No. 2011-6

AN ACT

SB 1030

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 definitions, for relief from charges for certain employers and for establishment and maintenance of employer's reserve accounts; providing for automatic relief from charges; further providing for qualifications required to secure compensation, for rate and amount of compensation, for definitions and for rules of procedure; and providing for shared-work program and for applicability.

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

Section 1. Section 4(g.1) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, added July 10, 1980 (P.L.521, No.108), 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.

* * *

(g.1) **["Credit week" means any calendar week in an individual's base year with respect to which he was paid in employment as defined in this act, remuneration of not less than fifty dollars ($50). Only one credit week can be established with respect to any one calendar week.]** ***"Credit week" means any calendar week in an individual's base year with respect to which he was paid in employment as defined in this act, remuneration of not less than:***

(1) One hundred dollars ($100). This paragraph shall expire December 31, 2014.

(2) Sixteen (16) times the minimum hourly wage required by the act of January 17, 1968 (P.L.11, No.5), known as "The Minimum Wage Act of 1968." This paragraph shall take effect January 1, 2015.

Only one credit week can be established with respect to any one calendar week.

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Section 1.1. Section 213 of the act, added December 9, 2002 (P.L.1330, No.156), is amended to read:

Section 213. Relief from Charges for Certain Employers.—(a) An employer that makes payments in lieu of contributions pursuant to Article X,

XI or XII shall be relieved of charges in accordance with section **[302(a)]** ***302.1*** and regulations of the department, for compensation paid on applications for benefits effective during a calendar year, if the employer satisfies the following requirements:

(1) The employer pays a nonrefundable solvency fee under subsection (b) for the calendar year within thirty (30) days after notice of the fee is sent to the employer's last known address. The department may for good cause extend the period within which the fee must be paid.

(2) All reports required by this act and regulations of the department for calendar quarters through the second calendar quarter of the preceding calendar year are filed.

(b) An employer's solvency fee for a calendar year shall be the monetary amount determined by multiplying the solvency fee rate for the year by the amount of wages paid, without regard to the exclusion in section 4(x)(1), by the employer in the four consecutive calendar quarters ending on June 30 of the preceding calendar year, provided that an employer's solvency fee for a year shall not be less than twenty-five dollars ($25).

(1) For calendar years 2003, 2004 and 2005, the solvency fee rate shall be three ten thousandths (.0003).

(2) In 2005 the secretary shall redetermine the solvency fee rate. The secretary shall redetermine the rate so that the unrounded rate yields solvency fees approximately equal to the amount of compensation for which charges are relieved under this section. For purposes of redetermining the rate, the secretary shall use the amount of compensation for which charges are relieved under this section paid during 2003 and 2004 and the amount of wages paid, without regard to the exclusion in section 4(x)(1), during the same time period by employers who paid a solvency fee under this section. The rate as redetermined shall take effect for the next calendar year and shall remain in effect for three years.

(3) Beginning in 2008 and each fifth year thereafter, the secretary shall redetermine the solvency fee rate. The secretary shall redetermine the rate so that the unrounded rate yields solvency fees approximately equal to the amount of compensation for which charges are relieved under this section. For purposes of redetermining the rate, the secretary shall use the amount of compensation for which charges are relieved under this section paid during the five calendar years immediately preceding the year in which the redetermination occurs and the amount of wages paid, without regard to the exclusion in section 4(x)(1), during the same time period by employers who paid a solvency fee under this section. The rate as redetermined shall take effect for the next calendar year and shall remain in effect for five years.

(4) If the solvency fee rate redetermined under paragraphs (2) and (3) is not a multiple of one-hundredth of one per cent, it shall be rounded to the next higher multiple of one-hundredth of one per cent.

(c) Solvency fees paid by employers under this section shall be deposited in the Unemployment Compensation Fund. Compensation for which charges are relieved under this section shall not be used in the calculation of the State adjustment factor under section 301.1(e).

(d) The provisions of this section shall constitute the exclusive means by which an employer who makes payments in lieu of contributions pursuant to

Article X, XI or XII may be excused from reimbursing the Unemployment Compensation Fund for compensation paid to an individual that is based on wages paid by the employer or that portion of the individual's compensation determined in accordance with section 1108.

(e) A group account under section 1109 shall constitute an employer for purposes of this section.

