

houses, academies, seminaries, colleges, hotels, hospitals, storehouses, office buildings, public halls and places of amusement, in which proper fire-escapes, exits and extinguishers are required; to provide for the health of all employes, and of men, women and children in all such establishments, storehouses and buildings, by proper sanitary appliances; and to provide for the appointment of inspectors, office clerks and others, who, with the chief factory inspector, shall constitute the Department of Factory Inspection; to enforce the same; and providing penalties for violations of the provisions thereof; fixing the term and salaries of the chief factory inspector and his appointees," and all amendments thereto.

(b) All acts and parts of acts inconsistent with this act are hereby repealed.

Inconsistent
acts repealed.

APPROVED—The 18th day of May, A. D. 1937.

GEORGE H. EARLE

No. 175

AN ACT

To amend clauses (i) and (j) of section four, clauses (e), (f) and (j) of section two hundred eight, and sections three hundred nine and five hundred seven of the act, approved the fifth day of December, one thousand nine hundred thirty-six (Act 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," by providing for certain additional persons to be considered as employers; providing for additional credits in civil service examinations for persons who were engaged in the military or naval service of the United States during any war in which the United States was engaged, and who were honorably discharged from such service; further defining the qualifications and the method of examining personnel; providing a system of promotion for employes in the civil service system; further defining the scope of judgments obtained for the collection of employer contributions; and extending the jurisdiction of courts of common pleas with respect to summonses and subpoenas issued under the act.

Section 1. Be it enacted, &c., That clauses (i) and (j) of section four, of the act, approved the fifth day of December, one thousand nine hundred thirty-six (Act No. 1), entitled "An act establishing a system of unemployment compensation to be administered by the De-

Clauses (i) and (j), of section 4, act of December 5, 1936 (Act No. 1), amended.

partment 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," are hereby amended to read as follows:

(i) "Employer" means every—(1) individual, (2) copartnership, (3) association, (4) corporation (domestic or foreign), (5) the legal representative, trustee in bankruptcy, receiver or trustee of any individual, copartnership, association, or corporation, or (6) the legal representative of a deceased person, (I) who or which employed or employs any employe (whether or not the same employe) in employment subject to this act for some portion of each of some twenty (20) days during the calendar year one thousand nine hundred thirty-six, or any calendar year thereafter, each day being in a different week, or (II) who or which has elected to become fully subject to this act, and whose election remains in force.

Whenever any employer contracts with or has under him any contractor or subcontractor for any work which is part of his usual trade, occupation, profession or business, unless such employer, as well as each such contractor or subcontractor, is an employer (as defined in the first paragraph of this subsection), the employer shall, for all the purposes of this act, be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which said individual is engaged in performing such work, except that each such contractor or subcontractor who is an employer (as defined in the first paragraph of this subsection) shall alone be liable for the employer's contributions measured by the wages payable to individuals in his employ, and except that any employer who shall become liable for, and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer (as defined in the first paragraph of this subsection), may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing work of any agent or employe of an employer shall be deemed to be employed by such employer for all the purposes of this act, whether such individual was hired

or paid directly by such employer or by such agent or employe, provided the employer had actual or constructive knowledge of the work.

Where an employer maintains more than one place of employment within this Commonwealth, all of the employes at the several places of employment shall be treated, for the purposes of this act, as if employed by a single employer.

Any individual, copartnership, association, or corporation who or which is not subject to this act may elect to become subject thereto by filing with the department his or its written application, and if such application is approved by the department, the election shall become binding for not less than two calendar years.

An employer subject to this act may elect to include within the term "employment," subject to this act, services performed by his or its employes entirely without this Commonwealth, with respect to which no contributions are required and paid under an unemployment compensation law of any other state, if the employe or employes, included in such election, maintain a domicile within this Commonwealth. Such election shall be subject to the approval of the department, and if such election is approved by the department, the election shall become binding for not less than two calendar years, or until the department, on its own motion, cancels the election.

An employer, subject to this act, may elect to include within the term "employment," subject to this act, services performed by his or its employes which are exempt under the provisions of subsection (j) of section four of this act. Such election shall be subject to the approval of the department, and if such election is approved by the department, the election shall become binding for not less than two calendar years.

Any services performed for an employer covered by an election, pursuant to this subsection, shall, during the effective period of such election, be deemed to be employment for all the purposes of this act. Any election approved by the department, pursuant to this subsection, shall cease to be effective only as of January first of any calendar year subsequent to the initial two calendar years thereof, and only if, at least thirty (30) days prior to such first day of January, the employer has filed with the department a notice of termination of his election.

