WORKERS' COMPENSATION ACT - OMNIBUS AMENDMENTS
Act of Jun. 24, 1996, P.L. 350, No. 57 Cl. 77
Session of 1996
No. 1996-57

SB 801

AN ACT

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," further providing for definitions, for recovery, for liability for compensation, for financial responsibility, for compensation schedules and for wages; providing for reporting; further providing for notices, for examinations, for commutation of compensation, for exclusions, for the Workmen's Compensation Appeal Board and for procedure; providing for informal conferences; further providing for processing claims, for commutation petitions, for modifications and reversals, for pleadings, for investigations, for evidence, for appeals, for regulations, for costs and attorney fees, for the Pennsylvania Workers' Compensation Advisory Council and for insurance policies; providing for settlements and for collective bargaining; further providing for ratings organizations, for rating procedures and for shared liability; providing for employer association groups; further providing for safety committees, for penalties, for prosecutions and for collection of penalties; providing for limitation of actions; further providing for assessments; providing for workers' compensation judges and for transfer of administrative functions; transferring provisions relating to the State Workmen's Insurance Fund and broadening its permissible coverages; and making a repeal.

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

Section 1. Section 104 of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281), and amended July 2, 1993 (P.L.190, No.44), is amended to read:

Section 104. The term "employe," as used in this act is declared to be synonymous with servant, and includes--

All natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in the worker's own home, or on other premises, not under the control or management of the employer. Except as hereinafter provided in clause (c) of section 302 and sections 305 and 321, every executive officer of a corporation elected or appointed in accordance with the charter and by-laws of the corporation, except elected officers of the Commonwealth or any of its political subdivisions, shall be an employe of the

corporation. An executive officer of a **for-profit** corporation **or an executive officer of a nonprofit corporation who serves voluntarily and without remuneration** may, however, elect not to be an employe of the corporation for the purposes of this act. For purposes of this section, an executive officer **of a for-profit corporation** is an individual who has an ownership interest in the corporation, in the case of a Subchapter S corporation as defined by the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," or an ownership interest in the corporation of at least five per centum, in the case of a Subchapter C corporation as defined by the Tax Reform Code of 1971.

Section 1.1. Section 107 of the act is amended to read:

Section 107. The term "Department," when used in this act, shall mean the Department of Labor and Industry of this Commonwealth.

The term "Board," when used in this act shall mean The [Workmen's] **Workers'** Compensation **Appeal** Board of this Commonwealth.

Section 2. The definition of "coordinated care organization" in section 109 of the act, added July 2, 1993 (P.L.190, No.44), is amended and the section is amended by adding a definition to read:

Section 109. In addition to the definitions set forth in this article, 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:

"Adjudication" shall have the meaning given in 2 Pa.C.S. § 101 (relating to definitions).

* * *

"Coordinated care organization" or "CCO" means an organization licensed in Pennsylvania and certified by the Secretary of [Health] **Labor and Industry** on the basis of established criteria possessing the capacity to provide medical services to an injured worker.

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Section 3. Sections 204, 302(c) and 305(a)(2) and (b) of the act, amended July 2, 1993 (P.L.190, No.44), are amended to read:

Section 204. (a) No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of sections 108 and 306, except for benefits payable under section 306(c) or 307. **Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall also be credited against the amount of the payments made under sections 108 and 306, except for benefits payable under section 306(c): Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior to the compensable injury. The severance benefits paid by the employer directly liable for the payment of compensation and the benefits from a pension**

plan to the extent funded by the employer directly liable for the payment of compensation which are received by an employe shall also be credited against the amount of the award made under sections 108 and 306, except for benefits payable under section 306(c). The employe shall provide the insurer with proper authorization to secure the amount which the employe is receiving under the Social Security Act.

(b) For the exclusive purpose of determining eligibility for compensation under the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," [weekly compensation paid to an employe under this act shall be deemed to be a credit week as that term is defined in the "Unemployment Compensation Law."] **any employe who does not meet the monetary and credit week requirements under section 401(a) of that act due to a work-related injury compensable under this act may elect to have his base year consist of the four complete calendar quarters immediately preceding the date of the work-related injury.**

(c) The employe is required to report regularly to the insurer the receipt of unemployment compensation benefits, wages received in employment or self-employment, benefits commonly characterized as "old age" benefits under the Social Security Act, severance benefits and pension benefits, which post-date the compensable injury under this act, subject to the fraud provisions of Article XI.