Section 2. Section 302 of the act, amended March 24, 1964 (Sp.Sess., P.L.53, No.1), July 6, 1977 (P.L.41, No.22), July 21, 1983 (P.L.68, No.30), December 19, 1996 (P.L.1476, No.189) and December 9, 2002 (P.L.1330, No.156), is amended to read:

Section 302. Establishment and Maintenance of Employer's Reserve Accounts.—The department shall establish and maintain for each employer a separate employer's reserve account in the following manner:

(a) **[(1) Such account shall be credited with all contributions paid by such employer for periods subsequent to June thirtieth, one thousand nine hundred forty-eight. Such account shall be charged with an amount determined by multiplying the wages of compensated employes of such employer for the twelve month period ended June thirtieth, one thousand nine hundred forty-nine, by the state experience heretofore used in determining rates of contributions for the year one thousand nine hundred forty-nine. Subsequent to January 1, 1984, such]** ***An employer's*** account shall be charged with all compensation, including dependents' allowances, paid to each individual who received from such employer wage credits constituting the base of such compensation, in the proportion that such wage credits with such employer bears to the total wage credits received by such individual from all employers**[: Provided, That if the department finds that such individual was separated from his most recent work for such employer due to being discharged for willful misconduct connected with such work, or due to his leaving such work without good cause attributable to his employment, or due to his being separated from such work under conditions which would result in disqualification for benefits under the provisions of section 3 or section 402(e.1), thereafter no compensation paid to such individual with respect to any week of unemployment occurring subsequent to such separation, which is based upon wages paid by such employer with respect to employment prior to such separation, shall be charged to such employer's account under the provisions of this subsection (a); provided, such employer has filed a notice with the department in accordance with its rules and regulations and within the time limits prescribed therein; and provided if the department finds that such individual's unemployment is directly caused by a major natural disaster declared by the President pursuant to section 102(1) of the Disaster Relief Act of 1970 (P.L.91-606) and such individual would have been eligible for disaster unemployment assistance as provided in section 240 of that act with respect to such unemployment but for the receipt of unemployment compensation, no compensation paid to such individual with respect to any week of unemployment occurring due to such natural disaster, to a maximum of the eight weeks immediately following the President's**

declaration of emergency, shall be charged to the employer's account under the provisions of this subsection.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the department finds that an individual subsequent to separation from his work is engaged in part-time work for a base year employer, other than a base year employer from whom he has separated, compensation paid to such individual with respect to any week of unemployment occurring subsequent to such separation and while such part-time work continues without material change, shall not be charged to the account of such part-time employer; provided, such part-time employer has filed a notice with the department in accordance with its rules and regulations and within the time limits prescribed therein.

(2.1) Notwithstanding the provisions of paragraph (1) of this subsection, if the department finds that an individual was separated from his most recent work for such employer due to a cessation of business of eighteen months or less caused by a disaster, compensation paid to such individual with respect to any week of unemployment occurring subsequent to such separation shall not be charged to the account of such employer; provided, such employer has filed a notice with the department in accordance with its rules and regulations and within the time limits prescribed therein.

(3) The findings and determinations of the department under this subsection (a) shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation: Provided, That where the individual's eligibility for compensation has been finally determined under the provisions of Article V of this act, such determination shall not be subject to attack in proceedings under this section.

(4) The reserve account of any employer who pays contributions under this section shall not be charged with respect to benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 401(g) to the extent that the unemployment insurance fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566].

(b) Any employer, at any time, may voluntarily pay into the Unemployment Compensation Fund an amount in excess of the contributions required to be paid under the provisions of this act, and such amount shall be forthwith credited to his reserve account. His rate of contribution shall be computed or recomputed, as the case may be, with such amount included in the calculation. To affect such employer's rate of contribution for any year, such amount shall be paid not later than thirty days following the mailing of notice of his rate of contribution for such year: Provided, That for good cause, such time may be extended by the department: And provided further, That such amount, when paid as aforesaid, shall not be refunded or used as a credit in the payment of contributions in whole or in part. In no event shall any such amount be included in the computation or recomputation for any year unless it is paid within one hundred twenty days after the beginning of such year.

(c) (1) For the purpose of determining any employer's rate of contribution for any year, the phrase "balance in an employer's reserve account" as used in sections 301, 301.1 and 301.2 of this act shall mean the amount ascertained as of the computation date by subtracting the amounts charged to his reserve account from the amounts credited thereto including voluntary contributions. If, as of the computation date, the amounts charged to his reserve account exceed the amounts credited by an amount equivalent to more than twenty per centum (20%) of his average annual payroll, the employer may elect, subject to the provisions of section 301.1(f) of this act to have his reserve account balance adjusted to a negative balance equal to twenty per centum (20%) of his average annual payroll. This subsection as amended shall apply to elections made after December 31, 1986.

(2) Notwithstanding the provisions of section 301.1(f) and paragraph (1) of this subsection, for elections made on or after January 1, 1984 and before May 1, 1986, if the amounts charged to the employer's reserve account exceed the amounts credited by an amount equivalent to more than ten per centum (10%) of his average annual payroll, the department, after determining his Reserve Ratio Factor shall, upon the election of the employer, adjust his reserve account balance to a negative balance equal to ten per centum (10%) of his average annual payroll. With respect to future adjustments of negative balance accounts, the secretary shall, upon the election of the employer, make adjustments as follows:

(i) In relation to adjustments made for the second time after January 1, 1984 and before May 1, 1986, if the amounts charged to his reserve account exceed the amounts credited by an amount equivalent to more than fifteen per centum (15%) of his average annual payroll, the department shall, upon the election of the employer, adjust the reserve account balance to a negative balance equal to fifteen per centum (15%) of his average annual payroll.

