

No. 2005-5

AN ACT

SB 464

Amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), 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," further providing for the definition of "employer" and for general powers and duties of department; providing for representation in proceedings; further providing for contributions by employers and employees, for successors-in-interest, for appeals, for interest on past due contributions and for limitations upon enforcement of payment of contributions, interest and penalties; providing for registration and other reports; further providing for the Special Administration Fund; providing for the Job Training Fund; further providing for the duties of the State Treasurer as custodian and for offenses relating to false statements and representations to prevent or reduce compensation and other offenses; and providing for monetary penalties.

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

Section 1. Section 4(j) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, amended July 6, 1977 (P.L.41, No.22), 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 the Commonwealth of Pennsylvania, its political subdivisions, and their instrumentalities and every individual, copartnership, association, corporation (domestic or foreign) *or other entity*, the legal representative, trustee in bankruptcy, receiver or trustee of any individual, copartnership, association or corporation *or other entity*, or 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 (except as provided in subsection (1)(3)(G) of this section).

(2.1) An individual or entity that transfers some or all of its work force to the payroll of another individual or entity, directly or indirectly, as part of or resulting in an arrangement whereby the individual or entity shares employer functions with respect to some or all of its work force with the other individual or entity shall be the employer of the employe or employes covered by the arrangement with the other individual or entity. This paragraph shall include, without limitation, an arrangement known as a professional employer arrangement or employe leasing arrangement. This paragraph does not include a temporary help arrangement in which an individual or entity utilizes one or more workers supplied by another individual or entity to supplement its work force in special, temporary work situations such as absences, skill shortages, seasonal work loads and special assignments.

(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, 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.

(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, (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 (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.

(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 (l) of section four of this act.

(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 2. Section 201(a) of the act, amended July 1, 1985 (P.L.96, No.30), is amended to read:

Section 201. General Powers and Duties of Department.—(a) It shall be the duty of the department to administer and enforce this act through such employment service and public employment offices as have been or may be constituted in accordance with the provisions of this act and existing laws. It shall have power and authority to adopt, amend, and rescind such rules and regulations, require such reports from employers, employes, the board and from any other person deemed by the department to be affected by this act, make such investigations, and take such other action as it deems necessary or suitable. Such rules and regulations shall not be inconsistent with the provisions of this act. The department shall submit to the Governor and the General Assembly a biennial report covering the administration and operation of this act and shall make such recommendations for amendments to this act as it deems proper. *The department shall establish procedures to identify the transfer or acquisition of a business in accordance with section 303(k)(1)(E) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 503(k)(1)(E)).* In the discharge of the duties imposed by this act, the Secretary and any agent duly authorized in writing by him shall have the power to administer oaths and affirmations, take depositions, and certify to official acts. The department shall have the power to issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary in the administration of this act.

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

Section 214. Representation in Proceedings.—Any party in any proceeding under this act before the department, a referee or the board may be represented by an attorney or other representative.

Section 4. Section 301(a), (d) and (j) of the act, amended September 29, 1951 (P.L.1580, No.408), December 17, 1959 (P.L.1893, No.693), March 24, 1964 (Sp.Sess. P.L.53, No.1), June 22, 1964 (Sp.Sess. P.L.112, No.7), July 21, 1983 (P.L.68, No.30) and November 17, 1995 (P.L.615, No.64), are amended to read:

Section 301. Contributions by Employers and Employes; Successors-In-Interest; Appeals.—

(a) (1) Each employer shall pay contributions with respect to the calendar year 1984, and each calendar year thereafter, at a rate equal to five and four-tenths per centum (5.4%) for employers with a zero or credit reserve account balance and eight and five-tenths per centum (8.5%) for 1984, eight and eight-tenths per centum (8.8%) for 1985 and nine and two-tenths per centum (9.2%) for 1986 and thereafter for employers with a debit reserve

account balance of wages paid by him for employment: Provided, however, That with respect to employers subject to the provisions of section 301.1(b) of this act, such rate shall be adjusted in accordance with the provisions of sections 301.1, 301.2 and 301.6 of this act.