(d) The department shall prepare the forms necessary for the enforcement of this section and issue rules and regulations as appropriate.

Section 302. * * *

(c) Any employer employing persons in agricultural labor shall be required to provide workmen's compensation coverage for such employes according to the provisions of this act, if such employer is otherwise covered by the provisions of this act or if during the calendar year such employer pays wages to one employe for agricultural labor totaling [one hundred fifty dollars ($150)] **one thousand two hundred dollars ($1,200)** or more or furnishes employment to one employe in agricultural labor on [twenty] **thirty** or more days in any of which events the employer shall be required to provide coverage for all employes. **For purposes of this clause, a spouse or a child of the employer under eighteen years of age shall not be deemed an employe unless the services of such spouse or child are engaged by the employer under an express written contract of hire which is filed with the department.**

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Section 305. (a) * * *

(2) In securing the payment of benefits, the department shall require an employer wishing to self-insure its liability **and a group of employers approved to pool their liabilities under Article VIII** to establish sufficient security by posting a bond or other security, including letters of credit drawn on commercial banks with a Thomson Bank Watch rating of [B] **B/C** or better or **a Thomson Bank Watch score of 2.5 or better for the bank or its holding company or with** a CD rating of BBB or better by Standard and Poor's [or Baa 2 or better by Moody's]. This paragraph shall not apply to [municipalities] **the Commonwealth or its political subdivisions.**

* * *

(b) Any employer who fails to comply with the provisions of this section for every such failure, shall, upon conviction in the court of common pleas, be guilty of a misdemeanor of the

third degree. If the failure to comply with this section is found by the court to be intentional, the employer shall be guilty of a felony of the third degree. Every day's violation shall constitute a separate offense. A judge of the court of common pleas may, in addition to imposing fines and imprisonment, include restitution in his order: Provided, That there is an injured employe who has obtained an award of compensation. The amount of restitution shall be limited to that specified in the award of compensation. It shall be the duty of the department to enforce the provisions of this section; and it shall investigate all violations that are brought to its notice and shall institute prosecutions for violations thereof. All fines recovered under the provisions of this section shall be paid to the department, and by it paid into the State Treasury **and appropriated to the Office of Attorney General** if the prosecutor is the Attorney General and **paid** to the operating fund of the county in which the district attorney is elected if the prosecutor is a district attorney.

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Section 4. Section 306(a), (b), (f.1) and (f.2)(1), (3)(i), (4), (6) and (7) of the act, amended or added March 29, 1972 (P.L.159, No.61), December 5, 1974 (P.L.782, No.263) and July 2, 1993 (P.L.190, No.44), are amended and the section is amended by adding clauses to read:

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

(a) (1) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section [three hundred and nine] **309** beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than the maximum compensation payable as defined in section 105.2. Nothing in this clause shall require payment of compensation after disability shall cease. If the benefit so calculated is less than fifty per centum of the Statewide average weekly wage, then the benefit payable shall be the lower of fifty per centum of the Statewide average weekly wage or ninety per centum of the worker's average weekly wage.

(2) Nothing in this act shall require payment of **total disability** compensation **benefits under this clause** for any period during which the employe is **employed or receiving wages.**

(a.1) Nothing in this act shall require payment of compensation under clause (a) or (b) for any period during which the employe is incarcerated after a conviction **or during which the employe is employed and receiving wages equal to or greater than the employe's prior earnings.**

(a.2) (1) When an employe has received total disability compensation pursuant to clause (a) for a period of one hundred four weeks, unless otherwise agreed to, the employe shall be required to submit to a medical examination which shall be requested by the insurer within sixty days upon the expiration of the one hundred four weeks to determine the degree of impairment due to the compensable injury, if any. The degree of impairment shall be determined based upon an evaluation by a physician who is licensed in this Commonwealth, who is certified by an American Board of Medical Specialties approved board or its osteopathic equivalent and who is active in clinical practice for at least twenty hours per week, chosen by agreement of the parties, or as designated by the department, pursuant to the most recent edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(2) If such determination results in an impairment rating that meets a threshold impairment rating that is equal to or greater than fifty per centum impairment under the most recent edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment," the employe shall be presumed to be totally disabled and shall continue to receive total disability compensation benefits under clause (a). If such determination results in an impairment rating less than fifty per centum impairment under the most recent edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment," the employe shall then receive partial disability benefits under clause (b): Provided, however, That no reduction shall be made until sixty days' notice of modification is given.