(j) "Employment" means all service performed for remuneration or under any contract of hire, express or implied, written or oral, (1) which is localized within this Commonwealth, or (2) which is not localized in any state but some of the service is performed within this Commonwealth and (a) the base for operations or place

from which such service is directed or controlled is in this Commonwealth, or (b) the base for operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this Commonwealth. Service shall be deemed to be localized within this Commonwealth if—(a) the service is performed entirely within this Commonwealth, or (b) the service is performed both within and without this Commonwealth, but the service performed without this Commonwealth is incidental to the individual's service within this Commonwealth as for example where it is temporary or transitory in nature or consists of isolated transactions. Services performed without this Commonwealth shall not be included within the term "employment" if contributions are required and paid with respect to such services under an unemployment compensation law of any other state.

An individual performing services for remuneration in an employment subject to this act shall be deemed to be performing such services for wages, unless and until it is shown to the satisfaction of the department that— (a) *such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact; and (b) that such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) that such individual is customarily engaged in an independently established trade, occupation, profession or business.*

The word "employment" shall not include—

- (1) Agricultural labor;
- (2) Domestic service in a private home;
- (3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;
- (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;
- (5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- (6) Service performed in the employ of a state, a political subdivision thereof, or an instrumentality of one or more states or political subdivisions;
- (7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the preven-

tion of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Clauses (e), (f) and (j) of section 208, amended.

Section 2. That clauses (e), (f) and (j) of section two hundred eight of the said act are hereby amended to read as follows:

The secretary shall prescribe qualifications for employes.

(e) The secretary shall prescribe, by rules and regulations, the qualifications to be possessed by persons desiring employment in the various grades of employment in the administration of this act. The qualifications shall be such as will best promote the most efficient administration of this act, and shall provide that persons applying for positions in the offices designated by the secretary as central administrative offices (*which shall include all those having jurisdiction throughout the State*) shall be citizens of the United States and shall have been legal residents of Pennsylvania for a period of not less than one year before making application, and persons applying for positions in district offices (*which shall include all those whose jurisdiction is limited to a particular district created under the provisions of this act*) shall be citizens of the United States and shall have been legal residents of Pennsylvania for a period of not less than one year, and in the district in which such office is located for a period of not less than six months, before making application.

Every individual desiring employment shall file an application with the board.

(f) Every individual desiring employment under the provisions of this act shall file with the board an application, [under oath or affirmation] which shall be in a form prescribed by the board, provided that such application shall be the same for all individuals desiring the same grade of employment, and shall be so drawn as to reveal the qualifications as prescribed by the secretary.

Information concerning race, creed, etc., not permitted.

In no case shall the board require of the applicant any information pertaining to his race, creed, color, or political affiliations. Upon receiving such application the applicant shall be admitted to the next competitive examination in the grade of employment which he or she seeks. Such competitive examinations shall be practical in their character and, so far as may be possible, shall relate to those matters which will fairly test the relative capacity and fitness of persons examined to discharge the duties of the service into which they seek to be appointed, *but no applicant shall be required to be possessed of any scholastic education or training in order to be permitted to take any competitive examination or to be appointed to any position.* Such competitive examinations shall be in writing, but in arriving at a final rating of applicants for such administrative and professional grades of employment as are so designated by the board, the board may take into consideration such experience and personal qualifications as are related to

Examinations.

the grades of employment for which applicants are being examined, provided that the same standards shall apply with respect to all applicants in the same grade of employment: *Provided, however, That in the final rating of all applicants persons who were engaged in the military or naval service of the United States during any war in which the United States was engaged, and who have an honorable discharge from such service, shall receive, in addition to all other ratings, an additional five per centum, and any such person who shall have been disabled by wounds or in any other manner while engaged in such service (so long as he is able to perform the work of the employment for which he is examined), and who shall submit satisfactory evidence to the board that such disability was received while engaged in such service, shall be rated an additional five per centum over and above the five per centum hereinbefore set forth, and in either case, the total per centum mark or grade thus obtained shall determine the order of standing of such persons on any list of eligibles.*

(j) The secretary shall make appointments to positions created under this act, and shall fill vacancies as they may occur from the lists of eligibles certified to him by the board, except with respect to positions filled by *promotions as hereinafter provided, and by the appointment of persons exempted by subsection (b) of this section.* In making appointments therefrom, the secretary shall select from the three persons, ranking highest on the list of eligibles for the grade of employment in the administrative district, or in the State as a whole, as the case may be, the applicant most suitable for the position in the grade of employment for which a vacancy exists, taking into consideration his experience and personal qualifications with sole reference to merit and fitness for the position to be filled. If, upon inquiry by the secretary, a person on the list of eligibles is found to be not available for employment or cannot be located, his name shall not for the time being be considered among the three names from which a choice is to be made. For the second vacancy, the secretary shall make selection from the highest three persons remaining on such list of eligibles who have not been within his reach for three separate vacancies. The third and any additional vacancies shall be filled in like manner.

