

No. 1988-109

AN ACT

SB 1534

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," establishing a separate fund to supplement the Unemployment Compensation Fund; further providing for the rate of contribution by employers and employees; further providing for the rate and amount of benefits; further providing for administrative matters and for the recoupment of fault overpayments; and making repeals.

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

Section 1. Sections 301.2, 301.4 and 301.5 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, amended or added July 21, 1983 (P.L.68, No.30), are amended to read:

Section 301.2. Additional Contributions.—Notwithstanding any other provision of this act, all employers required to pay contributions under section 301 or 301.1, except those subject to the provisions of section 301(a)(3) and (4) or 301.1(g), shall pay additional contributions **[equal to seven-tenths of one per centum (0.7%) for calendar year 1984, six-tenths of one per centum (0.6%) for calendar year 1985 and five-tenths of one per centum (0.5%) for calendar year 1986 and thereafter] at a rate of zero per centum (0.0%) for calendar year 1989 and at a rate as set forth in section 301.7 for each calendar year thereafter** on wages paid with regard to the limitation specified under section 4(x)(1) of this act.

Section 301.4. Contributions by Employes.—(a) Notwithstanding any other provision of this act, **[for calendar year 1984 and every calendar year thereafter]** each employe shall contribute to the Unemployment Compensation Fund **[one-tenth of one per centum (0.1%)] at a rate of zero per centum (0.0%) for calendar year 1989 and at a rate as set forth in section 301.7 for each calendar year thereafter** of all wages paid for "employment" as defined by the act without regard to the limitation specified in section 4(x)(1) of this act.

(b) Each employer subject to this act shall be responsible for withholding and shall withhold, in trust, such contributions from the wages of his employes at the time such wages are paid, and shall report and transmit such

deductions to the department for deposit into the Unemployment Compensation Fund, in accordance with rules and procedures established by the department.

(c) Any employer who is an individual, or any officer or agent of any employer, who violates the trust provision of this section, fails to withhold, hold in trust or fails to transmit to the department all contributions withheld from the wages of his employes in accordance with the rules and procedure established by the department shall be subject to the provisions of clause (2) of subsection (a) of section 301 and sections 308, 308.1, 308.2, 308.3 and 309 of this act.

(d) This section shall not be deemed to affect or impair the operation of any State statute or ordinance or resolution of a political subdivision which levies or collects any wage tax or similar tax. Contributions made pursuant to this section are not intended to reduce or otherwise affect any tax on wages or similar tax.

Section 301.5. Surcharge.—**(a) Notwithstanding any other provisions of this act, all employers subject to this act (other than employers who have elected, pursuant to section 1102 or 1202.2, to make payments in lieu of contributions) shall be assessed a surcharge of fifteen per centum (15%) of the contributions due for 1983 without regard to the tax credit granted under subsection (c) of section 301.3. Additional contributions due under this section for the period of January through September 1983 shall be payable on or before October 31, 1983. Additional contributions due under this section for the period of October through December 1983 shall be payable on or before January 31, 1984. Such additional contributions due under this section shall be collectible in the manner provided in sections 308.1, 308.2, 308.3 and 309 of this act.**

(b) This section shall not apply to contributions on wages paid during the period January 1, 1983, through June 30, 1983, by jobbers, manufacturers, contractors or subcontractors with a Standard Industrial Code classification of 23 for work on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel industry.] Notwithstanding any other provision of this act, all employers subject to this act (other than employers who are subject to section 1003 or who have elected, pursuant to section 1102 or 1202.2, to make payments in lieu of contributions) shall be assessed a surcharge on contributions due from employers at a rate of zero per centum (0.0%) for calendar year 1989 and at a rate as set forth in section 301.7 for each calendar year thereafter. Such additional contributions due under this section shall be collectible in the manner provided in sections 308.1, 308.2, 308.3 and 309 of this act.

Section 2. The act is amended by adding sections to read:

Section 301.7. Trigger Determination.—(a) On July 1 of every year, the secretary shall calculate the trigger percentage to be used in setting surcharge and contribution rates for the contributions required under sections 301.2, 301.4 and 301.5 and in setting the benefit reduction required under section 404(e)(4) for the following calendar year. The secretary shall:

(1) *determine the balance in the Unemployment Compensation Trust Fund;*

(2) *determine the average of the benefit costs for the three immediately preceding fiscal years; and*

(3) *calculate the percentage that the Unemployment Compensation Trust Fund represents of the average of the benefit costs.*

(b) *Surcharge and contribution rates shall be announced by the secretary on July 1 of every year in accordance with the following schedule:*

(1) *When the trigger percentage is one hundred fifty per centum (150%) or higher, the rate of the surcharge assessed under section 301.5 shall be a negative one and one-half per centum (-1.5%).*