(2) **[No employer's rate of contribution for any calendar year shall be less than nine and two-tenths per centum (9.2%) for 1984, nine and four-tenths per centum (9.4%) for 1985, nine and seven-tenths per centum (9.7%) for 1986 through 1995 and the sum of three per centum (3%) plus his rate of contribution as determined without regard to this paragraph for 1996 and thereafter unless] *An employer's rate of contribution shall be the sum of three per centum (3%) plus his rate of contribution as determined under this section or section 301.1 of this act, without regard to this paragraph or paragraph (2.1) of this subsection, if all his reports required by this act and regulations of the department to establish the amount of contributions or showing the amount of wages paid to each employe for calendar quarters through the second calendar quarter of the preceding calendar year and all his contributions due on wages paid to the end of the second calendar quarter of the preceding calendar year, together with interest and penalties due thereon, have not been filed and paid by September 30 of such preceding calendar year, except that an employer who has timely filed an appeal as provided in subsection (e) of this section and who has been determined ineligible to receive a reduced rate solely on the basis that he has not filed all reports and paid all contributions, interest and penalties within the time limits as required in this [subsection] paragraph, shall have his rate redetermined and shall not be considered ineligible under this [subsection] paragraph if such delinquent reports are filed and payment of such delinquent contributions, interest and penalties is made within thirty (30) days after the department has notified the employer of the reason for his ineligibility for rate reduction in response to the appeal filed by the employer under subsection (e) or, if the employer executes and files with the department, no later than the end of the thirty (30) days, a deferred payment plan, which is accepted by the department as filed or modified, for such delinquent contributions, interest and penalties. If the employer fails to comply with the deferred payment plan, the reduced rate granted shall be revoked and, notwithstanding sections 301(j) and 309.2, additional contributions shall be due as a result of the rate increase and shall bear interest from the due date of the corresponding report or reports.***

(2.1) An employer's rate of contribution shall be the sum of three per centum (3%) plus his rate of contribution as determined under this section or section 301.1 of this act, without regard to this paragraph or paragraph (2) of this subsection, if the employer fails to file any report required by section 315(a)(1), (2) or (3) of this act in accordance with section 315(b). This paragraph shall apply to an employer's rate of contribution for the calendar year in which the report becomes due through the calendar year in which the report is filed: Provided, however, That an employer who has

timely filed an appeal as provided in subsection (e) of this section and who has been determined ineligible to receive a reduced rate solely on the basis that he has not filed a report as required in this paragraph shall have his rate redetermined and shall not be considered ineligible under this paragraph if such report is filed within thirty (30) days after the department has notified the employer of the reason for his ineligibility for rate reduction in response to the appeal filed by the employer under subsection (e): and Provided further, That for purposes of this paragraph when one party to a transfer of organization, trade, business or work force files the report required by section 315(a)(2) of this act in accordance with section 315(b), the other party to the transfer will be deemed to have filed its report at that time.

(3) Notwithstanding any other provisions of the act except paragraph (2) of this subsection, any employer who becomes newly liable for contributions under this act in a calendar year in which it employs individuals in the performance of a contract or subcontract for construction in this Commonwealth of roads, bridges, highways, buildings, factories, housing developments or other construction projects shall be liable for contributions at the rate of nine and two-tenths per centum (9.2%) for 1984, nine and four-tenths per centum (9.4%) for 1985 and nine and seven-tenths per centum (9.7%) for 1986 and thereafter paid by him for employment, until such time as he becomes subject to the provisions of sections 301.1, 301.2 and 301.6 of this act subject to the provisions of section 301.1(g).

(4) Notwithstanding the provisions of paragraph (1) of this subsection, any employer who becomes newly liable for contributions under this act, other than an employer subject to the provisions of paragraph (3) of this subsection, shall be liable for contributions at the rate of three and five-tenths per centum (3.5%) of wages paid by him for employment until such time as he shall become classifiable under the provisions of section 301.1(b) of this act. Thereafter his rate of contributions shall be five and four-tenths per centum (5.4%) for employers with a zero or credit reserve account balance and eight and five-tenths per centum (8.5%) for 1984, eight and eight-tenths per centum (8.8%) for 1985 and nine and two-tenths per centum (9.2%) for 1986 and thereafter for employers with a debit reserve account balance subject to adjustment under the provisions of sections 301.1, 301.2 and 301.6 of this act.

