

No. 263

AN ACT

HB 2010

Amending the act of May 18, 1937 (P.L.665, No.176), entitled "An act relating to the performance of industrial work in homes; regulating, and in certain cases prohibiting, industrial homework; imposing duties, restrictions and liabilities on industrial home-workers and on persons, partnerships, associations and corporations, directly or indirectly furnishing materials and articles to home-workers for manufacture or work thereon; requiring permits and home-workers' certificates and prescribing the fees therefor; conferring powers and imposing duties on the Department of Labor and Industry; and prescribing penalties," further regulating, and in certain cases prohibiting, industrial homework; imposing additional duties, restrictions, and liabilities on industrial home-workers and on persons, partnerships, associations and corporations, directly or indirectly furnishing materials and articles to home-workers for manufacture or work thereon; increasing fees prescribed for permits; conferring additional powers and imposing additional duties on the Department of Labor and Industry; and modifying existing penalties and prescribing additional penalties.

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

Section 1. Sections 1, 7 and 9, act of May 18, 1937 (P.L.665, No.176), known as the "Industrial Homework Law," are amended and section 3 is amended by adding a clause to read:

Section 1. Legislative Purpose.—This State has long recognized that employment of men, women and children under conditions detrimental to health and general welfare results in injury, not only to the workers immediately affected, but also to the public interest as a whole. This recognition has produced a broad program of regulatory legislation to conserve the public welfare. The continuance of an unregulated industrial homework system in this State runs counter to that program since it is usually accompanied by excessively low wages, long and irregular hours, and unsanitary or otherwise inadequate working quarters. **[Employment of young children in industrial homework occupations is frequent but effective supervision of this child labor evil has not been attainable under present statutes. The dangerous consequences of this system may fall upon the consumer of its products as well as upon the men and women who are its work force. The preservation of the system, moreover, endangers the protection of the workers in factory industries which, being forced to compete with industrial homework, are under pressure to relax the established safeguards of life, health and the public welfare. After study of experience and reported investigations, the Legislature is convinced that industrial homework must eventually be abolished, and that during a period of adjustment it must be strictly controlled in the interest of the wage-earners of this State, and of the public at large. This act is the product of that conviction.]** *In enacting this act, the Legislature stated that*

industrial homework was harmful to society as a whole, to the industrial homework work force, and to workers in factory industries forced to compete against the lower wages and less salutary working conditions characteristic of industrial homework. The Legislature concluded that "industrial homework must eventually be abolished." It is the aim of this act to achieve that goal, and eliminate the pernicious influence of industrial homework on the people of this State, by abolishing industrial homework except when it is engaged in by certain types of individuals unable to leave their homes to work, as hereinafter specified.

Section 3. Definitions.—The following words, terms and phrases, when used in this act, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

* * *

(c.1) "Family." The spouse and children of a home-worker, and the mother, father, grandmother, and grandfather of a home-worker and his spouse.

* * *

Section 7. Permit Required by Employers and Representative Contractors.—**[(a)]** Every employer and every representative contractor within this Commonwealth must procure from the department an employer's permit. Application for such permit shall be made on a form prescribed by the department. Such permit shall be in writing, dated when issued, and signed by the Secretary of Labor and Industry, or his duly authorized representative. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted. Such permit shall be valid for a period of one year from the date of its issuance, unless sooner revoked.

[(b)] No such permit shall be issued to any person, or to the successor in interest of any person whose employer's permit has been revoked by the department within two years prior to the last application for such a permit.

(c) Any employer, or a representative contractor, who delivers to another person any articles or materials for manufacture by industrial homework without having in his possession a valid employer's permit from the department, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00), or to undergo imprisonment for not more than six (6) months, or both, in the discretion of the court.]

Section 9. Permit Required by Contractors.—**[(a)]** Every contractor must procure from the department a contractor's permit. Application for such permit shall be made on a form prescribed by the department. Such permit shall be in writing and signed by the Secretary of Labor and Industry, or his duly authorized representative. It shall give the name and address of the person to whom it is issued, and shall designate and limit the acts that are permitted. Such permit shall be valid for a period of one year from the date of its issuance unless sooner revoked.

[(b)] No such permit shall issue to any person who or whose predecessor

in interest held an employer's permit which, within two years prior to the application for a contractor's permit, was revoked by the department.

(c) Any contractor who delivers, or causes to be delivered, to another person, any articles or materials for manufacture by industrial homework without having in his possession a valid contractor's permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00), or to undergo imprisonment for not more than six (6) months, or both, in the discretion of the court.]

