

No. 1996-133

AN ACT

HB 2388

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 defining "employment"; providing for ineligibility of incarcerated employee; further providing for the use of certain Federal moneys; and making an appropriation.

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

Section 1. Section 4(1)(4) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, is amended by adding a subparagraph to read:

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

* * *

(1) * * *

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

* * *

(20) *Services performed as a direct seller.*

(A) *The term "direct seller" means any person (i) engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, or any similar basis which the United States Secretary of Treasury or his delegate prescribes by regulations for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment, or (ii) engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment.*

(B) *To be a "direct seller," (i) substantially all the remuneration whether or not paid in cash for the performance of the services described under this definition must be directly related to sales or other output, including the performance of services, rather than to the number of hours worked, and (ii) the services performed by the person must be performed*

pursuant to a written contract between the person and the person for whom the services are performed and the contract provides that the person will not be treated as an employe with respect to the services for Federal tax purposes.

* * *

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

Section 402.6. Ineligibility of Incarcerated Employe.—*Nothing in this act shall require payment of unemployment compensation benefits for any weeks of unemployment during which the employe is incarcerated after a conviction.*

Section 3. Section 602.3(a) and (b) of the act, amended July 21, 1983 (P.L.68, No.30), are amended to read:

Section 602.3. Money Credited under Section 903 of the Federal Social Security Act (42 U.S.C. § 1103).—(a) Money credited to the account of this Commonwealth in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to section 903 of the Federal Social Security Act (42 U.S.C. § 1103) may not be requisitioned from this Commonwealth's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this act and this State's system of public employment offices. Such money may be requisitioned pursuant to subsection (b) of section 601 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this act and this State's system of public employment offices but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(1) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(2) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(3) Limits the amount which may be obligated [during any twelve-month period beginning on July 1 and ending on the next June 30] to an amount which does not exceed the amount by which (i) the aggregate of the amounts [credited] *transferred* to the account of this Commonwealth pursuant to section 903 of the Federal Social Security Act (42 U.S.C. § 1103) [during the same twelve-month period and the thirty-four (34) preceding twelve-month periods,] exceeds (ii) the aggregate of the amounts [obligated for administration and paid out for benefits] *used by this Commonwealth pursuant to this act* and charged against the amounts [credited] *transferred* to the account of this Commonwealth [during such thirty-five (35) twelve-month periods].

(b) [Amounts credited to this Commonwealth's account in the Unemployment Trust Fund under section 903 of the Federal Social Security Act (42 U.S.C. § 1103) which are obligated for administration

or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.] *For purposes of subsection (a)(3), amounts obligated for administrative purposes pursuant to an appropriation or paid out for benefits shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.*

* * *

Section 4. (a) The sum of \$8,176,000, or as much thereof as may be necessary, is appropriated from Federal funds made available to the Commonwealth under section 903 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1103) for the fiscal years 1996-1997 and 1997-1998 to the Department of Labor and Industry for staff salary and benefits for employment security purposes and programs.

(b) No part of the money hereby appropriated may be obligated after the expiration of the two-year period beginning on the effective date of this section.

(c) The amount obligated pursuant to this section shall not exceed at any time the amount by which the aggregate of the amounts transferred to the account of this Commonwealth pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this Commonwealth.

Section 5. This act shall take effect as follows:

- (1) The amendment of section 4(1)(4) of the act shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 30th day of October, A.D. 1996.

THOMAS J. RIDGE