* * *

(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 *or work force*, 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], *including the report required by section 315(a)(3)*; 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]; *and all contributions, interest and penalties owing by the predecessor have been or are paid at the time such application is filed with the department. The department may not transfer the whole or appropriate part of the preceding employer's experience record and reserve account balance if the department determines that the successor-in-interest acquired all or part of the preceding employer's organization, trade, business or work force solely or primarily to obtain a lower rate of contribution.*

(B) Notwithstanding the provisions of paragraph (A) of this subsection, with respect to any transfer by an employer subject to the contribution provisions of this act of its organization, trade [or], business *or work force*, 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 *or managed* by or owned [or], controlled *or managed* 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 *or managed* either directly or indirectly, by legally enforceable means or otherwise, by the same interest or interests.

(B.1) Paragraphs (A) and (B) of this subsection shall not apply to a transfer of a work force, in whole or in part, which is part of or results in an arrangement covered by section 4(j)(2.1) of this act.

(C) In the event of a part transfer of an employer's organization, trade [or], business *or work force* under either paragraph (A) or paragraph (B) of this subsection, [only such] a portion of the experience record and reserve account balance of the preceding employer [as such employer's average annual wages for the last three calendar years of the organization, trade or business transferred bears to his total average annual payroll for such last three calendar years] shall be transferred[:] *according to the following formula:*

*average of the number of
employees in the part of
the organization, trade,
business or work force
transferred for each*

*calendar quarter in the
three calendar years
preceding the transfer*

_____ X 100 =

*percentage of preceding
employer's experience record
and reserve account balance
transferred to the successor-in-
interest*

*average of the number of
employees in the total of
the preceding employer's
organization, trade,
business or work force for
each calendar quarter in
the three calendar years
preceding the transfer*

Provided, That if the part transferred has been in existence for a period of less than three calendar years *preceding the transfer* but more than one calendar year, then [only such portion of the experience record and reserve account balance of the preceding employer as the average annual wages for such period of the part transferred bears to the total average annual payroll for such period shall be transferred,] *the period for which the part transferred has been in existence shall be used in the foregoing formula* and credit shall be given to the successor-in-interest only for the years during which contributions were paid by the preceding employer with respect to that part of the organization, trade [or], business *or work force* transferred.

(D) A transfer of an experience record and reserve account balance, in whole or in part, having been made under the provisions of either paragraph (A) or paragraph (B) of this subsection, the preceding employer shall not be entitled to consideration for an adjusted rate for the calendar year following the date of transfer and for subsequent calendar years, based upon his experience record and reserve account balance which has been thus transferred.

(2) A preceding employer or successor-in-interest who, prior to the transfer, was an employer during the calendar year in which the transfer occurred, shall not have his rate of contribution adjusted under the provisions of this subsection for the remainder of such year. A successor-in-interest who, prior to the transfer, was not an employer during the calendar year in which the transfer occurred and who has made application for a transfer which has been approved by the department, as provided herein, and who, together with his predecessor, has paid contributions for the period required under subsection (b) of section three hundred one point one with respect to the organization, trade or business, or part thereof, which has been transferred, shall be

assigned the same rate of contribution as the preceding employer for the remainder of such year, after which his rate of contribution shall be determined on the basis of the experience record and balance in the reserve account which has been combined with any other experience record and reserve account balance which such successor-in-interest may have acquired.]

(2.1) If the experience record and reserve account balance of a preceding employer is transferred, in whole or in part, to a successor-in-interest under paragraph (1) of this subsection, the following provisions shall apply:

(A) Notwithstanding any other provision of this act, the experience record and reserve account balance transferred to the successor-in-interest shall be deemed to remain with the preceding employer for purposes of determining the rate of contribution of the preceding employer for the remainder of the calendar year in which the transfer of organization, trade, business or work force occurred.

(B) In the event of a transfer of an experience record and reserve account balance under the provisions of paragraph (1)(A) of this subsection:

(i) For purposes of determining the rate of contribution of the successor-in-interest for calendar years specified in the rules and regulations of the department, the experience record and reserve account balance acquired from the preceding employer shall be combined into the experience record and reserve account balance of the successor-in-interest.

(ii) The rate of contribution of the preceding employer shall be determined without regard to the experience record and reserve account balance transferred to the successor-in-interest commencing with the earliest calendar year for which the rate of contribution of the successor-in-interest is determined under subparagraph (i).