(ii) In relation to adjustments made for the third time after January 1, 1984 and before May 1, 1986, if the amounts charged to his reserve account exceed the amounts credited by an amount equivalent to more than twenty per centum (20%) of his average annual payroll, the department shall, upon the election of the employer, adjust his reserve account balance to a negative balance equal to twenty per centum (20%) of his average annual payroll.

(d) The department shall terminate the reserve account of any employer who has not paid contributions for a period of four consecutive twelve month periods, ending June thirtieth in any year.

(e) Nothing contained in this act shall be construed to grant to any employer any claim or right of withdrawal with respect to any amount allocated to him from, or paid by him into, the Unemployment Compensation Fund, except as provided in section three hundred eleven hereof.

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

Section 302.1. Relief from Charges.—Notwithstanding any other provisions of this act assigning charges for compensation paid to employes, the department shall relieve an employer of charges for compensation in accordance with this section and section 213 of this act.

(a) Circumstances allowing relief:

(1) If an individual was separated from his most recent work for an employer due to being discharged for willful misconduct connected with that work, or due to his leaving that work without good cause attributable to his employment, or due to his being separated from such work under conditions which would result in disqualification for benefits under the provisions of section 3 or 402(e.1) of this act, the employer shall be relieved of charges for compensation paid to the individual with respect to any week of unemployment occurring subsequent to such separation. Relief from charges under this paragraph terminates if the employe returns to work for the employer.

(2) If an individual's unemployment is directly caused by a major natural disaster declared by the President of the United States pursuant to section 102(1) of the Disaster Relief Act of 1970 (Public Law 91-606, 42 U.S.C. § 4401 et seq.) and the individual would have been eligible for disaster unemployment assistance as provided in section 240 of the Disaster Relief Act of 1970 with respect to that unemployment but for the receipt of unemployment compensation, an employer shall be relieved of charges for compensation paid to such individual with respect to any week of unemployment occurring due to the natural disaster, to a maximum of the eight weeks immediately following the declaration of emergency by the President of the United States.

(3) If an individual subsequent to separation from his work is engaged in part-time work for a base year employer, other than a base year employer from whom he has separated, the part-time employer shall be relieved of charges for compensation paid to the individual with respect to any week of unemployment occurring subsequent to the separation and while such part-time work continues without material change.

(4) If the department finds that an individual was separated from his most recent work for an employer due to a cessation of business of eighteen (18) months or less caused by a disaster, the employer may be relieved of charges for compensation paid to such individual with respect to any week of unemployment occurring subsequent to that separation. Relief from charges under this paragraph terminates if the employe returns to work for the employer.

(b) Requests for relief from charges:

(1) Except as provided in subsection (c), in order to be granted relief from charges for compensation, an employer must file a request with the department in the manner provided, and containing all information required, by the department's regulations.

(2) If an employer is requesting relief from charges on the basis of a separation that occurs on or before the date the claimant files an application for benefits or on the basis of continuing part-time work, the following shall apply:

(i) If the request is filed within fifteen (15) days after the date of the earliest notice issued by the department under section 501(a) of this act indicating that the claimant is eligible under section 401(a) of this act and relief is granted, relief shall begin with the earliest week for which the claimant is eligible for benefits pursuant to the claimant's application for benefits.

(ii) If the request is not filed within the time period provided in subparagraph (i), relief, if granted by the department, shall begin with the earliest week ending fifteen (15) or more days subsequent to the date the request is filed.

(3) If an employer is requesting relief from charges on the basis of a separation that occurs after the claimant files an application for benefits, the following shall apply:

(i) If the request is filed within fifteen (15) days after the date of the earliest notice issued by the department indicating that the claimant is claiming benefits subsequent to the separation and relief is granted, relief shall begin with the earliest week for which the claimant is eligible for benefits following the last day worked.

(ii) If the request is not filed within the time period provided in subparagraph (i), relief, if granted by the department, shall begin with the earliest week ending fifteen (15) or more days subsequent to the date the request is filed.

(c) Relief from charges without a request:

(1) If a claimant is determined ineligible for benefits under section 3 or 402(b), (e) or (e.1) of this act pursuant to a notice of determination that has become final, the department shall grant relief from charges in accordance with subsection (a)(1) to the employer from whom the claimant was separated, beginning with the earliest week for which the claimant is eligible for benefits following the week or weeks governed by the notice of determination.

(2) If a claimant is determined eligible for benefits under section 402(b) of this act pursuant to a notice of determination that has become final, the department shall grant or deny relief from charges in accordance with subsection (a)(1) to the employer from whom the claimant was separated, beginning with the earliest week governed by the notice of determination, in accordance with the following:

(i) The department shall grant relief from charges if the claimant left work for the employer without good cause attributable to the claimant's employment.