(2) *When the trigger percentage is at least one hundred twenty-five per centum (125%), but less than one hundred fifty per centum (150%), there shall be no surcharge or contribution under section 301.2, 301.4 or 301.5.*

(3) *When the trigger percentage is at least one hundred ten per centum (110%), but less than one hundred twenty-five per centum (125%):*

(i) *the rate of the surcharge assessed under section 301.5 shall be four per centum (4%); and*

(ii) *the rate of contributions assessed under section 301.4 shall be five-hundredths of one per centum (0.05%).*

(4) *When the trigger percentage is at least ninety-five per centum (95%), but less than one hundred ten per centum (110%):*

(i) *the rate of the surcharge assessed under section 301.5 shall be eight per centum (8%); and*

(ii) *the rate of contributions assessed under section 301.4 shall be one-tenth of one per centum (0.1%).*

(5) *When the trigger percentage is at least seventy-five per centum (75%), but less than ninety-five per centum (95%):*

(i) *the rate of the surcharge assessed under section 301.5 shall be eight per centum (8%);*

(ii) *the rate of contributions assessed under section 301.4 shall be fifteen-hundredths of one per centum (0.15%); and*

(iii) *the rate of additional contributions assessed under section 301.2 shall be twenty-five hundredths of one per centum (0.25%).*

(6) *When the trigger percentage is at least fifty per centum (50%), but less than seventy-five per centum (75%):*

(i) *the rate of the surcharge assessed under section 301.5 shall be eight per centum (8%);*

(ii) *the rate of contributions assessed under section 301.4 shall be two-tenths of one per centum (0.2%); and*

(iii) *the rate of additional contribution assessed under section 301.2 shall be five-tenths of one per centum (0.5%).*

(7) *When the trigger percentage is less than fifty per centum (50%):*

(i) *the rate of the surcharge assessed under section 301.5 shall be eight per centum (8%);*

(ii) *the rate of additional contribution assessed under section 301.2 shall be seventy-five hundredths of one per centum (0.75%); and*

(iii) the rate of contributions assessed under section 301.4 shall be two-tenths of one per centum (0.2%).

(c) Whenever the trigger percentage determined under subsection (a) is less than fifty per centum (50%), the secretary shall announce a reduction in the weekly benefit rate under section 404(e)(4).

(d) Whenever the trigger percentage is less than twenty-five per centum (25%), any balance remaining in the Unemployment Compensation Trigger Reserve Account shall be transferred to the Unemployment Compensation Trust Fund.

Section 301.8. Trigger Rate Redeterminations.—*(a) Beginning in 1992 and each fifth year thereafter, the secretary shall redetermine the rates of the surcharge, employe tax, additional contributions and benefit reduction otherwise applicable under sections 301.7 and 404(e)(4). The secretary shall redetermine the rates so that the unrounded rates yield contribution increases and benefit reductions, on a calendar year basis, approximately equal to the dollar amounts specified in subsection (b). The rates as redetermined shall take effect on January 1 of the following calendar year and shall remain in effect for five years.*

(b) The rates shall be adjusted to yield the amounts indicated at the following trigger percentages:

(1) At least one hundred fifty per centum (150%), the negative surcharge assessed under section 301.5 shall result in an employer contribution reduction of eighteen million dollars (\$18,000,000).

(2) At least one hundred ten per centum (110%) but less than one hundred twenty-five per centum (125%), the surcharge assessed under section 301.5 shall yield fifty million dollars (\$50,000,000), and the employe tax under section 301.4 shall yield thirty-three million three hundred thirty-three thousand three hundred thirty-three dollars (\$33,333,333).

(3) At least ninety-five per centum (95%) but less than one hundred ten per centum (110%), the surcharge assessed under section 301.5 shall yield one hundred million dollars (\$100,000,000), and the employe tax under section 301.4 shall yield sixty-six million six hundred sixty-six thousand six hundred sixty-six dollars (\$66,666,666).

(4) At least seventy-five per centum (75%) but less than ninety-five per centum (95%), the surcharge assessed under section 301.5 shall yield one hundred million dollars (\$100,000,000), the additional contributions under section 301.2 shall yield seventy-five million dollars (\$75,000,000), and the employe tax under section 301.4 shall yield one hundred sixteen million six hundred sixty-six thousand six hundred sixty-six dollars (\$166,666,666).

(5) At least fifty per centum (50%) but less than seventy-five per centum (75%), the surcharge assessed under section 301.5 shall yield one hundred million dollars (\$100,000,000), the additional contribution under section 301.2 shall yield one hundred fifty million dollars (\$150,000,000), and the employe tax under section 301.4 shall yield one hundred sixty-six million six hundred sixty-six thousand six hundred sixty-six dollars (\$166,666,666).