(C) In the event of a transfer of an experience record and reserve account balance under the provisions of paragraph (1)(B) of this subsection:

(i) The rate of contribution of the preceding employer for calendar years following the year in which the transfer of organization, trade, business or work force occurred shall be determined without regard to the experience record and reserve account balance transferred to the successor-in-interest.

(ii) The experience record and reserve account balance acquired from the preceding employer shall be combined into the experience record and reserve account balance of the successor-in-interest for purposes of determining the rate of contribution of the successor-in-interest for the remainder of the calendar year in which the transfer of organization, trade, business or work force occurred and subsequent calendar years.

(D) In the event of a part transfer of an experience record and reserve account balance under the provisions of paragraph (1)(A) of this

subsection, compensation paid after the date of the transfer of organization, trade, business or work force, based on wages paid by the preceding employer before the date of such transfer, shall be charged to the respective experience records and reserve accounts of the preceding employer and successor-in-interest. Compensation paid to individuals identified by the preceding employer in the report required by section 315(a)(3) of this act shall be charged to the successor-in-interest. The remaining compensation shall be charged to the preceding employer.

(E) In the event of a part transfer of an experience record and reserve account balance under the provisions of paragraph (1)(B) of this subsection, compensation paid after the date of the transfer of organization, trade, business or work force, based on wages paid by the preceding employer before the date of such transfer, shall be charged to the respective experience records and reserve accounts of the preceding employer and successor-in-interest in accordance with the following:

(i) Compensation paid to individuals identified by the preceding employer in the report required by section 315(a)(3) of this act shall be charged to the successor-in-interest. The remaining compensation shall be charged to the preceding employer.

(ii) If the preceding employer fails to furnish the report required by section 315(a)(3) of this act in accordance with section 315(b) of this act, the department shall determine, based on available information and within the department's discretion, whether the compensation shall be charged to the preceding employer, the successor-in-interest or both and, if the department determines that the compensation shall be charged to both the preceding employer and the successor-in-interest, what portion of the compensation shall be charged to each.

(3) A successor-in-interest who acquires from a preceding employer the whole or a part of a reserve balance which has been adjusted to a negative balance equal to ten per centum (10%), or twenty per centum (20%) in 1987 and thereafter, of his average annual payroll under the provisions of section 302(c) of this act shall be liable for contributions at the maximum rate under the provisions of section 301.1(f) of this act and contributions under the provisions of sections 301.2 and 301.6 of this act in the same manner as the preceding employer with respect to the part of the organization, trade or business transferred. This provision shall not apply if the successor-in-interest as of any computation date has been subject to this act for fourteen or more consecutive calendar quarters, or has been subject to this act for a period as long as or longer than the preceding employer.

(4) Notwithstanding the provisions of paragraph (3) of this subsection and section 301.1(f), a successor-in-interest who acquires from a preceding employer the whole or a part of a reserve balance which has been adjusted to a negative balance under the provisions of section 302(c)(2), shall be liable for contributions at the rate determined under the provisions of sections 301.1, 301.2 and 301.6 in the same manner as the preceding employer with

respect to the part of the organization, trade or business transferred. This provision shall not apply if the successor-in-interest, as of any computation date, has been subject to this act for fourteen or more consecutive calendar quarters or has been subject to this act for a period as long as or longer than the preceding employer.

* * *

(j) If the department finds that it has erroneously notified an employer that his rate of contribution is less than the rate to which he is entitled, he shall be notified of the revision of his rate and he shall be required to make payment of additional contributions on the basis of the revised rate: Provided, That no such additional contribution shall be required unless the employer is notified of his revised rate not later than December thirty-first of the calendar year to which the rate is applicable, unless the department finds that the employer has directly or indirectly contributed to the error[. **No**]: **Provided further, That no** interest shall be required to be paid in connection with such additional contributions if they are paid within thirty (30) days from the date that the employer is notified of his revised rate[.], **unless the department finds that the employer has directly or indirectly contributed to the error.**

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Section 5. Section 308 of the act, amended July 21, 1983 (P.L.68, No.30), is amended to read:

Section 308. Interest on Past Due Contributions.—Contributions unpaid on the date on which they are due and payable, as prescribed by the department, shall bear interest at *one-twelfth (1/12) of the annual* rate determined by the Secretary of Revenue under section 806 of the act of April 9, 1929 (P.L.343, No.176), known as “The Fiscal Code,” per month or fraction of a month, *or at the rate of three quarters of one per centum (0.75%) per month or fraction of a month, whichever is greater*, from the date they become due until paid.