(ii) The department shall deny relief from charges if the claimant left work for the employer with good cause attributable to the claimant's employment.

(3) Relief from charges granted to an employer remains in effect for the purpose of benefits paid to the claimant pursuant to a subsequent application for benefits if the relief has not terminated in accordance with the provisions of this section.

(d) Employer information:

(1) An employer that is granted relief from charges on the basis of a claimant's separation from employment shall notify the department within fifteen (15) days if the claimant returns to work for the employer. The employer shall include with the notification the claimant's name and Social Security number, the employer's name and account number and the date when reemployment commenced.

(2) An employer that is granted relief from charges on the basis of continuing part-time work shall notify the department within fifteen (15)

days if the employment situation of the claimant changes. The employer shall include with the notification the claimant's name and Social Security number and the employer's name and account number.

(e) General provisions:

(1) Where the individual's eligibility for compensation has been finally determined under the provisions of Article V of this act, such determination shall not be subject to attack in proceedings under this section.

(2) The findings and determinations of the department under this section shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation.

Section 4. Section 401(b) of the act, amended July 9, 1976 (P.L.842, No.147), is amended to read:

Section 401. Qualifications Required to Secure Compensation.—Compensation shall be payable to any employe who is or becomes unemployed, and who—

* * *

(b) **[Has registered for work at, and thereafter continued to report to an employment office in accordance with such regulations as the secretary may prescribe, except that the secretary may by regulation waive or alter either or both of the requirements of this clause as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the act: Provided, however, That no such regulation shall conflict with section four hundred and one (c) of this act;]**

(1) Is making an active search for suitable employment. The requirements for "active search" shall be established by the department and shall include, at a minimum, all of the following:

(i) Registration by a claimant for employment search services offered by the Pennsylvania CareerLink system or its successor agency within thirty (30) days after initial application for benefits.

(ii) Posting a resume on the system's database, unless the claimant is seeking work in an employment sector in which resumes are not commonly used.

(iii) Applying for positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a forty-five (45) minute commuting distance.

(2) The Pennsylvania CareerLink system or its successor agency shall provide documentation, on a quarterly basis or more frequently, as the secretary deems appropriate, to the Pennsylvania Unemployment Compensation Service Center system so the system can conduct the necessary cross reference checks.

(3) For the purposes of paragraph (1), the department may determine that a claimant has made an active search for suitable work if the claimant's efforts include actions comparable to those traditional actions in their trade or occupation by which jobs have been found by others in the community and labor market in which the claimant is seeking employment.

(4) The requirements of this subsection do not apply to any week in which the claimant is in training approved under section 236(a)(1) of the Trade Act of 1974 (Public Law 93-618, 19 U.S.C. § 2101 et seq.) or any week in which the claimant is required to participate in reemployment services under section 402(j) of this act.

(5) The requirements of this subsection shall not apply to a claimant who is laid off for lack of work and advised by the employer of the date on which the claimant will return to work.

(6) The department may waive or alter the requirements of this subsection in cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or which would be inconsistent with the purposes of this act.

* * *

Section 5. Section 404(a), (c), (d) and (e)(2) of the act, amended March 24, 1964 (Sp. Sess., P.L.53, No.1), January 17, 1968 (P.L.21, No.6), July 10, 1980 (P.L.521, No.108), July 21, 1983 (P.L.68, No.30), October 19, 1988 (P.L.818, No.109) and December 16, 2005 (P.L.437, No.80), 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 1989 shall be paid on the basis of the provisions of this section in effect at the beginning of such benefit years.

(a) (1) The employe's weekly benefit rate shall be computed as (1) the amount appearing in Part B of the Table Specified for the Determination of Rate and Amount of Benefits on the line on which in Part A there appears his "highest quarterly wage," or (2) fifty per centum (50%) of his full-time weekly wage, whichever is greater. ***Notwithstanding any other provision of this act, if an employe's weekly benefit rate, as calculated under this paragraph, is less than seventy dollars ($70), he shall be ineligible to receive any amount of compensation. If the employe's weekly benefit rate is not a multiple of one dollar ($1), it shall be rounded to the next lower multiple of one dollar ($1).***

(2) If the base year wages of an employe whose weekly benefit rate has been determined under clause (2) of paragraph (1) of this subsection are insufficient to qualify him under subsection (c) of this section, his weekly benefit rate shall be redetermined under clause (1) of paragraph (1) of this subsection.

(3) If the base year wages of an employe whose weekly benefit rate has been determined under clause (1) of paragraph (1) of this subsection, or redetermined under paragraph (2) of this subsection, as the case may be, are insufficient to qualify him under subsection (c) of this section but are sufficient to qualify him for any one of the next three lower weekly benefit rates, his weekly benefit rate shall be redetermined at the highest of such next lower rates.