Section 2. Subsections (a), (b) and (c) of section 10 of the act, subsection (b) amended July 25, 1953 (P.L.575, No.153), are amended to read:

Section 10. Fees.—(a) A fee of [**two hundred dollars (\$200.00)**] *five hundred dollars (\$500.00)* shall be paid to the department for the original issuance of an employer's permit.

(b) For each annual renewal of such permit, the employer or representative contractor shall pay to the department a fee of—

(1) [**Fifty dollars (\$50.00)**] *One hundred dollars (\$100.00)*, where at no time during the preceding year did the employer, or representative contractor, directly or indirectly, have business relations simultaneously with more than one hundred home-workers.

(2) (One hundred dollars (\$100.00)) *Two hundred dollars (\$200.00)*, where at any time during the preceding year the employer, or representative contractor, directly or indirectly, had business relations simultaneously with more than one hundred, but less than three hundred home-workers.

(3) [**Two hundred dollars (\$200.00)**] *Three hundred dollars (\$300.00)*, where at any time during the preceding year the employer, or representative contractor, directly or indirectly, had business relations simultaneously with three hundred or more home-workers.

(c) A fee of [**twenty-five dollars (\$25.00)**] *three hundred dollars (\$300.00)* shall be paid to the department for the issuance of a contractor's permit. *For each annual renewal of such permit, the contractor shall pay to the department a fee of one hundred dollars (\$100.00).*

* * *

Section 3. Sections 11, 12 and 14 of the act are amended and section 13 is amended by adding a clause to read:

Section 11. Home-Worker's Certificate.—(a) Every person desiring to engage in industrial homework within this Commonwealth must procure from the department a home-worker's certificate, which shall be issued without cost and which shall be valid for a period of one year from the date of its issuance, unless sooner revoked or suspended *by action of the department or, under subsection (f) of this section, automatically.* Application for such certificate shall be made in such form as the department may by regulation prescribe *and must be remade each year.* Such certificate shall be valid only for work performed by the applicant himself in his own home, and in accordance with the provisions of this act.

(b) No home-worker's certificate shall be issued:—

(1) To any person under the age of sixteen years; or

(2) To any person known to be suffering from an infectious, contagious, or communicable disease, or known to be living in a home that is not clean, sanitary and free from infectious, contagious, or communicable diseases.

(3) To any person, unless that person is unable to leave his home to work on account of:

(i) his own physical handicap, if that handicap has lasted for more than thirty consecutive days; or

(ii) his own illness, if that illness has lasted for more than thirty consecutive days; or

(iii) the necessity of caring for a member of his family who is ill or handicapped, if that illness and/or handicap and necessity has lasted for more than thirty consecutive days.

(c) It shall be the duty of each applicant for a home-worker's certificate to prove his eligibility for a certificate by presenting evidence of handicap or illness of himself or illness or handicap of a family member sufficient to prove to the department that he qualifies for a home-worker's certificate under one of the exceptions set forth in subsection (b)(3) of this section. The department shall be empowered to require any applicant for a home-worker's certificate, or any family member of any applicant for a home-worker's certificate upon whose illness an applicant is relying in order to obtain a certificate, to submit to a medical examination by a physician of the department's choosing in order to aid the department in making a decision on whether or not to issue a certificate.

(d) Whenever a physical examination by a physician is necessary, in order for a person to qualify for or to retain a home-worker's certificate, if the person is working, or has been promised work on the condition that he obtain a home-worker's certificate, it shall be the duty of the employer, representative contractor, or contractor for which the person is working or by which the person has been promised work, to pay the cost of the physical examination.

(e) Every certificate shall contain the following information, in addition to any information which the department shall, by regulation, require:

(1) The home-worker's

(i) name,

(ii) address,

(iii) sex,

(iv) Social Security number,

(v) date of birth,

(vi) height,

(vii) weight,

(viii) eye color,

(ix) hair color; and

- (2) The expiration date of the certificate; and*
- (3) The basis of the home-worker's eligibility for a certificate, as set forth in subsection (b)(3) above.*

(f) Upon the termination of the handicap, illness, or necessity of caring for a family member who is ill or handicapped which has qualified a person for a home-worker's certificate under subsection (b)(3) of this section, that person's certificate shall automatically be revoked.

[(c)] (g) The department may revoke, or suspend any home-worker's certificate if [he] it finds that the holder is performing industrial homework contrary to the conditions under which the certificate was issued, or to any provision of this act, or has permitted any person not holding a valid home-worker's certificate to assist him in performing his industrial homework or has obtained the certificate through fraud or misrepresentation.

(h) The department shall keep records of the applications made and certificates issued under this section, and of all information contained thereon.

