

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 88

Session of
2003

INTRODUCED BY TURZAI, CREIGHTON, DALLY, FEESE, HERSHEY, LEWIS,
MAHER, METCALFE, SATHER, SAYLOR, SCAVELLO, SCHRODER, SEMMEL,
R. STEVENSON, T. STEVENSON, E. Z. TAYLOR, TRUE, WATSON AND
WILT, FEBRUARY 3, 2003

REFERRED TO COMMITTEE ON LABOR RELATIONS, FEBRUARY 3, 2003

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," further providing for the schedule of
8 compensation.

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

11 Section 1. Section 306(b) of the act of June 2, 1915
12 (P.L.736, No.338), known as the Workers' Compensation Act,
13 reenacted and amended June 21, 1939 (P.L.520, No.281), and
14 amended June 24, 1996 (P.L.350, No.57), is amended to read:

15 Section 306. The following schedule of compensation is
16 hereby established:

17 * * *

18 (b) (1) For disability partial in character caused by the
19 compensable injury or disease (except the particular cases
20 mentioned in clause (c)) sixty-six and two-thirds per centum of

1 the difference between the wages of the injured employe, as
2 defined in section 309, and the earning power of the employe
3 thereafter; but such compensation shall not be more than the
4 maximum compensation payable. This compensation shall be paid
5 during the period of such partial disability except as provided
6 in clause (e) of this section, but for not more than five
7 hundred weeks. Should total disability be followed by partial
8 disability, the period of five hundred weeks shall not be
9 reduced by the number of weeks during which compensation was
10 paid for total disability. The term "earning power," as used in
11 this section, shall in no case be less than the weekly amount
12 which the employe receives after the injury; and in no instance
13 shall an employe receiving compensation under this section
14 receive more in compensation and wages combined than the current
15 wages of a fellow employe in employment similar to that in which
16 the injured employe was engaged at the time of the injury.

17 (2) "Earning power" shall be determined by the work the
18 employe is capable of performing and shall be based upon expert
19 opinion evidence which includes job listings with agencies of
20 the department, private job placement agencies and
21 advertisements in the usual employment area. Disability partial
22 in character shall apply if the employe is able to perform his
23 previous work or can, considering the employe's residual
24 productive skill, education, age and work experience, engage in
25 any other kind of substantial gainful employment which exists in
26 the usual employment area in which the employe lives within this
27 Commonwealth. If the employe does not live in this Commonwealth,
28 then the usual employment area where the injury occurred shall
29 apply. If the employer has a specific job vacancy the employe is
30 capable of performing, the employer shall offer such job to the

1 employe. In order to accurately assess the earning power of the
2 employe, the insurer may require the employe to submit to an
3 interview by [an] a vocational expert [approved by the
4 department and] who is selected by the insurer and who meets the
5 minimum qualifications established by the department through
6 regulation.

7 (3) If the insurer receives medical evidence that the
8 claimant is able to return to work in any capacity, then the
9 insurer must provide prompt written notice, on a form prescribed
10 by the department, to the claimant, which states all of the
11 following:

12 (i) The nature of the employe's physical condition or change
13 of condition.

14 (ii) That the employe has an obligation to look for
15 available employment.

16 (iii) That proof of available employment opportunities may
17 jeopardize the employe's right to receipt of ongoing benefits.

18 (iv) That the employe has the right to consult with an
19 attorney in order to obtain evidence to challenge the insurer's
20 contentions.

21 * * *

22 Section 2. All regulations and parts of regulations which
23 are inconsistent with the amendment of section 306(b) of the act
24 are abrogated.

25 Section 3. This act shall take effect in 60 days.