* * *

(c) **[Any]** ***The total amount of benefits to which an*** otherwise eligible employe who has base year wages in an amount equal to, or in excess**[,]** of,

the amount of qualifying wages appearing in Part C of the Table Specified for the Determination of Rate and Amount of Benefits on the line on which in Part B there appears his weekly benefit rate, as determined under subsection (a) of this section, shall be entitled during his benefit year to the amount appearing in Part **[D]** ***B*** on said line ***multiplied by the number of qualifying credit weeks during his base year, up to a maximum of twenty-six (26)***: Provided he had eighteen (18) or more "credit weeks" during his base year **[or Part E provided he had sixteen (16) or seventeen (17) "credit weeks" during his base year]**. Notwithstanding any other provision of this act, any employe with less than **[sixteen (16)]** ***eighteen (18)*** "credit weeks" during the employe's base year shall be ineligible to receive any amount of compensation.

(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) the amount of severance pay that is attributed to the week.***

(1.1) For purposes of clause (1)(iii), all of the following apply:

(i) "Severance pay" means one or more payments made by an employer to an employe on account of separation from the service of the employer, regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments. The term does not include payments for pension, retirement or accrued leave or payments of supplemental unemployment benefits.

(ii) The amount of severance pay attributed pursuant to subclause (iii) shall be an amount not less than zero (0) determined by subtracting forty per centum (40%) of the average annual wage as calculated under subsection (e) as of June 30 immediately preceding the calendar year in which the claimant's benefit year begins from the total amount of severance pay paid or payable to the claimant by the employer.

(iii) Severance pay is attributed as follows:

(A) Severance pay is attributed to the day, days, week or weeks immediately following the employe's separation.

(B) The number of days or weeks to which severance pay is attributed is determined by dividing the total amount of severance pay by the regular full-time daily or weekly wage of the claimant.

(C) The amount of severance pay attributed to each day or week equals the regular full-time daily or weekly wage of the claimant.

(D) When the attribution of severance pay is made on the basis of the number of days, the pay shall be attributed to the customary working days in the calendar week.

(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. Except as set forth in clause (4), 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.

(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).

(4) No deductions shall be made under this subsection for 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), if the pension is contributed to by the individual in any amount.

(e) * * *

(2) ***(i)*** 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]** ***shall equal*** sixty-six and two-thirds per centum of the average weekly wage for the **[twelve-month]** ***thirty-six-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 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.

(ii) 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 ***average annual*** total wages reported (irrespective of the limit on the amount of wages subject to contributions) for the **[twelve-month]** ***thirty-six-month*** period ending June 30 ***(determined by dividing the total wages reported for the thirty-six-month period by three)*** 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]** ***thirty-six-month period by thirty-six***) 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.

(iii) Notwithstanding the provisions of subclause (i), for the calendar year 2012, the maximum weekly benefit rate shall be frozen at the rate calculated for calendar year 2011. Thereafter, the maximum weekly benefit rate established:

(A) For calendar year 2013, shall be no greater than a one per centum (1%) increase above the calendar year 2012 rate.

(B) For calendar year 2014, shall be no greater than a one and one-tenth per centum (1.1%) increase above the calendar year 2013 rate.

(C) For calendar year 2015, shall be no greater than a one and two-tenths per centum (1.2%) increase above the calendar year 2014 rate.

(D) For calendar year 2016, shall be no greater than a one and three-tenths per centum (1.3%) increase above the calendar year 2015 rate.

(E) For calendar year 2017, shall be no greater than one and four-tenths per centum (1.4%) increase above the calendar year 2016 rate.

(F) For calendar year 2018, shall be no greater increase than one and five-tenths per centum (1.5%) increase above the calendar year 2017 rate. The limitations instituted for calendar years 2013 through 2018 shall expire on the earlier to occur of December 31, 2018, or the last day of the calendar year in which the unemployment Compensation trust fund does not have an outstanding solvency-based debt to the United States government.

(iv) If the change implemented by the freeze in calendar year 2012 is determined by the department, in an official notice to the General Assembly, to result in the loss of funds under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, 123 Stat. 115), the schedule under subclause (iii) shall occur one year later and the expiration of the limitations set forth in subclause (iii) shall occur one year later.

* * *

Section 6. Section 401-A(b) and (c) of the act, amended August 4, 2009 (P.L.114, No.30), are amended to read:

Section 401-A. Definitions.—As used in this article:

* * *

(b) (1) There is a "State 'on' indicator" for this State for a week if the Secretary of Labor and Industry determines in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this act:

(i) ***(A)*** equaled or exceeded one hundred twenty per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, ***or***

(B) with respect to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011, equaled or exceeded one hundred twenty per centum (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding three calendar years, and

(ii) equaled or exceeded five per centum: Provided, That with respect to benefits for weeks of unemployment beginning with the passage of this amendment but no earlier than April 3, 1977, the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this paragraph as if (A) this paragraph did not contain subparagraph (i) thereof, and (B) the per centum rate indicated in this paragraph were six, except that, notwithstanding any such provision of this paragraph, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

(2) There is a "State 'off' indicator" for this State for a week if the Secretary of Labor and Industry determines in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this act:

(i) was less than one hundred twenty per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, ***if paragraph (1)(i)(A) applies or, the preceding three calendar years, if paragraph (1)(i)(B) applies,*** or

(ii) was less than five per centum.