Section 6. Section 309.2 of the act, amended September 29, 1951 (P.L.1580, No.408), is amended to read:

Section 309.2. Limitations Upon Enforcement of Payment of Contributions, Interest and Penalties.—(a) Notwithstanding any other provisions of this act to the contrary, no legal action for the collection of contributions, interest and penalties shall be instituted after the expiration of four years from the end of the calendar year [in which the wages were paid with respect to which liability for the payment of such contributions, interest or penalties, as the case may be, was based.] **determined in accordance with subsection (b) of this section**, unless prior to the expiration of such four-year period and with respect thereto (1) an assessment proceeding shall have been instituted pursuant to the provisions of section three hundred four of this act, or (2) an action shall have been instituted pursuant to the provisions of section three hundred nine of this act, or (3) a lien shall have been entered pursuant to the provisions of section three

hundred eight point one of this act: Provided, That the provisions of this section shall not apply where an employer by willful failure or refusal to file a report with the department or to include in any report all wages which he has paid, or otherwise, has attempted to avoid or reduce liability for the payment of contributions.

(b) The calendar year referenced in subsection (a) of this section shall be the later of the following calendar years: (1) the calendar year in which the wages were paid with respect to which liability for the payment of contributions, interest or penalties, as the case may be, is based, or (2) with respect to contributions, interest or penalties due on wages paid by a successor-in-interest after a transfer of organization, trade, business or work force, in whole or in part, from a preceding employer, the calendar year in which the successor-in-interest files the report required by section 315(a)(2) of this act in accordance with section 315(b) of this act.

Section 7. The act is amended by adding a section to read:

Section 315. Registration and Other Reports.—(a) In addition to reports otherwise required by this act and the rules and regulations of the department, the following reports shall be made to the department:

(1) Each person, corporation, unincorporated association or any other entity, for whom services are performed for remuneration by any individual, shall register with the department within thirty (30) days after services are first performed for the person or entity or within thirty (30) days after the effective date of this paragraph if services were first performed for the person or entity prior to the effective date of this paragraph and the person or entity did not register prior to the effective date of this paragraph.

(2) An employer that transfers its organization, trade, business or work force, in whole or in part, whether such transfer was by merger, consolidation, sale or transfer, descent or otherwise, and the person, corporation, unincorporated association or other entity to whom the transfer is made, shall report the transfer to the department. For transfers occurring on or after January 1, 2004, the report shall be made within thirty (30) days after the date of the transfer or within thirty (30) days after the effective date of this section if the transfer occurred prior to the effective date of this section and the employer, individual or entity did not report the transfer prior to the effective date of this section. If the transfer occurred on or before December 31, 2003, the report shall be made within thirty (30) days after it is requested by the department.

(3) In the event of a part transfer of an employer's organization, trade, business or work force under section 301(d)(1)(A) or (B) of this act, the preceding employer shall identify the individuals who were employed in the part transferred to the successor-in-interest during the calendar quarter in which the transfer occurred and the eight (8) immediately preceding calendar quarters. The report shall be made within thirty (30) days after it is requested by the department.

(4) An individual or entity to whom some or all of a work force is transferred, as part of or resulting in an arrangement described under section 4(j)(2.1) of this act, shall file a report with the department for each calendar quarter. The individual or entity may file one report for all such arrangements. The report shall be filed on or before the last day of the month which immediately follows the end of the calendar quarter for which the report is filed.

(b) All reports required by this section or any other provision of this act or the rules and regulations of the department shall be made in the manner prescribed by the department and contain all information required by the department.