(6) *Less than fifty per centum (50%), the surcharge assessed under section 301.5 shall yield one hundred million dollars (\$100,000,000), the additional contribution under section 301.2 shall yield two hundred twenty-five million dollars (\$225,000,000), the employe tax under section 301.4 shall yield one hundred sixty-six million six hundred sixty-six thousand six hundred sixty-six dollars (\$166,666,666), and the benefit reduction under section 404(e)(4) shall yield fifty-two million dollars (\$52,000,000).*

(c) *For the purpose of redetermining the rates under this section, the secretary shall utilize the necessary contribution and benefit activity data from the calendar year immediately preceding the year in which the redetermination is to be done.*

(d) *The first redetermination shall be done by June 30, 1992, and the rates shall be redetermined each fifth succeeding June 30, and the applicable redetermined rates shall take effect the next January 1.*

(e) *The redetermined rates shall be rounded in accordance with the following schedule:*

(1) *If the rate for the surcharge assessed under section 301.5 is not a multiple of one-tenth of one per centum (0.1%), it shall be rounded to the next higher multiple of one-tenth of one per centum (0.1%).*

(2) *If the rate for the employe tax under section 301.4 is not a multiple of one-hundredth of one per centum (0.01%), it shall be rounded to the next higher multiple of one-hundredth of one per centum (0.01%).*

(3) *If the rate for the additional contribution under section 301.2 is not a multiple of five-hundredths of one per centum (0.05%), it shall be rounded to the next higher multiple of five-hundredths of one per centum (0.05%).*

(4) *If the rate for the benefit reduction under section 404(e)(4) is not a multiple of one-tenth of one per centum (0.1%), it shall be rounded to the next higher multiple of one-tenth of one per centum (0.1%).*

Section 3. Section 314 of the act is repealed.

Section 4. The introductory paragraph and subsections (d) and (e)(2) and (4) of section 404 of the act, amended or added December 5, 1974 (P.L.771, No.262) and July 21, 1983 (P.L.68, No.30), are amended to read:

Section 404. Rate and Amount of Compensation.—Compensation shall be paid to each eligible employe in accordance with the following provisions of this section except that compensation payable with respect to weeks ending in benefit years which begin prior to the first day of **[January 1984]** **January 1989** shall be paid on the basis of the provisions of this section in effect at the beginning of such benefit years.

* * *

(d) (1) Notwithstanding any other provisions of this section each eligible employe who is unemployed with respect to any week ending subsequent to July 1, 1980 shall be paid, with respect to such week, compensation in an amount equal to his weekly benefit rate less the total of (i) the remuneration, if any, paid or payable to him with respect to such week for services performed which is in excess of his partial benefit credit[;] *and* (ii) vacation pay, if any, which is in excess of his partial benefit credit, except when paid to an employe who is permanently or indefinitely separated from his employment

[and (iii) an amount equal to the amount of a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual, which is reasonably attributable to such week, in accordance with this subsection. The provisions of this subsection shall be applicable whether or not such vacation pay, retirement pension or annuities, or wages are legally required to be paid. If such retirement pension or annuity payments deductible under the provisions of this subsection are received on other than a weekly basis, the amount thereof shall be allocated and pro-rated in accordance with the rules and regulations of the department. Vacation pay, or other remuneration deductible under the provisions of this subsection shall be pro-rated on the basis of the employe's normal full-time weekly wage and as so pro-rated shall be allocated to such period or periods of unemployment as shall be determined by rules and regulations of the department. Such compensation, if not a multiple of one dollar (\$1), shall be computed to the next lower multiple of one dollar (\$1)].

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

(ii) *If the pension is entirely contributed to by the employer, then one hundred per centum (100%) of the pro-rated weekly amount of the pension shall be deducted. If the pension is contributed to by the individual, in any amount, then fifty per centum (50%) of the pro-rated weekly amount of the pension shall be deducted.*

(iii) *No deduction shall be made under this clause by reason of the receipt of a pension if the services performed by the individual during the base period or remuneration received for such services for such employer did not affect the individual's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity or similar payment. This subclause shall not apply to pensions paid under the Social Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.) or the Railroad Retirement Act of 1974 (Public Law 93-445, 88 Stat. 1305) or the corresponding provisions of prior law. Payments made under such acts shall be treated solely in the manner specified by subclause (i) of this clause.*

(3) *The provisions of this subsection shall be applicable whether or not such vacation pay, retirement pension or annuities or wages are legally required to be paid. If such retirement pension or annuity payments deductible under the provisions of this subsection are received on other than a weekly basis, the amount thereof shall be allocated and pro-rated in accordance with the rules and regulations of the department. Vacation pay or other remuneration deductible under the provisions of this subsection shall be pro-rated on the basis of the employe's normal full-time weekly wage and as so pro-rated shall be allocated to such period or periods of unemployment*

as shall be determined by rules and regulations of the department. Such compensation, if not a multiple of one dollar (\$1), shall be computed to the next lower multiple of one dollar (\$1).

