

## No. 1981-106

## AN ACT

## SB 1006

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," making changes required by the Federal Government to conform to Federal law.

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

Section 1. Subsections (a) and (b) of section 402, 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), are amended to read:

Section 402. Ineligibility for Compensation.—An employe shall be ineligible for compensation for any week—

(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe, or to accept suitable work when offered to him by the employment office or by any employer, irrespective of whether or not such work is in "employment" as defined in this act: *Provided*, That such employer notifies the employment office of such offer within seven (7) days after the making thereof; however this subsection shall not cause a disqualification of a waiting week or benefits under the following circumstances: when work is offered by his employer and he is not required to accept the offer pursuant to the terms of the labor-management contract or agreement, or pursuant to an established employer plan, program or policy: *Provided further*, *That a claimant shall not be disqualified for refusing suitable work when he is in training approved under section 236(a)(1) of the Trade Act of 1974.*

\* \* \*

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is in "employment" as defined in this act: *Provided*, That a voluntary leaving work because of a disability if the employer is able to provide other suitable work, shall be deemed not a cause of a necessitous and compelling nature: *And provided further*,

That no employe shall be deemed to be ineligible under this subsection where as a condition of continuing in employment such employe would be required to join or remain a member of a company union or to resign from or refrain from joining any bona fide labor organization, or to accept wages, hours or conditions of employment not desired by a majority of the employes in the establishment or the occupation, or would be denied the right of collective bargaining under generally prevailing conditions, and that in determining whether or not an employe has left his work voluntarily without cause of a necessitous and compelling nature, the department shall give consideration to the same factors, insofar as they are applicable, provided, with respect to the determination of suitable work under section four (t): And provided further, That the provisions of this subsection shall not apply in the event of a stoppage of work which exists because of a labor dispute within the meaning of subsection (d). Provided further, That no otherwise eligible claimant shall be denied benefits for any week in which his unemployment is due to exercising the option of accepting a layoff, from an available position pursuant to a labor-management contract agreement, or pursuant to an established employer plan, program or policy: *Provided further, That a claimant shall not be disqualified for voluntarily leaving work, which is not suitable employment to enter training approved under section 236(a)(1) of the Trade Act of 1974. For purposes of this subsection the term "suitable employment" means with respect to a claimant, work of a substantially equal or higher skill level than the claimant's past "adversely affected employment" (as defined in section 247 of the Trade Act of 1974), and wages for such work at not less than eighty per centum of the worker's "average weekly wage" (as defined in section 247 of the Trade Act of 1974).*

\* \* \*

Section 2. Section 401-A of the act, added February 9, 1971 (P.L.1, No.1) and amended July 6, 1977 (P.L.41, No.22), is amended to read:

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

(a) "Extended benefit period" means a period which

**[(1) begins with the third week after whichever of the following weeks occurs first:**

**(A) a week for which there is a national "on" indicator, or**

**(B) a week for which there is a State "on" indicator; and]**

**(1) Begins with the third week after the week for which there is a State "on" indicator.**

**(2) [ends] Ends with either of the following weeks, whichever occurs later:**

**(A) the third week after the first week for which there is [both a national "off" indicator and] a State "off" indicator; or**

**(B) the thirteenth consecutive week of such period:**

Provided, That no extended benefit period may begin by reason of a State "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.[:

And, provided further, That no extended benefit period may become effective in this State prior to January 31, 1971 and that, within the period beginning on such date and ending on December 31, 1971, an extended benefit period may become effective and be terminated in this State solely by reason of a State "on" and a State "off" indicator, respectively.

(b) There is a National "on" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths per centum. The rate of insured unemployment for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(c) There is a National "off" indicator for a week if, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths per centum. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(d)] (b) 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:

(1) 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, and

(2) equaled or exceeded [four] 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 subsection as if (i) this subsection did not contain subparagraph (1) thereof, and (ii) the per centum rate indicated in this subparagraph were [five] six, except that, notwithstanding any such provision 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.

[(e)] (c) 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:

(1) 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, or

(2) was less than **[four] five** per centum.

**[(f)] (d)** "Rate of insured unemployment," for purposes of clauses **[(d) and (e)] (b) and (c)** of this section, means the percentage derived by dividing

(1) the average weekly number of individuals filing claims *for regular benefits* in this State for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the Secretary of Labor and Industry on the basis of his reports to the United States Secretary of Labor, by

(2) the average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

**[(g)] (e)** "Regular benefits" means benefits payable to an individual under this act or under any other State law (including benefits payable to Federal civilian employes and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

**[(h)] (f)** "Extended benefits" means benefits (including benefits payable to Federal civilian employes and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

**[(i)] (g)** "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

**[(j)] (h)** "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(1) has received, prior to such week, all of the regular benefits that were available to him under this act or any other State law (including dependents' allowances and benefits payable to Federal civilian employes and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That, for the purposes of this subclause, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(2) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(3) (A) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other Federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(B) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(i) *“Shareable regular benefits” means regular benefits payable for compensable weeks in an individual’s eligibility period which exceed twenty-six times the individual’s weekly benefit rate (including allowances for dependents) in regular benefits paid during the individual’s benefit year.*

[(k)] (j) *“State law” means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.*

Section 3. Sections 402-A and 403-A of the act, added February 9, 1971 (P.L.1, No.1), are amended to read:

Section 402-A. *Effect of State Law Provisions Relating to Regular Benefits on Claims for, and the Payment of, Extended Benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Secretary of Labor and Industry, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits except that payment of extended benefits shall not be made to any individual for any week if:*

(1) *Extended benefits would, but for this section, have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan.*

(2) *An extended benefit period is not in effect for such week in such state.*

(3) *The denial of extended benefits shall not apply with respect to the first two weeks (whether full or partial payment) for which extended benefits is payable (determined without regard to this section) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.*

Section 403-A. *Eligibility Requirements for Extended Benefits and Shareable Regular Benefits.—(a) An individual shall be eligible to receive shareable regular benefits or extended benefits with respect to any week of unemployment in his eligibility period only if the Secretary of Labor and Industry finds that with respect to such week:*

[(a)] (1) *he is an “exhaustee” as defined in section 401-A(j)[,];*

[(b)] (2) *he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming shareable regular benefits and extended benefits, including not being subject to a disqualification for the receipt of benefits.*

(b) *Notwithstanding any other provisions of section 402-A an individual shall be ineligible for the payment of shareable regular benefits or extended benefits for any week of unemployment in his eligibility period if during such period:*

*(1) he failed to accept any offer of suitable work (as defined under subsection (d)) or failed to apply for any suitable work to which he was referred by the employment office; or*

*(2) he failed to actively engage in seeking work as prescribed under subsection (f).*

*(c) Any individual who has been found ineligible for the payment of shareable regular benefits or extended benefits by reason of the provisions in subsection (b) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed (without regard to employment as defined by this act) in each of four (4) subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four (4) times his extended weekly benefit amount.*

*(d) (1) For the purposes of this section, the term "suitable work" means, with respect to any individual, the requirements contained in clauses (i) and (ii) below:*

*(i) Any work which is within such individual's capabilities: Provided, however, That the gross average weekly remuneration payable for the work must exceed the sum of the following:*

*(A) The individual's extended weekly benefit amount as determined under section 404-A (relating to the extended benefit program).*

*(B) The amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, payable to such individual for such week.*

*(ii) Pays wages not less than the higher of:*

*(A) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or*

*(B) the applicable State or local minimum wage.*

*(2) No individual shall however be denied shareable regular benefits or extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:*

*(i) the position was not offered to such individual in writing or was not listed with the employment service;*

*(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 4(t) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection; or*

*(iii) the individual furnishes satisfactory evidence to the department that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 4(t) without regard to the definition specified by this subsection.*

*(e) Notwithstanding, the provisions of section 403-A to the contrary, no work shall be deemed to be suitable work for an individual which does*

*not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under section 4(t).*

*(f) For the purposes of subsection (b)(2), an individual shall be treated as actively engaged in seeking work during any week if he meets both of the following:*

*(1) The individual has engaged in a systematic and sustained effort to obtain work during such week.*

*(2) The individual furnishes tangible evidence that he has engaged in such an effort during such week.*

*(g) The employment office shall refer any claimant entitled to shareable regular benefits or extended benefits under this act to any suitable work which meets the criteria prescribed in subsection (d).*

*(h) An individual shall not be eligible to receive shareable regular benefits or extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits, shareable regular benefits, or extended benefits under this act because he or she voluntarily left work, was discharged for willful misconduct or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated by the individual performing services in an employer-employee relationship (whether or not services were in employment as defined by this act) for remuneration subsequent to the date of such disqualification.*

*(i) Notwithstanding subsection (a)(2) an individual shall not be eligible for extended benefits unless, in the base year with respect to which the individual exhausted all rights to regular benefits under the State law, the individual had wages equal to at least one and one-half (1 1/2) times the individual's highest quarterly wage.*

Section 4. Section 405-A of the act, amended December 5, 1974 (P.L.771, No.262), is amended to read:

Section 405-A. Total Extended Benefit Amount.—*(a) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the [following] amounts determined under clauses (1), (2) or (3) and then such amount shall be reduced by subsection (b):*

*[(a)] (1) fifty per centum of the total amount of regular benefits (plus dependents' allowances) which were payable to him under this act in his applicable benefit year;*

*[(b)] (2) thirteen times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year; or*

*[(c)] (3) thirty-nine times his weekly benefit amount (plus dependents' allowances) which was payable to him under this act for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this act with respect to the benefit year.*

*(b) Notwithstanding any other provisions of this article, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.*

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

*Section 703.1. Child Support Intercept of Unemployment Compensation.—Notwithstanding any other provisions of this or any other act:*

*(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be required to disclose whether he owes child support obligations as defined in subsection (h).*

*(b) Information that the individual has been determined to be eligible for unemployment compensation shall be provided to State or local child support enforcement agencies enforcing such obligation.*

*(c) The Department of Labor and Industry shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under subsection (h):*

*(1) the amount specified by the individual to be deducted and withheld under this subsection if neither paragraph (2) nor (3) is applicable:*

*(2) the amount (if any) determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless paragraph (3) is applicable; or*

*(3) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as defined in section 462(e) of the Social Security Act).*

*(d) Any amount deducted and withheld under subsection (c) shall be paid to the appropriate State or local child support enforcement agency.*

*(e) Any amount deducted and withheld under subsection (c) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.*

*(f) For purposes of subsections (a) through (e), the term "unemployment compensation" means any compensation payable under the State law (including amounts payable pursuant to an agreement under any Federal law providing for compensation, assistance, or allowances with respect to unemployment).*

*(g) Deductions will be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the State or local child support enforcement agency for the administrative costs incurred by the department under this section which are attributable to child support obligations being enforced by the State or local child support enforcement agency.*



*(h) The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.*

*(i) The term "State or local child support enforcement agency" as used in these provisions means any agency of a State or political subdivision thereof operating pursuant to a plan described in subsection (h).*

Section 6. This act shall take effect immediately and the following amendments shall apply as follows:

(1) The amendments made by section 1 of this act shall apply to determinations regarding training under the Trade Act of 1974 that are made after September 30, 1981.

(2) The amendments made by section 2 of this act shall apply as follows:

(i) The amendment made to section 401-A(a) shall apply to weeks beginning after August 13, 1981.

(ii) The amendments made to section 401-A(b) and (c) (as redesignated by this act) shall apply to weeks beginning after September 25, 1982.

(iii) The amendment made to section 401-A(d)(1) (as redesignated by this act) shall apply for purposes of determining whether there are State "on" or "off" indicators for weeks beginning after August 13, 1981. For purposes of making determinations for such weeks, such amendment shall be deemed to be in effect for all weeks whether beginning before, on, or after August 13, 1981.

(iv) The amendments made to section 401-A(i) shall apply to weeks of unemployment in an extended benefit period with respect to weeks beginning on or after March 31, 1981.

(3) The amendments made by section 3 of this act shall apply as follows:

(i) The amendments made to section 402-A shall apply to weeks beginning on or after June 1, 1981.

(ii) The amendments made to section 403-A except 403-A(i) shall apply to weeks of unemployment in an extended benefit period with respect to weeks beginning on or after March 31, 1981.

(iii) The amendments made to section 403-A(i) shall apply to weeks beginning after September 25, 1982.

(4) The amendments made by section 4 of this act shall take effect October 31, 1982.

(5) The amendments made by section 5 of this act shall take effect October 1, 1982.

(6) Any overpayments which occur as a result of the retroactive implementation of the amendments contained in this act to sections 401-A(i), 402-A and 403-A (except 403-A(i)) of the Pennsylvania Unemployment Compensation Law shall be established as nonfault nonrecoupable.

APPROVED—The 22nd day of October, A. D. 1981.

DICK THORNBURGH