to which the claimant would otherwise be eligible for compensation, under the provisions of this act, which begin within the two year period following the departmental determination imposing such penalty weeks.

Section 22. Subsection (a) of section 804 of the act, amended August 24, 1953 (P. L. 1397), is amended to read:

Section 804. Recovery and Recoupment of Compensation.—(a) Any person who by reason of his fault has received any sum as compensation under this act to which he was not entitled, shall be liable to repay the Unemployment Compensation Fund to the credit of the Compensation Account a sum equal to the amount so received by him. Such sum shall be collectible [(a)] (1) in the manner provided in section three hundred eight point one (308.1) or section three hundred nine (309) of this act, for the collection of past due contributions, or [(b)] (2) by deduction from any future compensation payable to the claimant under this act: Provided, That no administrative or legal proceedings for the collection of such sum shall be instituted after the expiration of six years following the end of the benefit year with respect to which such sum was paid.

* * * * *

Section 23. The provisions of this act shall be severable and if any provision thereof shall be finally determined to be inconsistent with any Federal law with which state employment security laws are required to conform as a condition for the allowance of credit against Federal taxes on payrolls or the receipt of funds for administration of the employment security program, such provision shall be deemed inoperative and of no effect but such determination shall not affect the validity of any of the remaining provisions of this act.

Section 24. This act shall take effect immediately. The amendments to subsection (b) of section 801 shall be applicable to determinations made by the department on or after the effective date of this act. The amendments to paragraphs (A) and (B) and the repeal of paragraph (E) of section 301 (d) (1) and to paragraph (1) of section 302 (a) shall be applicable to the determination of contribution rates for the year 1964 and thereafter. The amendments to subsection (a) of section 804 shall be applicable to overpayments whether the same occurred before or after the effective date of this act.

APPROVED—The 22d day of June, A. D. 1964.

WILLIAM W. SCRANTON