(3) Notwithstanding the provisions of this subsection, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

(c) (1) There is a "State 'on' indicator" for this State for a week if:

(i) the average rate of total unemployment in this State, seasonally adjusted, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half per centum; and

(ii) ***(A)*** the average rate of total unemployment in this State, seasonally adjusted, for the three-month period referred to in subparagraph (i) equals or exceeds one hundred ten per centum of such average rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years, ***or***

(B) with respect to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31,

2011, the average rate of total unemployment in this State, seasonally adjusted, for the three-month period referred to in subparagraph (i) equals or exceeds one hundred ten per centum (110%) of such average rate for any, or all, of the corresponding three-month periods ending in the three preceding calendar years.

(2) There is a State "off" indicator for this State for a week if the requirements of paragraph (1)(i) or (ii) are not satisfied.

(3) This subsection shall be applicable only with respect to weeks of unemployment for which one hundred per centum Federal sharing of extended benefits is available under section 2005(a) of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, 123 Stat. 115), without regard to the extension of Federal sharing for certain claims as provided under section 2005(c) of the American Recovery and Reinvestment Act of 2009, or under a subsequently enacted provision of Federal law.

(4) Notwithstanding the provisions of this subsection, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

(5) For purposes of this subsection, determinations of the rate of total unemployment for any period, and of any seasonal adjustment, shall be made by the United States Secretary of Labor.

* * *

Section 7. Section 505 of the act, amended April 23, 1942 (Sp.Sess., P.L.60, No.23), is amended to read:

Section 505. Rules of Procedure.—The manner in which appeals shall be taken, the reports thereon required from the department, the claimant and employers, and the conduct of hearings and appeals, shall be in accordance with rules of procedure prescribed by the board whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. ***Rules established by the board shall permit either party to a hearing to testify via telephone, without regard to distance of hearing location from either party.***

When the same or substantially similar evidence is relevant and material to the matter in issue in applications and claims filed by more than one individual or in multiple applications and claims filed by a single individual the same time and place for considering each such application and claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made and evidence introduced with respect to any application or claim considered as introduced with respect to all of such applications or claims: Provided, That in the judgment of the board or referee having jurisdiction of the proceeding such consideration will not be prejudicial to any party.

Section 8. The act is amended by adding an article to read:

ARTICLE XIII
SHARED-WORK PROGRAM

Section 1301. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affected unit." A department, shift or other organizational unit of two or more employees that is designated by an employer to participate in a shared-work plan.

"Approved shared-work plan." An employer's shared-work plan which meets the requirements of section 1303 and which the department approves in writing.

"Fringe benefit." Health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave and any other similar employee benefit provided by an employer.

"Participating employee." An employee in the affected unit whose hours of work are reduced by the reduction percentage under the shared-work plan.

"Participating employer." An employer who has a shared-work plan in effect.

"Reduction percentage." The percentage by which each participating employee's normal weekly hours of work are reduced under a shared-work plan in accordance with section 1303(b).

"Shared-work plan." A plan for reducing unemployment under which participating employees of an affected unit share the work remaining after reduction in their normal weekly hours of work.

Section 1302. Application to approve shared-work plan.

(a) Requirements.—An employer that meets all of the following requirements may apply to the department for approval of a shared-work plan:

(1) The employer has filed all quarterly reports and other reports required under this act and has paid all contribution, reimbursement, interest and penalty due through the date of the employer's application.

(2) If the employer is contributory, the employer's reserve account balance as of the most recent computation date preceding the date of the employer's application is a positive number.

(3) The employer has paid wages for the 12 consecutive calendar quarters preceding the date of the employer's application.

(b) Application.—An application under this section shall be made in the manner prescribed by the department and contain all information required by the department, including the following:

(1) The employer's assurance that it will provide reports to the department relating to the operation of its shared-work plan at the times and in the manner prescribed by the department and containing all information required by the department, including the number of hours worked each week by participating employees.

(2) The employer's assurance that it will not hire new employees in or transfer employees to the affected unit during the effective period of the shared-work plan.

(3) The employer's assurance that it will not lay off participating employees during the effective period of the shared-work plan, or reduce participating employees' hours of work by more than the

reduction percentage during the effective period of the shared-work plan, except in cases of holidays, designated vacation periods, equipment maintenance or similar circumstances.