Section 8. Section 601.1 of the act, amended May 17, 1957 (P.L.153, No.72) and July 21, 1983 (P.L.68, No.30), is amended to read:

Section 601.1. Special Administration Fund.—(a) There is hereby created a special fund, separate and apart from all public moneys or funds of this Commonwealth, to be known as the Special Administration Fund. Under rules and regulations adopted by the department, interest and penalties collected from employers under the provisions of this act may be paid into the Special Administration Fund. Such rules and regulations may provide for determining in any manner which payments of interest and penalties are to be paid into the Special Administration Fund and which payments of interest and penalties are to be paid into the Unemployment Compensation Fund. The moneys in this fund shall be used for the payment of costs of administration which are found not to have been properly and validly chargeable against Federal grants or other funds received for or in the Administration Fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, Federal funds which would in the absence of said moneys be available to finance expenditures for the administration of this act. Nothing in this section shall prevent said moneys from being used as a revolving fund to cover expenditures necessary and proper under the law for which Federal Funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The State Treasurer shall make payment of obligations from the Special Administration Fund as herein provided, upon requisition of the secretary and certification by him that no other funds are available or can properly be used to finance such expenditures. The moneys in this fund are hereby specifically made available to replace any moneys received pursuant to section three hundred and two of the Federal Social Security Act, as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of this act and are available for such replacement, whether or not such moneys were expended or the obligations covering such expenditures were incurred prior or subsequent to the enactment of this amendment. The moneys in this fund shall be continuously available for expenditure in accordance with the

provisions of this section, and shall not lapse at any time or be transferred to any other fund except as herein provided and as provided under section three hundred eleven, wherein an amount equal to any refund or credit of interest or penalties shall be transferred from the Special Administration Fund to the Unemployment Compensation Fund.

(b) **[At the close of each fiscal year all]** *All moneys in the fund in excess of two hundred thousand dollars (\$200,000) on June 25th of each year shall be transferred to either the Unemployment Compensation Fund and credited to the Employers' Contribution Account as specified in section 601[,] or the Job Training Fund as specified in section 601.4, or transferred to both, as determined by the department, in consultation with the Secretary of the Budget. If the department determines that such excess shall be transferred to both the Unemployment Compensation Fund and the Job Training Fund, the department, in consultation with the Secretary of the Budget, shall determine what portion of such excess is transferred to each fund.*

Section 9. The act is amended by adding a section to read:

Section 601.4. Job Training Fund.—(a) *There is hereby created a special fund to be known as the Job Training Fund. Deposits in the fund shall include moneys transferred from the Special Administration Fund pursuant to section 601.1(b) and other moneys appropriated to the fund.*

(b) *Subject to the provisions of subsections (c) and (d), the moneys in this fund are hereby appropriated, upon approval of the Governor, to the Department of Labor and Industry for the following purposes:*

(1) *Job training programs for incumbent workers, dislocated workers, adult and youth workers, and any other work force development training program, including equipment and supplies.*

(2) *Job training equipment, subject to a requirement for matching funds from a source other than State funding.*

(3) *The costs of administering such training program.*

(4) *The costs of collecting interest and penalties under this act that are transferred from the Special Administration Fund.*

(c) *Moneys from the fund shall be made available in the following order of priority:*

(1) *Counties of the sixth, seventh and eighth class.*

(2) *Counties of the first, second, second A, third, fourth and fifth class, provided that there are insufficient applications for funding under paragraph (1) and to the extent that funds remains available.*

(d) *The department shall make funds available to eligible entities as determined under subsection (e) based on a competitive application process as determined by the department. In distributing funding under this section, preferential consideration shall be given to those counties with a higher unemployment rate. Distribution of funds shall be determined by review of all applications submitted by eligible entities within the time period authorized by the department.*

(e) Funding shall be made available only for those entities identified in this section which provide work force education programs and services. Eligible entities shall include:

(1) Employment and training program providers receiving financial assistance from the Commonwealth or from other sources of public funding.

(2) Not-for-profit organizations offering publicly funded employment training programs.

(3) Career and technical institutes.

(4) High schools with eight or more vocational education programs.

(5) Higher education institutions offering publicly funded employment and training programs, including:

(i) State-related institutions and their branch campuses.

(ii) State-owned institutions within the State System of Higher Education under Article XX-A of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949."

(iii) Community colleges established and operated under Article XIX-A of the "Public School Code of 1949."

(f) The moneys in this fund shall be continuously available for expenditure in accordance with the provisions of this section and shall not lapse at any time nor be transferred to any other fund.

(g) For purposes of this section, the term "State-related institutions" shall include The Pennsylvania State University, the University of Pittsburgh, Temple University, Lincoln University and any other institution that is hereafter designated as "State-related" by the Commonwealth.

Section 10. Section 603 of the act, amended July 21, 1983 (P.L.68, No.30), is amended to read:

Section 603. State Treasurer as Custodian.—The State Treasurer shall be the custodian of the Unemployment Compensation Fund, the Administration Fund, the Special Administration Fund [and], the Interest Fund *and the Job Training Fund*. He shall give a bond, or bonds, with corporate sureties, conditioned upon the faithful performance of his duties as custodian of such funds in such amount or amounts as shall be determined and fixed by the Executive Board of this Commonwealth. Premiums for such bond or bonds shall be paid by the department out of the moneys in the Administration Fund. All moneys belonging to such funds (exclusive of moneys on deposit in the Unemployment Trust Fund as provided in section 601) shall be deposited by the State Treasurer in any banks or public depositories in which general funds of the Commonwealth may be deposited, but no public deposit insurance charge or premium shall be paid out of moneys in the Unemployment Compensation Fund. Any law to the contrary notwithstanding, all payments from such funds shall be made under such systems of requisitioning and accounting as the Governor, the State Treasurer, and Secretary shall determine.

Section 11. Section 802 of the act, amended December 9, 2002 (P.L.1336, No.158), is amended to read:

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

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

(2) wilfully fails or refuses to make any such contribution or other payment [or to furnish any reports] required hereunder[, or who];

(3) wilfully fails or refuses to produce or permit the inspection or copying of records as required hereunder[, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than one hundred dollars nor more than fifteen hundred dollars or to imprisonment for not longer than thirty days, or both.];

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

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

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

(b) *The number of offenses under subsection (a) shall be determined as follows:*

(1) Each [such] false statement or representation or failure to disclose a material fact[, and each day of such failure or refusal] shall constitute a separate offense[.] *under subsection (a)(1) of this section.*

(2) *Each day of failure or refusal shall constitute a separate offense under subsection (a)(2), (3) and (4) of this section.*

(3) *Each person or entity for whom a registration is not made as required by section 315(a)(1) of this act shall be the basis of a separate offense under subsection (a)(4) of this section.*

(4) *Each transfer of organization, trade, business or work force that is not reported as required by section 315(a)(2) or (3) of this act shall be the basis of a separate offense under subsection (a)(4) of this section.*

(5) Each report required by section 304 or 315 of this act, or any other provision of this act or the rules or regulations of the department, shall be the basis of a separate offense under subsection (a)(4) of this act.

(6) Each calendar quarter and each account on which wages are incorrectly reported shall be the basis of a separate offense under subsection (a)(5) of this section.

(7) Each incident of advising, soliciting, encouraging or commanding, and each employer, officer, agent or other person advised, solicited, encouraged or commanded, shall be the basis of a separate offense under subsection (a)(6) of this section.

(c) In addition to any other sanction, any employer, officer, agent or other person convicted under this section for willful failure or refusal to make a payment shall be ordered to make restitution of the unpaid amounts, including interest and penalty from the date the payment was due through the date of payment.

(d) For purposes of this section, the terms “wilfully” and “willfully” shall have the meaning applicable to the term “willfully” under 18 Pa.C.S. § 302 (relating to general requirements of culpability).

Section 12. The act is amended by adding a section to read:

Section 802.1. Monetary Penalties.—(a) Any employer (whether or not liable for the payment of contributions under this act) or any officer or agent of such employer or any other person who does any of the following commits an offense for which a civil penalty shall be assessed by the department:

(1) wilfully fails or refuses to produce or permit the inspection or copying of records as required hereunder;

(2) wilfully fails or refuses to make any report required by section 315(a)(1) or (2) of this act, wilfully makes or attempts to make such a report containing a misrepresentation of fact, or wilfully makes or attempts to make such a report that fails to disclose a material fact;

(3) wilfully fails or refuses to make any report required by section 315(a)(4) of this act, wilfully makes or attempts to make such a report containing a misrepresentation of fact, or wilfully makes or attempts to make such a report that fails to disclose a material fact;

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

(5) wilfully advises, solicits, encourages or commands an employer or an officer or agent of an employer or any other person to engage in conduct that is an offense under this section.