(3) Unless otherwise adjudicated or agreed to based upon a determination of earning power under clause (b)(2), the amount of compensation shall not be affected as a result of the change in disability status and shall remain the same. An insurer or employe may, at any time prior to or during the five hundred-week period of partial disability, show that the employe's earning power has changed.

(4) An employe may appeal the change to partial disability at any time during the five hundred-week period of partial disability; Provided, That there is a determination that the employe meets the threshold impairment rating that is equal to or greater than fifty per centum impairment under the most recent edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(5) Total disability shall continue until it is adjudicated or agreed under clause (b) that total disability has ceased or the employe's condition improves to an impairment rating that is less than fifty per centum of the degree of impairment defined under the most recent edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(6) Upon request of the insurer, the employe shall submit to an independent medical examination in accordance with the provisions of section 314 to determine the status of impairment: Provided, however, That for purposes of this clause, the employe shall not be required to submit to more than two independent medical examinations under this clause during a twelve-month period.

(7) In no event shall the total number of weeks of partial disability exceed five hundred weeks for any injury or recurrence thereof, regardless of the changes in status in disability that may occur. In no event shall the total number of weeks of total disability exceed one hundred four weeks for any employe who does not meet a threshold impairment rating that is equal to or greater than fifty per centum impairment under the most recent edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment" for any injury or recurrence thereof.

(8) (i) For purposes of this clause, the term "impairment" shall mean an anatomic or functional abnormality or loss that results from the compensable injury and is reasonably presumed to be permanent.

(ii) For purposes of this clause, the term "impairment rating" shall mean the percentage of permanent impairment of the whole body resulting from the compensable injury. The percentage rating for impairment under this clause shall represent only that impairment that is the result of the compensable injury and not for any preexisting work-related or nonwork-related impairment.

(b) **(1)** For disability partial in character **caused by the compensable injury or disease** (except the particular cases mentioned in clause (c)) sixty-six and two-thirds per centum of the difference between the wages of the injured employe, as defined in section [three hundred and nine] **309**, and the earning power of the employe thereafter; but such compensation shall not be more than the maximum compensation payable. This compensation shall be paid during the period of such partial disability except as provided in clause (e) of this section, but for not more than five hundred weeks. Should total disability be followed by partial disability, the period of five hundred weeks shall not be reduced by the number of weeks during which compensation was paid for total disability. The term "earning power," as used in this section, shall in no case be less than the weekly amount which the employe receives after the injury[, and in those cases in which the employe works fewer than five days per week for reasons not connected with or arising out of the disability resulting from the injury shall not be less than five times his actual daily wage as fixed by the day, hour, or by the output of the employe]; and in no instance shall an employe receiving compensation under this section receive more in compensation and wages combined than **the current wages of** a fellow employe in employment similar to that in which the injured employe was engaged at the time of the injury.

(2) "Earning power" shall be determined by the work the employe is capable of performing and shall be based upon expert opinion evidence which includes job listings with agencies of the department, private job placement agencies and advertisements in the usual employment area. Disability partial in character shall apply if the employe is able to perform his previous work or can, considering the employe's residual productive skill, education, age and work experience, engage in any other kind of substantial gainful employment which exists in the usual employment area in which the employe lives within this Commonwealth. If the employe does not live in this Commonwealth, then the usual employment area where the injury occurred shall apply. If the employer has a specific job vacancy the employe is capable of performing, the employer shall offer such job to the employe. In order to accurately assess the earning power of the employe, the insurer may require the employe to submit to an interview by an expert approved by the department and selected by the insurer.