(4) A list of the week or weeks within the requested effective period of the shared-work plan during which participating employees are anticipated to work fewer hours than the number of hours determined under section 1303(a)(5) due to circumstances included in paragraph (3).

(5) The employer's certification that the implementation of a shared-work plan is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and would result in an equivalent reduction in work hours.

(6) The employer's assurance that it will abide by all terms and conditions of this article.

(c) Multiple shared-work plans.—An employer may apply to the department for approval of more than one shared-work plan.

Section 1303. Shared-work plan requirements.

(a) General rule.—The department may approve a shared-work plan only if the plan meets all of the following requirements:

(1) The shared-work plan applies to one affected unit.

(2) All employees in the affected unit are participating employees, except that the following employees may not be participating employees:

(i) An employee who has been employed in the affected unit for less than three months prior to the date the employer applies for approval of the shared-work plan.

(ii) An employee whose hours of work per week determined under paragraph (5) is 40 or more hours.

(3) There are no fewer than two participating employees, determined without regard to corporate officers.

(4) The participating employees are identified by name and Social Security number.

(5) The number of hours a participating employee will work each week during the effective period of the shared-work plan is determined by the following formula:

employee's normal weekly hours of
work x (100% - reduction percentage)

(6) As a result of a decrease in the number of hours worked by each participating employee, there is a corresponding reduction in wages.

(7) If any participating employee is covered by a collective bargaining agreement, the shared-work plan is approved in writing by the collective bargaining representative.

(8) The shared-work plan does not affect the fringe benefits of any participating employee not covered by a collective bargaining agreement.

(9) The effective period of the shared-work plan is not more than 52 consecutive weeks.

(10) The effective period of the shared-work plan combined with effective periods of the participating employer's prior shared-work plans does not equal more than 104 weeks out of a 156-week period.

(11) The reduction percentage satisfies the requirements of subsection (b).

(b) Reduction percentage.—The reduction percentage under an approved shared-work plan shall meet all of the following requirements:

(1) The reduction percentage shall be no less than 20% and no more than 40%.

(2) The reduction percentage shall be the same for all participating employees.

(3) The reduction percentage shall not change during the period of the shared-work plan unless the plan is modified in accordance with section 1308.

Section 1304. Approval or disapproval of shared-work plan.

The department shall approve or disapprove a shared-work plan no later than 15 days after the date the employer's shared-work plan application that meets the requirements of section 1302(b) is received by the department. The department's decision shall be made in writing and, if the shared-work plan is disapproved, shall include the reasons for the disapproval.

Section 1305. Effective period of shared-work plan.

(a) Number of weeks.—A shared-work plan is effective for the number of consecutive weeks indicated in the employer's application, or a lesser number of weeks as approved by the department, unless sooner terminated in accordance with section 1309.

(b) Start date.—The effective period of the shared-work plan shall begin with the first calendar week following the date on which the department approves the plan.

Section 1306. Criteria for compensation.

(a) General rule.—Compensation shall be payable to a participating employee for a week within the effective period of an approved shared-work plan during which the employee works the number of hours determined under section 1303(a)(5) for the participating employer on the same terms, in the same amount and subject to the same conditions that would apply to the participating employee without regard to this article, except as follows:

(1) A participating employee shall not be required to be unemployed within the meaning of section 4(u) or file claims for compensation under section 401(c).

(2) Notwithstanding section 404(d)(1), a participating employee shall be paid compensation in an amount equal to the product of his weekly benefit rate and the reduction percentage, rounded to the next lower whole dollar amount.

(3) The department shall not deny compensation to a participating employee for any week during the effective period of the shared-work plan by reason of the application of any provision of this act relating to active search for work or refusal to apply for or accept work other than work offered by the participating employer.

(4) A participating employee satisfies the requirements of section 401(d)(1) if the employee is able to work and is available for the

employee's normal weekly hours of work with the participating employer.

(b) Equivalent remuneration.—For purposes of subsection (a), if a participating employee works fewer hours than the number of hours determined under section 1303(a)(5) for the participating employer during a week within the effective period of the approved shared-work plan but receives remuneration equal to remuneration the employee would have received if the employee had worked the number of hours determined under section 1303(a)(5), the employee will be deemed to have worked the number of hours determined under section 1303(a)(5) during that week.

(c) Inapplicability of article.—A participating employee's eligibility for compensation for a week within the effective period of an approved shared-work plan shall be determined without regard to this article under any of the following circumstances:

(1) The employee works fewer hours than the number of hours determined under section 1303(a)(5) for the participating employer during the week and subsection (b) does not apply.

(2) The employee works more hours than the number of hours determined under section 1303(a)(5) for the participating employer during the week.

(3) The employee receives remuneration for the week from the participating employer for hours in excess of the number of hours determined under section 1303(a)(5).

Section 1307. Participating employer responsibilities.