* * *

(e) * * *

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

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

For the purpose of determining the maximum weekly benefit rate, the Pennsylvania average weekly wage in covered employment shall be computed on the basis of the total wages reported (irrespective of the limit on the amount of wages subject to contributions) for the twelve-month period ending June 30 and this amount shall be divided by the average monthly number of covered workers (determined by dividing the total covered employment reported for the same fiscal year by twelve) to determine the average annual wage. The average annual wage thus obtained shall be divided by fifty-two and the average weekly wage thus determined rounded to the nearest cent.

* * *

(4) (i) Notwithstanding any other provision of this act, each claimant eligible for a weekly benefit rate of seventy-five dollars (\$75) or more shall have his weekly compensation as determined by application of subsections (a) through (e) reduced by five per centum (5%)**[, or more if and when the provisions of section 314(c)(1)(iii) apply]**. If such reduced weekly compensation is not an even multiple of one dollar (\$1), it shall be rounded to the next lower multiple of one dollar (\$1): Provided, That no claimant whose weekly benefit rate, determined in accordance with subsection (a), is in excess of seventy-four dollars (\$74) shall have his weekly compensation reduced below

seventy-five dollars (\$75) except through the combined application of this paragraph and subsection (d). The balance in the claimant's compensation account as indicated in Part D or E of the table contained in subsection (e)(1) of this section shall be reduced by his weekly benefit amount without regard to the reduction provided herein. *This subclause shall be of no effect beginning with the compensable week which ends on or after the first day of January 1989.*

(ii) Notwithstanding any other provision of this act, each claimant shall have his weekly compensation, as determined by applications of subsections (a) through (e), reduced by five per centum (5%) if and when the provisions of section 301.7(c) apply, or by the per centum redetermined under section 301.8, if and when applicable. If such reduced weekly compensation is not an even multiple of one dollar (\$1), it shall be rounded to the next lower multiple of one dollar (\$1): Provided, That no claimant whose weekly benefit rate, determined in accordance with subsection (a), is in excess of the weekly benefit rate immediately below the weekly benefit rate that is one-half of the maximum weekly benefit rate determined in clause (2) of this subsection shall have his weekly compensation reduced below one-half of the maximum weekly benefit rate except through the combined application of this subclause and subsection (d). The balance in the claimant's compensation account as indicated in Part D or E of the table contained in clause (1) of this subsection shall be reduced by his weekly benefit amount without regard to the reduction provided herein. This subclause shall be in effect as of the first compensable week that ends on or after the first day of January 1990.

(iii) For purposes of this subsection only, if one-half of the maximum weekly benefit rate is not a multiple of one dollar (\$1), such amount shall be rounded down to the next lower multiple of one dollar (\$1) and then applied as required by this subsection.

* * *

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

Section 601.3. Unemployment Compensation Trigger Reserve Account.—*There is hereby established within the General Fund of the State Treasury a special account, which shall be known as the Unemployment Compensation Trigger Reserve Account, for the purpose of supplementing the Unemployment Compensation Fund established under section 601. There shall be deposited in this special account such moneys as are transferred from the State Workmen's Insurance Fund. Any amounts in the Unemployment Compensation Trigger Reserve Account shall be maintained separate and apart from the Unemployment Compensation Fund unless and until transferred to the Unemployment Compensation Fund in accordance with section 301.7(d). Any interest earned on the principal of the Unemployment Compensation Trigger Reserve Account shall be deposited into the State Workmen's Insurance Fund. Any amounts transferred from the Unemployment Compensation Trigger Reserve Account to the Unemployment Compensation Fund shall become available for any purpose permitted under section 601.*

Section 6. Section 804(a) of the act, amended July 21, 1983 (P.L.68, No.30), 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 to the Unemployment Compensation Fund to the credit of the Compensation Account a sum equal to the amount so received by him and interest at the rate determined by the Secretary of Revenue as provided by 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 from fifteen (15) days after the Notice of Overpayment was issued until paid. Such sum shall be collectible (1) in the manner provided in section 308.1 or section 309 of this act, for the collection of past due contributions, or (2) by deduction from any future compensation payable to the claimant under this act: *Provided, That interest assessed under this section cannot be recouped by deduction from any future compensation payable to the claimant under this act*: *Provided further*, 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 7. This act shall take effect as follows:

- (1) The amendments to section 404(d) shall take effect beginning with the first compensable week that ends on or after January 1, 1989.
- (2) The amendments to sections 301.2, 301.4, 301.5, 301.7, 301.8 and 404(e) shall take effect on the first day of January 1989.
- (3) The remainder of this act shall take effect immediately.

APPROVED—The 19th day of October, A. D. 1988.

ROBERT P. CASEY