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

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

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

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

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

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(f.1) (1) (i) The employer shall provide payment in accordance with this section for reasonable surgical and medical services, services rendered by physicians or other health care providers, **including an additional opinion when invasive surgery**

may be necessary, medicines and supplies, as and when needed. Provided an employer establishes a list of at least six designated health care providers, no more than [two] **four** of whom may be a coordinated care organization and no fewer than three of whom shall be physicians, the employe shall be required to visit one of the physicians or other health care providers so designated and shall continue to visit the same or another designated physician or health care provider for a period of [thirty (30)] **ninety (90)** days from the date of the first visit: Provided, however, That the employer shall not include on the list a physician or other health care provider who is employed, owned or controlled by the employer or the employer's insurer unless employment, ownership or control is disclosed on the list. **Should invasive surgery for an employe be prescribed by a physician or other health care provider so designated by the employer, the employe shall be permitted to receive an additional opinion from any health care provider of the employe's own choice. If the additional opinion differs from the opinion provided by the physician or health care provider so designated by the employer, the employe shall determine which course of treatment to follow: Provided, That the second opinion provides a specific and detailed course of treatment. If the employe chooses to follow the procedures designated in the second opinion, such procedures shall be performed by one of the physicians or other health care providers so designated by the employer for a period of ninety (90) days from the date of the visit to the physician or other health care provider of the employe's own choice.** Should the employe not comply with the foregoing, the employer will be relieved from liability for the payment for the services rendered during such applicable period. It shall be the duty of the employer to provide a clearly written notification of the employe's rights and duties under this section to the employe. The employer shall further ensure that the employe has been informed and that he understands these rights and duties. This duty shall be evidenced only by the employe's written acknowledgment of having been informed and having understood his rights and duties. Any failure of the employer to provide and evidence such notification shall relieve the employe from any notification duty owed, notwithstanding any provision of this act to the contrary, and the employer shall remain liable for all rendered treatment. Subsequent treatment may be provided by any health care provider of the employe's own choice. Any employe who, next following termination of the applicable period, is provided treatment from a nondesignated health care provider shall notify the employer within five (5) days of the first visit to said health care provider. Failure to so notify the employer will relieve the employer from liability for the payment for the services rendered prior to appropriate notice if such services are determined pursuant to paragraph (6) to have been unreasonable or unnecessary.

(ii) In addition to the above service, the employer shall provide payment for medicines and supplies, hospital treatment, services and supplies and orthopedic appliances, and prostheses in accordance with this section. Whenever an employe shall have suffered the loss of a limb, part of a limb, or an eye, the employer shall also provide for an artificial limb or eye or other prostheses of a type and kind recommended by the doctor attending such employe in connection with such injury and any replacements for an artificial limb or eye which the employe may require at any time thereafter, together with such continued

medical care as may be prescribed by the doctor attending such employe in connection with such injury as well as such training as may be required in the proper use of such prostheses. The provisions of this section shall apply to injuries whether or not loss of earning power occurs. If hospital confinement is required, the employe shall be entitled to semiprivate accommodations, but, if no such facilities are available, regardless of the patient's condition, the employer, not the patient, shall be liable for the additional costs for the facilities in a private room.

(iii) Nothing in this section shall prohibit an insurer or an employer from contracting with any individual, partnership, association or corporation to provide case management and coordination of services with regard to injured employes.

(2) Any provider who treats an injured employe shall be required to file periodic reports with the employer on a form prescribed by the department which shall include, where pertinent, history, diagnosis, treatment, prognosis and physical findings. The report shall be filed within ten (10) days of commencing treatment and at least once a month thereafter as long as treatment continues. The employer shall not be liable to pay for such treatment until a report has been filed.

(3) (i) For purposes of this clause, a provider shall not require, request or accept payment for the treatment, accommodations, products or services in excess of one hundred thirteen per centum of the prevailing charge at the seventy-fifth percentile; one hundred thirteen per centum of the applicable fee schedule, the recommended fee or the inflation index charge; one hundred thirteen per centum of the DRG payment plus pass-through costs and applicable cost or day outliers; or one hundred thirteen per centum of any other Medicare reimbursement mechanism, as determined by the Medicare carrier or intermediary, whichever pertains to the specialty service involved, determined to be applicable in this Commonwealth under the Medicare program for comparable services rendered. If the commissioner determines that an allowance for a particular provider group or service under the Medicare program is not reasonable, it may adopt, by regulation, a new allowance. If the prevailing charge, fee schedule, recommended fee, inflation index charge, DRG payment or any other reimbursement has not been calculated under the Medicare program for a particular treatment, accommodation, product or service, the amount of the payment may not exceed eighty per centum of the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided.