(i) Notwithstanding any provisions of this act to the contrary, a special home-worker's certificate may be issued to a person who does not qualify for a certificate under subsections (b)(3) and (c) if the person meets the other qualifications of subsection (b) and if the person has been employed fulltime for a period of at least six months in the manufacture of shoes, and is unable to continue his factory employment, if the following conditions are met:

(1) The special certificate holder may perform homework only for an employer which operates a factory in which shoes are manufactured, and which does not have more than five percent of its employes engaged in the manufacture of shoes in industrial homework.

(2) The homework performed by the special certificate holder must be part of the manufacturing process of shoes.

(3) The special certificate holder must be paid the same wages and receive the same benefits as the employer pays or affords to employes in its factory who perform similar work.

(4) The employer must deliver and pick up all the materials used in or produced by homework at the home of the special certificate holder without charge to the home-worker.

(5) All machinery, equipment, and materials used in the manufacture of goods by the special certificate holder must be supplied to the special certificate holder and maintained by the employer without charge to the home-worker.

A certificate issued under authority of this subsection shall bear a mark indicating that it permits its holder to engage in homework only in the shoe manufacturing industry. The provisions of this act shall govern the issuance and use of a special home-worker's certificate insofar as they do not conflict with this subsection. The use of a special home-worker's certificate in violation of this act shall automatically revoke the certificate.

(j) Notwithstanding any provisions of this act to the contrary, a special

home-worker's certificate may be issued to a person who does not qualify for a certificate under subsections (b)(3) and (c) if the person meets the other qualifications of subsection (b), has been employed fulltime for a period of at least one month in the manufacture of brushes, is unable to continue his factory employment, and if the following conditions are met:

(1) The special certificate holder performs homework only for an employer operating a factory in which brushes are manufactured who does not have more than thirty per cent of its employes engaged in the manufacture of brushes in industrial homework.

(2) The homework performed by the special certificate holder is part of the process of manufacturing brushes.

(3) The employer delivers and picks up all the materials used in or produced by homework at the home of the special certificate holder without charge to the home-worker.

(4) All machinery, equipment, and materials used in the manufacture of goods by the special certificate holder is supplied to the special certificate holder and maintained by the employer without charge to the home-worker.

A certificate issued pursuant to this subsection shall bear a mark indicating that it permits its holder to engage in homework only in the brush manufacturing industry. The provisions of this act shall govern the issuance and use of a special home-worker's certificate insofar as they do not conflict with this subsection. The use of a special home-worker's certificate in violation of this act shall automatically revoke the certificate.

Section 12. Records to Be Kept.—No person having an employer's or a contractor's permit shall deliver, or cause to be delivered, or received, any articles or materials for or as a result of industrial homework, unless he shall keep in such form and forward to the department at such intervals, as it may by regulation prescribe, and on such blanks as it may provide, a complete and accurate record of all persons engaged in industrial homework on articles or materials furnished or distributed by him; of all places where such persons work; of all articles or materials furnished and distributed to such persons, described as the department may require; of all goods which such persons have manufactured; of the net cash wages received by each home-worker; *of the Social Security number and certificate number of each home-worker*; and of all contractors to whom he has furnished articles or materials to be manufactured for him in any home. *Records kept pursuant to this section shall be open, at all times, to inspection by the department.*

Section 13. Conditions of Manufacture.—Industrial homework on articles or materials manufactured for any person to whom an employer's permit has been issued shall be performed:—

* * *

(f) Only by persons who are incapable of leaving their homes to work because of one of the reasons stated in section 11(b)(3).

* * *

Section 14. Labels Required.—(a) No employer, or representative contractor, or contractor, shall deliver, or cause to be delivered, any articles or materials to be manufactured by any home-worker, unless there has been conspicuously affixed to each article or material a label, or other mark of identification, bearing the employer's or representative contractor's name and address, printed or written legibly in English; but if the articles or materials are of such a nature that they cannot be individually so labeled or identified, then the employer or representative contractor shall conspicuously label, in like manner, the package, or other container in which such articles or materials are delivered, or are to be kept, while in the possession of the home-worker.

(b) Every article manufactured in whole or in part by industrial homework which is offered for sale, wholesale and retail, shall bear a conspicuous label stating in clearly legible type that it has been manufactured by industrial homework. It shall be the duty of the department to prescribe regulations concerning the nature and placement of labels on such articles.

Section 4. Sections 16, 17 and 21 of the act are repealed.