(a) Filing claims.—The department shall establish a schedule of consecutive two-week periods within the effective period of the shared-work plan. The department may, as necessary, include one-week periods in the schedule and revise the schedule. At the end of each scheduled period, the participating employer shall file claims for compensation for the week or weeks within the period on behalf of the participating employees. The claims shall be filed no later than the last day of the week immediately following the period, unless an extension of time is granted by the department for good cause. The claims shall be filed in the manner prescribed by the department and shall contain all information required by the department to determine the eligibility of the participating employees for compensation.

(b) Benefit charges.—Notwithstanding any other provision of this act, compensation paid to participating employees for weeks within the effective period of an approved shared-work plan will be charged to the participating employer.

Section 1308. Modification of an approved shared-work plan.

An employer may apply to the department for approval to modify an approved shared-work plan to meet changed conditions. The department shall reevaluate the plan and may approve the modified plan if it meets the requirements for approval under section 1303. If the modifications cause the shared-work plan to fail to meet the requirements for approval, the department shall disapprove the proposed modifications.

Section 1309. Termination of approved shared-work plan.

(a) General rule.—The secretary may terminate an approved shared-work plan for good cause.

(b) Good cause.—For purposes of subsection (a), good cause includes any of the following:

(1) The approved shared-work plan is not being executed according to its approved terms and conditions.

(2) The participating employer fails to comply with the assurances given in the approved shared-work plan.

(3) The participating employer or a participating employee violates any criteria on which approval of the shared-work plan was based.

(c) Termination by employer.—The employer may terminate an approved shared-work plan by written notice to the department.

Section 1310. Department discretion.

The decision to approve or disapprove a shared-work plan, to approve or disapprove a modification of an approved shared-work plan or to terminate an approved shared-work plan will be made within the department's discretion. Such decisions are not subject to the appeal provisions of Article V.

Section 1311. Publication of notice.

The department shall transmit to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin notice that the provisions of this article have been approved by the United States Department of Labor as required under section 3304(a)(4)(E) of the Federal Unemployment Tax Act (Public Law 86-778, 26 U.S.C. § 3304(a)(4)(E)) and section 303(a)(5) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 503(a)(5)).

Section 1312. Severability.

Notwithstanding any other section of this act, if any provision or provisions of this article cause the United States Department of Labor to withhold approval of this article as required under section 3304(a)(4)(E) of the Federal Unemployment Tax Act (Public Law 86-778, 26 U.S.C. § 3304(a)(4)(E)) and section 303(a)(5) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 503(a)(5)), the department is authorized to permanently suspend the provision or provisions.

Section 1313. Expiration.

This article shall expire five years from its effective date.

Section 9. This act shall apply as follows:

(1) The amendment or addition of sections 213, 302 and 302.1 of the act, other than section 302.1(c) of the act, shall apply to charges for compensation corresponding to benefit years that begin on and after the effective date of sections 213, 302 and 302.1 of the act.

(2) The addition of section 302.1(c)(1) and (2) of the act shall apply to notices of determination regarding eligibility for benefits that are issued on or after the date of implementation of the Department of Labor and Industry's system to provide relief from charges without an employer request, as announced by the Secretary of Labor and Industry in a notice published in the Pennsylvania Bulletin. The addition of section 302.1(c)(3) shall apply to relief from charges that is granted on or after such implementation date.

(3) The amendment of section 401(b) of the act shall apply to benefit years that begin on or after January 1, 2012.

(4) The amendment or addition of section 404(d)(1) and (1.1) of the act shall apply to benefit years that begin on or after the effective date of section 404(d)(1) and (1.1).

(5) The amendment or addition of section 404(d)(1) and (1.1) of the act shall not apply to severance pay agreements that were agreed to by an employer and employee prior to the effective date of section 404(d)(1) and (1.1).

(6) The amendment of sections 4(g.1) and 404(a) of the act shall apply to benefit years that begin on or after January 1, 2013.

(7) The amendment of section 404(c) of the act shall apply to benefit years that begin on or after January 1, 2015.

Section 10. The amendment of section 401-A(b) and (c) of the act shall apply retroactively to December 18, 2010.

Section 11. This act shall take effect as follows:

(1) The amendment of section 404(e)(2) of the act shall take effect immediately.

(1.1) The amendment of sections 401(b) and 404(d) of the act shall take effect January 1, 2012.

(2) The amendment of sections 4(g.1) and 404(a) of the act shall take effect January 1, 2013.

(2.1) The amendment of section 404(c) of the act shall take effect January 1, 2015.

(3) Sections 9 and 10 and this section shall take effect immediately.

(4) The addition of section 1311 of the act shall take effect immediately. The remainder of Article XIII of the act being added shall take effect upon publication in the Pennsylvania Bulletin of the notice required under section 1311 of the act or July 1, 2011, whichever occurs later.

(5) The remainder of this act shall take effect in 60 days.

APPROVED—The 17th day of June, A.D. 2011

TOM CORBETT