Vacancies in positions subject to the provisions of this section, whether such positions be newly created or vacated for any reason by any former incumbent, shall be filled, in so far as practical, by promotions from among employes holding positions in the lower grades. In all cases, an employe to be promoted shall possess the qualifications specified for the position, and shall have served not less than six months (including service dur-

Secretary must make the appointments from list of eligibles.

Method of making selection.

ing any probationary period, but not including service during any provisional employment) in a position under the provisions of this act. Promotions shall be based on merit and upon the superior qualifications of the employe to be promoted as shown by his or her previous service record under this act. The secretary may promote an employe to a higher position to which such employe has been certified as eligible by the board, provided that the board shall, in certifying such employe, satisfy itself that the employe possesses the qualifications prescribed by the secretary for the higher position. Before making such certification, the board may require any employe or employes to take such qualifying or competitive examinations as the board may prescribe.

Sections 309 and 507, amended.

Section 3. That sections three hundred nine and five hundred seven of the said act are hereby amended to read as follows:

Collection of contributions and interest may be enforced by legal action.

Section 309. Collection of Contributions and Interest.—If, after notice by the department, any employer fails, neglects, or refuses to pay any contributions due, or the interest due thereon, the amount due shall be collected by civil action in the name of the Commonwealth. Civil actions brought under this section to collect contributions, or interest thereon, from any employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other actions, except petitions for judicial review under this act and cases arising under the Workmen's Compensation Act of one thousand nine hundred fifteen, and its amendments and supplements. No court costs shall be imposed on the Commonwealth in any such civil actions. *Judgments obtained in such civil actions to collect any of the contributions aforesaid shall include interest and penalties, as provided in this act.*

Where subpoenas disobeyed, board, department or agent may petition court of common pleas.

Section 507. Procedure where Summons or Subpoenas Disobeyed.—In case any person refuses, fails, or neglects to obey a summons or subpoena issued under the authority of this act, or fails, refuses, or neglects to produce any books, papers, correspondence, memoranda, or record, the department or board or its agent duly authorized in writing may petition the court of common pleas of the county in which the inquiry is being carried on, or within which the person summoned or subpoenaed is found or resides or transacts business, setting forth the facts, whereupon the court shall have jurisdiction to direct such person to appear before the department or its agent, or before a referee or the board at a time and place fixed by the court, and give such testimony and produce such books, papers, correspondence, memoranda, and other records as may be required, or to issue to such person its subpoena requiring such person to appear before the court at a time fixed and

there to give testimony touching the matter under investigation, or to produce such other evidence as may be required.

Any person who shall, without just cause, fail, neglect, or refuse to obey a subpoena *or order* of the court or who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena *or an order* of the court may be punished by said court for contempt.

Failure to answer court subpoena subjects party to be held in contempt.

Section 4. This act shall become effective immediately upon its final enactment. When effective.

APPROVED—The 18th day of May, A. D. 1937.

GEORGE H. EARLE.

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No. 176

AN ACT

Relating to the performance of industrial work in homes; regulating, and in certain cases prohibiting, industrial homework; imposing duties, restrictions and liabilities on industrial home-workers and on persons, partnerships, associations and corporations, directly or indirectly furnishing materials and articles to home-workers for manufacture or work thereon; requiring permits and home-workers' certificates and prescribing the fees therefor; conferring powers and imposing duties on the Department of Labor and Industry; and prescribing penalties.

Be it enacted, &c., As follows:

Section 1. Legislative Purpose.—This State has long recognized that employment of men, women and children under conditions detrimental to health and general welfare results in injury, not only to the workers immediately affected, but also to the public interest as a whole. This recognition has produced a broad program of regulatory legislation to conserve the public welfare. The continuance of an unregulated industrial homework system in this State runs counter to that program since it is usually accompanied by excessively low wages, long and irregular hours, and unsanitary or otherwise inadequate working quarters. Employment of young children in industrial homework occupations is frequent but effective supervision of this child labor evil has not been attainable under present statutes. The dangerous consequences of this system may fall upon the consumer of its products as well as upon the men and women who are its work force. The preservation of the system, moreover, endangers the protection of the workers in factory industries which, being forced to compete with industrial homework, are under pressure

Legislative purpose.