(ii) Commencing on January 1, 1995, the maximum allowance for a health care service covered by subparagraph (i) shall be updated as of the first day of January of each year. The update, which shall be applied to all services performed after January 1 of each year, shall be equal to the percentage change in the Statewide average weekly wage. Such updates shall be cumulative.

(iii) Notwithstanding any other provision of law, it is unlawful for a provider to refer a person for laboratory, physical therapy, rehabilitation, chiropractic, radiation oncology, psychometric, home infusion therapy or diagnostic imaging, goods or services pursuant to this section if the provider has a financial interest with the person or in the entity that receives the referral. It is unlawful for a provider to enter into an arrangement or scheme such as a cross-referral arrangement, which the provider knows or should know has a

principal purpose of assuring referrals by the provider to a particular entity which, if the provider directly made referrals to such entity, would be in violation of this section. No claim for payment shall be presented by an entity to any individual, third-party payer or other entity for a service furnished pursuant to a referral prohibited under this section.

(iv) The secretary shall retain the services of an independent consulting firm to perform an annual accessibility study of health care provided under this act. The study shall include information as to whether there is adequate access to quality health care and products for injured workers and a review of the information that is provided. If the secretary determines based on this study that as a result of the health care fee schedule there is not sufficient access to quality health care or products for persons suffering injuries covered by this act, the secretary may recommend to the commissioner the adoption of regulations providing for a new allowance.

(v) An allowance shall be reviewed for reasonableness whenever the commissioner determines that the use of the allowance would result in payments more than ten per centum lower than the average level of reimbursement the provider would receive from coordinated care insurers, including those entities subject to the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act," and those entities known as preferred provider organizations which are subject to section 630 of the Insurance Company Law of 1921 for like treatments, accommodations, products or services. In making this determination, the commissioner shall consider the extent to which allowances applicable to other providers under this section deviate from the reimbursement such providers would receive from coordinated care insurers. Any information received as a result of this subparagraph shall be confidential.

(vi) The reimbursement for prescription drugs and professional pharmaceutical services shall be limited to one hundred ten per centum of the average wholesale price of the product.

(vii) The applicable Medicare fee schedule shall include fees associated with all permissible procedure codes. If the Medicare fee schedule also includes a larger grouping of procedure codes and corresponding charges than are specifically reimbursed by Medicare, a provider may use these codes, and corresponding charges shall be paid by insurers or employers. If a Medicare code exists for application to a specific provider specialty, that code shall be used.

(viii) A provider shall not fragment or unbundle charges imposed for specific care except as consistent with Medicare. Changes to a provider's codes by an insurer shall be made only as consistent with Medicare and when the insurer has sufficient information to make the changes and following consultation with the provider.

(4) Nothing in this act shall prohibit the self-insured employer, employer or insurer from contracting with a coordinated care organization for reimbursement levels different from those identified above.

(5) The employer or insurer shall make payment and providers shall submit bills and records in accordance with the provisions of this section. All payments to providers for treatment provided pursuant to this act shall be made within thirty (30) days of receipt of such bills and records unless the employer or insurer disputes the reasonableness or necessity of the treatment provided pursuant to paragraph (6). **The nonpayment to providers within thirty (30) days for treatment for which a**

bill and records have been submitted shall only apply to that particular treatment or portion thereof in dispute; payment must be made timely for any treatment or portion thereof not in dispute. A provider who has submitted the reports and bills required by this section and who disputes the amount or timeliness of the payment from the employer or insurer shall file an application for fee review with the department **no more than thirty (30) days following notification of a disputed treatment or ninety (90) days following the original billing date of treatment. If the insurer disputes the reasonableness and necessity of the treatment pursuant to paragraph (6), the period for filing an application for fee review shall be tolled as long as the insurer has the right to suspend payment to the provider pursuant to the provisions of this paragraph.** Within thirty (30) days of the filing of such an application, the department shall render an administrative decision.