(b) The amount of a penalty under subsection (a)(1) shall not exceed fifteen hundred dollars for each day of failure or refusal.

(c) The amount of a penalty under subsection (a)(2) of this section shall not exceed the greater of ten thousand dollars or the amount of the difference between the amount of contributions payable by the employer at

the rate or rates of contribution assigned by the department in the absence of the report or based on a misrepresentation or nondisclosure in the report and the amount of contributions payable by the employer at the correct rate or rates of contribution. The penalty shall apply to contributions for calendar quarters from the quarter in which the report became due through the quarter in which a report is filed that does not contain a misrepresentation or nondisclosure. Each employer for whom a report is not made, or a report is made containing a misrepresentation or nondisclosure, or an attempt is made to make a report containing a misrepresentation or nondisclosure shall be the basis of a separate penalty.

(d) The amount of the penalty under subsection (a)(3) of this section shall not exceed ten thousand dollars for each report that is not made, each report containing a misrepresentation or nondisclosure and each attempt to make a report containing a misrepresentation or nondisclosure.

(e) The amount of the penalty under subsection (a)(4) of this section shall not exceed the greater of ten thousand dollars or the amount of the difference between the amount of contributions payable on the wages as reported on an incorrect account, or the amount of contributions that would have been payable if the attempt to report the wages on an incorrect account had been consummated and the amount of contributions payable on the wages as reported on the employer's account. Each calendar quarter and each employer for which wages are reported on an incorrect account or an attempt is made to report wages on an incorrect account shall be the basis of a separate penalty.

(f) The amount of the penalty under subsection (a)(5) of this section shall not exceed the greater of ten thousand dollars or the amount of the penalty assessed against the employer, officer, agent or other person who is the object of the conduct that is an offense under subsection (a)(5) of this section. Each employer, officer, agent or other person who is the object of conduct that is an offense under subsection (a)(5) shall be the basis of a separate penalty.

(g) An officer or agent of an employer or any other person assessed a penalty under this section shall be deemed to be an employer for purposes of the enforcement and collection provisions of this act. A penalty assessed under this section may be collected in the manner provided in sections 308.1, 308.2, 308.3 and 309 of this act and any other manner provided by this act for the collection of contributions, interest and penalty.

(h) Penalties under this section shall be assessed in accordance with the procedures prescribed in section 304 of this act.

(i) For purposes of this section, the terms "wilfully" and "willfully" shall have the meaning applicable to the term "willfully" under 18 Pa. C.S. § 302 (relating to general requirements of culpability).

Section 13. This act shall apply as follows:

(1) The amendment of section 4(j) of the act shall apply to services for which remuneration is paid on or after July 1, 2005.

(2) The amendment of section 301(a)(2) of the act shall apply to rates of contribution for calendar years beginning on or after January 1, 2006.

(3) The amendment of section 301(d) of the act shall apply to transfers of organization, trade, business or work force occurring on or after July 1, 2005.

(4) The amendment of section 301(j) of the act shall apply to the calculation of interest on additional contributions that are unpaid on or after July 1, 2005.

(5) The amendment of section 308 of the act shall apply to the calculation of interest for that portion of the period from the date contributions become due through the date they are paid that is on or after January 1, 2006.

(6) Section 309.2(b)(2) of the act shall apply to transfers of organization, trade, business or work force occurring on or after July 1, 2005.

(7) Section 315(a)(2) and (3) of the act shall apply to transfers occurring prior to, on or after July 1, 2005.

(8) Section 315(a)(4) of the act shall apply to calendar quarters beginning on or after July 1, 2005.

Section 14. This act shall take effect as follows:

(1) The following provisions shall take effect July 1, 2005, or immediately, whichever is later:

(i) The amendment of section 4(j) of the act.

(ii) The amendment of section 301(d) and (j) of the act.

(iii) The amendment of section 309.2(b) of the act.

(iv) The addition of section 315(a)(2), (3) and (4) of the act.

(2) The following provisions shall take effect January 1, 2006, or immediately, whichever is later:

(i) The amendment of section 301(a)(2) of the act.

(ii) The amendment of section 308 of the act.

(3) The remainder of this act shall take effect immediately.

APPROVED—The 15th day of June, A.D. 2005.

EDWARD G. RENDELL