Section 5. The act is amended by adding sections to read:

Section 16.1. Duty to Inspect and Report.—It shall be the duty of every employer, representative contractor and contractor, at least once each month, or more frequently, if he has reasonable cause to believe that a home-worker is not in compliance with section 11 or section 13:

(1) To inspect the home of every home-worker to which it delivers goods to the extent required to determine whether the provisions of section 13 are being complied with; and

(2) To inspect the certificate of every home-worker to which it delivers goods to the extent required to determine whether the certificate is valid and whether the holder of the certificate possesses the physical characteristics stated on the certificate in compliance with section 11; and

(3) To report to the department within twenty-four hours after discovery, the name and address of any home-worker whom it reasonably believes, on the basis of the performance of the duties imposed by subsections (a) and (b) of this section, to be performing or seeking to perform homework in violation of this act.

Section 17.1. Violations and Penalties.—(a) It shall be a summary offense, punishable by a fine of one thousand dollars (\$1,000.00) or imprisonment for up to sixty days, or both:

(1) For any person to obtain or attempt to obtain an employer's or a contractor's permit required by section 7 or section 9 through fraud or misrepresentation; or

(2) For any person to deliver or cause to be delivered, to any person, any articles or materials for manufacture by industrial homework, prohibited by section 4 or by the department under authority of section 5; or

(3) For any person to deliver or cause to be delivered, to any person,

any articles or materials for manufacture by industrial homework, if the person delivering or causing the delivery does not have in his possession a valid appropriate permit required by section 7 or section 9; or

(4) For any person to deliver or cause to be delivered, to any person, any articles or materials for manufacturing by industrial homework, if the person to whom the articles or materials are delivered does not possess a home-worker's certificate which is valid or which, after performance of the inspection required by section 16, a person could reasonably believe to be valid; or

(5) For any person to fail to keep records or make a report as required by section 12, or refuse to grant access to such records as required by section 12, or to keep records or make a report required by section 12 inaccurately, if the inaccuracy is due to fraud, misrepresentation, or reckless disregard for accuracy; or

(6) For any person to fail to perform any duty imposed by section 16; or

(7) For an employer, representative contractor, or contractor to obtain or aid any person to obtain a home-worker's certificate, if he knows or has reason to know that the person does not meet the qualifications of a home-worker set forth in section 11; or

(8) For any person to sell or to possess with intent to sell, any articles manufactured in violation of any provision of this act, or any manufactured articles which have not been labeled as required by section 14(b), if the person knows or should have known that the articles were manufactured by industrial homework and are not labeled as required by this act.

(9) For any person to make a deduction from the wages of salary of any home-worker prohibited by section 8.

(b) It shall be a summary offense, punishable by a fine of five hundred dollars (\$500.00) or imprisonment for up to thirty days, or both, for any person to deliver or cause to be delivered, to any person, any articles or materials for manufacture by industrial homework which are not labeled in the manner prescribed by section 14(a).

(c) It shall be a summary offense, punishable by a fine of five thousand dollars (\$5,000.00) or imprisonment for between sixty and ninety days, or both, for any person to commit a second violation of this act within five years from the date of his conviction for violation of this act.

(d) If a person convicted under this section is a corporation, the president and any other officer of the corporation empowered to supervise the action of the corporation found to be violative of this act shall be subject to the penalties of imprisonment provided for by this section.

(e) It shall be the duty of every court which convicts any person of a violation of this act to notify the department of that conviction, if the department is not a party to the proceeding.

(f) Upon learning of the conviction of any person for violation of this act, it shall be the duty of the Secretary of Labor and Industry, or his

authorized representative, to revoke any permit which the convicted person may hold. The department shall not issue any permit authorized by this act to any such person, or his successor in interest, for a period of five years after the revocation of the permit becomes final. If a person convicted under this act did not have a valid permit at the time of his conviction, the department shall not issue any permit authorized by this act to any such person, or his successor in interest, for a period of five years after the person's conviction becomes final. In its performance of the duties imposed on it by this subsection, the department shall afford the convicted person due process of law.

(g) When delivery or causing delivering of any articles or materials for manufacture by industrial homework is an element of an offense under this section, and more than one delivery violative of this act is made to the same individual home-worker within one calendar week, those deliveries shall constitute only one offense under this act. In such a case the person making or causing the delivery shall be found guilty of that portion of the act which he has violated which carries the most onerous penalty. Deliveries during each calendar week to different individuals shall constitute separate offenses.

Section 21.1. Enforcement.—The Secretary of Labor and Industry shall have the duty, but not the exclusive right, to enforce the provisions of this act. Criminal proceedings authorized by this act may be brought and prosecuted by the secretary or his authorized agent, by the district attorney of any county in which the offense occurred, or by any citizen of Pennsylvania.

APPROVED—The 24th day of November, A. D. 1976.

MILTON J. SHAPP