(6) Except in those cases in which a [referee] **workers' compensation judge** asks for an opinion from peer review under section 420, disputes as to reasonableness or necessity of treatment by a health care provider shall be resolved in accordance with the following provisions:

(i) The reasonableness or necessity of all treatment provided by a health care provider under this act may be subject to prospective, concurrent or retrospective utilization review at the request of an employe, employer or insurer. The department shall authorize utilization review organizations to perform utilization review under this act. **Utilization review of all treatment rendered by a health care provider shall be performed by a provider licensed in the same profession and having the same or similar specialty as that of the provider of the treatment under review.** Organizations not authorized by the department may not engage in such utilization review.

(ii) The utilization review organization shall issue a written report of its findings and conclusions within thirty (30) days of a request. [If the provider, employer, employe or insurer disagrees with the finding of the utilization review organization, a request for reconsideration must be filed no later than thirty (30) days after receipt of the utilization review report. The request for reconsideration must be in writing.]

(iii) The employer or the insurer shall pay the cost of the [initial] utilization review. [The party which does not prevail on reconsideration of an initial review shall bear the costs of such reconsideration.]

(iv) If the provider, employer, employe or insurer disagrees with the finding of the utilization review organization [on reconsideration], a petition for review by the department must be filed within thirty (30) days after receipt of the [reconsideration] report. The department shall assign the petition to a [referee] **workers' compensation judge** for a hearing **or for an informal conference under section 402.1. The utilization review report shall be part of the record before the workers' compensation judge. The workers' compensation judge shall consider the utilization review report as evidence but shall not be bound by the report.**

(7) A provider shall not hold an employe liable for costs related to care or service rendered in connection with a compensable injury under this act. A provider shall not bill or otherwise attempt to recover from the employe the difference between the provider's charge and the amount paid by the employer or the insurer.

(8) If the employe shall refuse reasonable services of health care providers, surgical, medical and hospital services, treatment, medicines and supplies, he shall forfeit all rights to compensation for any injury or increase in his incapacity shown to have resulted from such refusal.

(9) The payment by an insurer or employer for any medical, surgical or hospital services or supplies after any statute of limitations provided for in this act shall have expired shall not act to reopen or revive the compensation rights for purposes of such limitations.

(10) If acute care is provided in an acute care facility to a patient with an immediately life threatening or urgent injury by a Level I or Level II trauma center accredited by the Pennsylvania Trauma Systems Foundation under the act of July 3, 1985 (P.L.164, No.45), known as the "Emergency Medical Services Act," or to a burn injury patient by a burn facility which meets all the service standards of the American Burn Association, or if basic or advanced life support services, as defined and licensed under the "Emergency Medical Services Act," are provided, the amount of payment shall be the usual and customary charge.

(f.2) (1) Medical services required by the act may be provided through a coordinated care organization which is certified by the [Secretary of Health] **secretary** subject to the following:

(i) Each application for certification shall be accompanied by a reasonable fee prescribed by the [Department of Health] **department.** A certificate is valid for such period as the [Department of Health] **department** may prescribe unless sooner revoked or suspended.

(ii) Application for certification shall be made in such form and manner as the [Department of Health] **department** shall require and shall set forth information regarding the proposed plan for providing services.

(iii) Where the secretary certifies that the coordinated care organization within which all of the designated physicians or other health care providers referred to in clause (f.1)(1)(i) are members, the secretary shall ensure that all the requirements of this clause are met.

* * *

(3) The [Secretary of Health] **secretary** shall certify an entity as a coordinated care organization if the [Secretary of Health] **secretary** finds that the entity:

(i) Possesses the capacity to provide all primary medical services as designated by the [Secretary of Health] **secretary** in a manner that is timely and effective.

* * *

(4) The [Secretary of Health] **secretary** shall refuse to certify or may revoke or suspend certification of any coordinated care organization if the [Secretary of Health] **secretary** finds that:

(i) the plan for providing health care services fails to meet the requirements of this section;

(ii) service under the plan is not being provided in accordance with terms of the plan as certified; or

(iii) services under the plan do not meet accepted professional standards for quality, cost-effective health care.

