

No. 2002-158

AN ACT

HB 731

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 decision of referee and further appeals and reviews, for disqualifications to participate in hearings, for finality of decisions, for false statements and representations, for violation of the act and rules and regulations and for penalties.

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

Section 1. Section 502 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, amended July 10, 1980 (P.L.521, No.108), is amended to read:

Section 502. Decision of Referee; Further Appeals and Reviews.—Where an appeal from the determination or revised determination, as the case may be, of the department is taken, a referee shall, after affording the parties and the department reasonable opportunity for a fair hearing, affirm, modify, or reverse such findings of fact and the determination or revised determination, as the case may be, of the department as to him shall appear just and proper. The parties *and their attorneys or other representatives of record* and the department shall be duly notified *of the time and place of a referee's hearing and* of the referee's decision, and the reasons therefor, which shall be deemed the final decision of the board, unless an appeal is filed therefrom, within fifteen days after the date of such decision the board acts on its own motion, to review the decision of the referee. A memorandum of testimony of any hearing before any referee shall be made and be preserved for a period of ninety days following expiration of the period for filing an appeal from the final decision rendered in the case.

Section 2. Section 503 of the act is amended to read:

Section 503. Disqualifications to Participate in Hearings.—(a) No referee, member of the board, or employe of the department shall participate in the hearing of any case in which he himself is an interested party. The board may designate an alternate to serve in the absence or disqualification of any referee.

(b) Referees shall conduct their hearings de novo.

Section 3. Section 509 of the act, amended April 14, 1976 (P.L.113, No.50) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Section 509. Finality of Decisions.—Any decision made by the department or any referee or the board shall not be subject to collateral attack as to any application claim or claims covered thereby or otherwise be disturbed, unless appealed from.

Subject to appeal proceedings and judicial review, any right, fact or matter in issue which was directly passed upon or necessarily involved in any decision of a referee or the board or the Court and which has become final shall be conclusive for all purposes of this act and shall not be subject to collateral attack as among all affected parties who had notice of such decision: Provided, however, That whenever an appeal involves a question as to whether services were performed by a claimant in employment or for an employer or whether remuneration paid constituted wages, a decision thereon shall not be conclusive as to an employing entity's liability for contributions unless the employing entity was given special notice of such issue and of the pendency of the appeal and was afforded a reasonable opportunity by the referee or the board to adduce evidence bearing on such question. ***No finding of fact or law, judgment, conclusion or final order made with respect to a claim for unemployment compensation under this act may be deemed to be conclusive or binding in any separate or subsequent action or proceeding in another forum.***

Section 4. Section 801 of the act, amended June 22, 1964 (Sp.Sess., P.L.112, No.7), is amended to read:

Section 801. False Statements and Representations to Obtain or Increase Compensation.—(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any compensation or other payment under this act or under an employment security law of any other state or of the Federal Government or of a foreign government, either for himself or for any other person, shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than ***[thirty nor more than two hundred] one hundred dollars nor more than one thousand*** dollars, or shall be sentenced to imprisonment for not longer than thirty days, or both, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. ***In addition to any other sanction, an individual convicted under this subsection shall be ordered to make restitution of the compensation to which the individual was not entitled and of interest on that compensation in accordance with section 804(a).***

(b) Whoever makes a false statement knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any compensation or other payment under this act or under an employment

security law of any other state or of the Federal Government or of a foreign government, may be disqualified in addition to such week or weeks of improper payments for a penalty period of two weeks and for not more than one additional week for each such week of improper payment: Provided, That no additional weeks of disqualification shall be imposed under this section if prosecution proceedings have been instituted against the claimant because of such misrepresentation or non-disclosure. The departmental determination imposing penalty weeks under the provisions of this subsection shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation. The penalty weeks herein provided for shall be imposed against any weeks with respect to which the claimant would otherwise be eligible for compensation, under the provisions of this act, which begin within the [two year] *four year* period following the [departmental determination imposing such penalty weeks] *end of the benefit year with respect to which the improper payment or payments occurred.*

Section 5. Section 802 of the act, amended March 30, 1955 (P.L.6, No.5), is amended to read:

Section 802. False Statements and Representations to Prevent or Reduce Compensation.—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 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 employee 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 wilfully fails or refuses to make any such contribution or other payment or to furnish any reports required hereunder, or who 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 [fifty] *one hundred* dollars nor more than [five] *fifteen* hundred dollars[, and in default of the payment of such fine and costs shall be sentenced] *or to imprisonment for not longer than thirty days, [and each] or both. 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. *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.*

Section 6. Section 803 of the act is amended to read:

Section 803. Violation of Act and Rules and Regulations.—Any person who shall wilfully violate any provision of this act or any rule or regulation thereunder, the violation of which is made unlawful, or the observance of which is required under the terms of this act, and for which a penalty is

neither prescribed herein nor provided by any other applicable statute, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than [twenty nor more than two hundred] *one hundred dollars nor more than one thousand* dollars], and in default of the payment of such fine and costs shall be sentenced] *or* to imprisonment for not longer than thirty days, [and each] *or both. Each* day such violation continues shall be deemed to be a separate offense.

Section 7. This act shall take effect in 60 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER