

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

No. 2894 Session of  
1986

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INTRODUCED BY LAUGHLIN, NOVEMBER 25, 1986

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REFERRED TO COMMITTEE ON LABOR RELATIONS, NOVEMBER 25, 1986

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## AN ACT

1 Establishing a fund to provide security for payment of workmen's  
2 compensation and occupational disease benefits in the event  
3 of the insolvency of self-insured employers; and providing  
4 for administration of the fund.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Workmen's  
9 Compensation Self-Insurance Security Fund Act.

10 Section 2. Definitions.

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

14 "Department." The Department of Labor and Industry of the  
15 Commonwealth.

16 "Fund." The Workmen's Compensation Self-Insurance Security  
17 Fund created by section 3.

18 "Occupational Disease Act." The act of June 21, 1939  
19 (P.L.566, No.284), known as The Pennsylvania Occupational

1 Disease Act.

2 "Secretary." The Secretary of Labor and Industry of the  
3 Commonwealth.

4 "Workmen's Compensation Act." The act of June 2, 1915  
5 (P.L.736, No.338), known as The Pennsylvania Workmen's  
6 Compensation Act.

7 Section 3. Fund for insuring payments by self-insurers.

8 There is hereby created a fund, to be known as the Workmen's  
9 Compensation Self-Insurance Security Fund, for the purpose of  
10 assuring to persons entitled thereto the compensation provided  
11 by the Workmen's Compensation Act or the Occupational Disease  
12 Act for employment with employers who are self-insured pursuant  
13 to section 305 of the Workmen's Compensation Act and section 305  
14 of the Occupational Disease Act.

15 Section 4. Assessments on self-insurers.

16 For the privilege of doing business in this Commonwealth,  
17 every employer desiring to be self-insured under section 305 of  
18 the Workmen's Compensation Act or section 305 of the  
19 Occupational Disease Act shall, as a condition of receiving any  
20 such exemption, pay into the fund an amount annually assessed by  
21 the department. The amount so assessed shall be in accordance  
22 with a formula established by the department, which formula  
23 shall equitably take into account the employer's prior workmen's  
24 compensation and occupational disease loss and payment  
25 experience, as well as the employer's total number of employees  
26 in this Commonwealth and the compensation of such employees. The  
27 fund shall initially be established at a level of \$20,000,000,  
28 and thereafter the fund balance shall be adjusted according to  
29 the loss and payment experience incurred.

30 Section 5. Rules and regulations.

1       The secretary shall have the power to promulgate rules and  
2 regulations necessary for the proper establishment and  
3 administration of the fund, including the articulation of a  
4 specific formula for the determination of annual assessments in  
5 accordance with the guidelines stated in section 4.  
6       Section 6. Failure of employer to provide information or make  
7                   payments.

8       If any self-insurer fails to provide any information or make  
9 any payment required by this act, or if the secretary has cause  
10 to believe that any information filed is false or inaccurate in  
11 any particular, or that any payment made is incorrect, he shall  
12 have full authority to examine all the books and records of the  
13 employer for the purpose of ascertaining the facts, and shall  
14 determine the correct amount to be paid, and may proceed in any  
15 court of competent jurisdiction to recover for the benefit of  
16 the fund any sums shown to be due upon such examination and  
17 determination. Any employer which fails to make any statement as  
18 required by this act, or to pay any contribution when due, shall  
19 thereby forfeit to the fund a penalty of 5% of the amount of  
20 unpaid assessment determined to be due, as provided by this act,  
21 plus 1% of such amount for each month of delay, or fraction  
22 thereof, after the expiration of the first month of such delay.

23       Section 7. Custody and management of fund.

24       The fund created by this act shall be separate and apart from  
25 all other Commonwealth moneys. The State Treasurer shall be the  
26 custodian of the fund, and all disbursements from the fund shall  
27 be made by the State Treasurer upon vouchers signed by the  
28 secretary, as hereinafter provided. The moneys of the fund may  
29 be invested by the State Treasurer and secretary only in bonds  
30 and securities which are the direct obligations of, or which are

1 guaranteed as to principal and interest by, the United States or  
2 of the Commonwealth. The State Treasurer and secretary may sell  
3 any of the securities in which the fund is invested, if  
4 advisable for its proper administration or in the best interest  
5 of the fund, and all earnings from the investment of the fund  
6 shall be credited to the fund.

7 Section 8. Payment of claims against insolvent self-insurers;  
8 recovery against insolvent self-insurers.

9       (a) Application.--A valid claim for compensation, or  
10      installments thereof, heretofore or hereafter made pursuant to  
11      the Workmen's Compensation Act, which has remained or shall  
12      remain due and unpaid for 60 days by reason of default, after  
13      the effective date of this act, by insolvent self-insurers,  
14      shall be paid from the fund in the manner provided in this act.

15 Any person in interest may file with the secretary an  
16 application for payment of compensation from the fund on a form  
17 to be prescribed and furnished by the secretary. A certified  
18 copy of the award must accompany the application. The secretary  
19 shall thereupon certify to the State Treasurer such award for  
20 payment according to the terms of the same, whereupon payment  
21 shall be made by the State Treasurer, on warrant of the Auditor  
22 General and on requisition of the secretary.

23 (b) No right of recovery.--Payment of an award from the fund  
24 shall not give the secretary any right of recovery against the  
25 employer.

26 (c) Payment by employer.--An employer may pay an award or a  
27 part thereof in advance of payment from the fund and shall  
28 thereupon be subrogated to the rights of the employee or other  
29 party in interest against such fund to the extent of the amount  
30 so paid.

(d) Recovery.--The secretary shall be entitled to recover the sum of all liabilities of such insolvent self-insurer assumed by the fund from such self-insurer, its receiver, liquidator, rehabilitator, conservator or trustee in bankruptcy, and all others, except employers, liable under any of the terms of the Workmen's Compensation Act or Occupational Disease Act, and may prosecute an action or other proceedings therefor. All moneys recovered in any such action or proceedings shall forthwith be placed to the credit of the fund which has assumed such liability by the State Treasurer, to reimburse the fund which has assumed such liability, to the extent of the moneys so recovered and paid. If and when all liabilities of all self-insurers for workmen's compensation or occupational disease losses in this Commonwealth shall have been fully liquidated, distribution shall be made to all contributing self-insurers of the remaining balance of such fund, provided that an insolvent self-insurer shall be entitled to share in the said distribution of the fund only to the extent that its distributive share of said fund is in excess of any losses paid out of said fund for its account by the State Treasurer, in accordance with the terms of this act.

24 After the effective date of this act, upon any self-insurer  
25 becoming insolvent, the secretary shall so notify the Workmen's  
26 Compensation Appeal Board, which shall immediately advise the  
27 secretary of the following:

(1) All claims for compensation pending or thereafter made against every such insolvent self-insurer.

30 (2) All unpaid or continuing awards made upon claims for

1 compensation prior to or after the date of such notice from  
2 the secretary.

3 (3) All appeals from or applications for modification,  
4 rescission or review of such awards.

5 Section 10. Expenses of administration.

6 The expenses of administering the fund shall be paid out of  
7 the fund. The secretary shall serve as administrator of the fund  
8 without additional remuneration, but may be allowed and paid,  
9 from the fund, expenses incurred in the performance of his  
10 duties in connection with the fund. The compensation of persons  
11 employed by the secretary, for the purposes of this act, in  
12 connection with the fund shall be deemed administration expenses  
13 payable out of the fund. The secretary shall include in his  
14 regular report to the Governor a statement of the expenses of  
15 administering the fund during the period covered by such report.

16 Section 11. Interim emergency assessments; annual assessments.

17 (a) Emergency interim assessment.--Immediately upon the  
18 effective date of this act, interim emergency assessments shall  
19 be levied against every self-insured employer who is exempted  
20 from workmen's compensation insurance coverage under section 305  
21 of the Workmen's Compensation Act or under section 305 of the  
22 Occupational Disease Act. The assessments shall be according to  
23 the formula provided for under section 4, so that an initial  
24 fund of \$10,000,000 is raised for purposes of immediately paying  
25 any workmen's compensation claims or occupational disease claims  
26 presently defaulted upon by any insolvent self-insurer.

27 (b) Annual assessments.--After the emergency interim  
28 assessments, annual assessments shall be made by the secretary  
29 in accordance with sections 4 and 5, scaled so that after the  
30 first annual assessments, a fund of \$20,000,000 is available at

1 all times to meet any defaults by self-insured employers. The  
2 annual assessments shall be payable at the same time each year  
3 on a date established by the secretary.

4 Section 12. Effective date.

5 This act shall take effect immediately.