* * *

(6) Health care providers designated as rural by HCFA or located in a county with a rural Health Professional Shortage Area who are attempting to form or operate a coordinated care organization may be excluded from meeting some or all of the

minimum requirements set forth in paragraphs (2) and (3), as shall be determined in rules or regulations promulgated by the [Department of Health] **department.**

(7) The [Department of Health] **department** shall have the power and authority to promulgate, adopt, publish and use regulations for the implementation of this section.

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Section 5. Section 309 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 309. Wherever in this article the term "wages" is used, it shall be construed to mean the average weekly wages of the employe, ascertained [in accordance with rules and regulations of the department] as follows:

(a) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(b) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(c) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two;

[(d) If at the time of the injury the wages are fixed by the day, hour, or by the output of the employe, the average weekly wage shall be the wage most favorable to the employe, computed by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks immediately preceding the injury, or in case the employe receives wages, monthly or semi-monthly, by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of three consecutive calendar months in the year immediately preceding the injury;

If the employe has been in the employ of employer less than thirteen calendar weeks (or three calendar months, if the employe receives wages monthly or semi-monthly) immediately preceding the injury, his average weekly wage shall be computed under the foregoing paragraph, taking "total wages" for such purpose to be the amount he would have earned had he been so employed by employer the full thirteen calendar weeks (or three calendar months) immediately preceding the injury and had worked, when work was available to other employes in a similar occupation, unless it be conclusively shown that by reason of exceptional causes such methods of computation does not ascertain fairly the "total wages" of employe so employed less than thirteen calendar weeks (or three calendar months);]

(d) If at the time of the injury the wages are fixed by any manner not enumerated in clause (a), (b) or (c), the average weekly wage shall be calculated by dividing by thirteen the total wages earned in the employ of the employer in each of the highest three of the last four consecutive periods of thirteen calendar weeks in the fifty-two weeks immediately preceding the injury and by averaging the total amounts earned during these three periods.

(d.1) If the employe has not been employed by the employer for at least three consecutive periods of thirteen calendar weeks in the fifty-two weeks immediately preceding the injury, the average weekly wage shall be calculated by dividing by thirteen the total wages earned in the employ of the employer for any completed period of thirteen calendar weeks immediately preceding the injury and by averaging the total amounts earned during such periods.

(d.2) If the employe has worked less than a complete period of thirteen calendar weeks and does not have fixed weekly wages, the average weekly wage shall be the hourly wage rate multiplied by the number of hours the employe was expected to work per week under the terms of employment.

(e) [In] **Except as provided in clause (d.1) or (d.2), in** occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth of the total wages which the employe has earned from all occupations during the twelve calendar months immediately preceding the injury, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employe, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings.

The terms "average weekly wage" and "total wages," as used in this section, shall include board and lodging received from the employer, [and in employments in which employes customarily receive not less than one-third of their remuneration in tips or gratuities not paid by the employer, gratuities shall be added to the wages received] **and gratuities reported to the United States Internal Revenue Service by or for the employe for Federal income tax purposes**, but such terms shall not include amounts deducted by the employer under the contract of hiring for labor furnished or paid for by the employer and necessary for the performance of such contract by the employe, nor shall such terms include deductions from wages due the employer for rent and supplies necessary for the employe's use in the performance of his labor[.], **nor shall such terms include fringe benefits, including, but not limited to, employer payments for or contributions to a retirement, pension, health and welfare, life insurance, social security or any other plan for the benefit of the employe or his dependents: Provided, however, That the amount of any bonus, incentive or vacation payment earned on an annual basis shall be excluded from the calculations under clauses (a) through (d.2). Such payments if any shall instead be divided by fifty-two and the amount shall be added to the average weekly wage otherwise calculated under clauses (a) through (d.2).**

Where the employe is working under concurrent contracts with two or more employers, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

[If under clauses (a), (b), (c), (d) and (e) of this section, the amount determined is less than if computed as follows, his computation shall apply, viz.: Divide the total wages earned by the employe during the last two completed calendar quarters with the same employer by the number of days he worked for such employer during such period multiplied by five.

(f) In no case shall an employe's average weekly wage be less than one-thirteenth of his highest calendar quarter wage amount in the first four of the last five completed calendar quarters immediately preceding the date of his injury, and compensation payments may be commenced on this basis unless other information obtained from the employe or employer establishes a higher weekly wage under this section.]

Section 6. The act is amended by adding a section to read:

Section 311.1. (a) If an employe files a petition seeking compensation under section 306(a) or (b) or is receiving

compensation under section 306(a) or (b), the employe shall report, in writing, to the insurer the following:

(1) If the employe has become or is employed or self-employed in any capacity.

(2) Any wages from such employment or self-employment.

(3) The name and address of the employer.

(4) The amount of wages from such employment or self-employment.

(5) The dates of such employment or self-employment.

(6) The nature and scope of such employment or self-employment.

(7) Any other information which is relevant in determining the entitlement to or amount of compensation.

(b) The report referred to in clause (a) must be made as soon as possible but no later than thirty days after such employment or self-employment occurs.

(c) An employe is obligated to cooperate with the insurer in an investigation of employment, self-employment, wages and physical condition.

(d) If an employe files a petition seeking compensation under section 306(a) or (b) or is receiving compensation under section 306(a) or (b), the insurer may submit a verification form to the employe either by mail or in person. The form shall request verification by the employe that the employe's status regarding the entitlement to receive compensation has not changed and a notation of any changes of which the employe is aware at the time the employe completes the verification, including employment, self-employment, wages and change in physical condition. Such verification shall not require any evaluation by a third party; however, it shall include a certification evidenced by the employe's signature that the statement is true and correct and that the claimant is aware of the penalties provided by law for making false statements for the purpose of obtaining compensation.

(e) The employe is obligated to complete accurately the verification form and return it to the insurer within thirty days of receipt by the employe of the form. However, the use of the verification form by the insurer and the employe's completion of such form do not relieve the employe of obligations under clauses (a), (b) and (c).

(f) The insurer may require the employe to complete the verification form at intervals of no less than six months.

(g) If the employe fails to return the completed verification form within thirty days, the insurer is permitted to suspend compensation until the completed verification form is returned. The verification form utilized by the insurer shall clearly provide notice to the employe that failure to complete the form within thirty days may result in a suspension of compensation payments.

Section 7. Section 312 of the act, amended February 28, 1956 (1955 P.L.1120, No.356), is amended to read:

Section 312. The notice referred to in section [three hundred and eleven] **311** shall inform the employer that a certain employe received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified.

Section 8. Section 313 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 313. The notice referred to in sections [three hundred and eleven and three hundred and twelve] **311 and 312** may be given to the immediate or other superior of the employe, to the employer, or any agent of the employer regularly employed

at the place of employment of the injured employe. Knowledge of the occurrence of the injury on the part of any such agents shall be the knowledge of the employer.

Section 9. Section 314 of the act, amended July 2, 1993 (P.L.190, No.44), is amended to read:

Section 314. (a) At any time after an injury the employe, if so requested by his employer, must submit himself **at some reasonable time and place** for **a physical** examination[, at some reasonable time and place, to a physician or physicians legally authorized to practice under the laws of such place] **or expert interview by an appropriate health care provider or other expert**, who shall be selected and paid **for** by the employer. If the employe shall refuse upon the request of the employer, to submit to the examination **or expert interview** by the [physician or physicians] **health care provider or other expert** selected by the employer, a [referee] **workers' compensation judge** assigned by the department may, upon petition of the employer, order the employe to submit to [an] **such** examination **or expert interview** at a time and place set by the [referee,] **workers' compensation judge** and by the [physician or physicians] **health care provider or other expert** selected and paid **for** by the employer[,] or by a [physician or physicians] **health care provider or other expert** designated by the [referee] **workers' compensation judge** and paid **for** by the employer. The [referee] **workers' compensation judge** may at any time after such first examination **or expert interview**, upon petition of the employer, order the employe to submit himself to such further **physical** examinations **or expert interviews** as the [referee] **workers' compensation judge** shall deem reasonable and necessary, at such times and places and by such [physicians] **health care provider or other expert** as the [referee] **workers' compensation judge** may designate; and in such case, the employer shall pay the fees and expenses of the examining [physician or physicians] **health care provider or other expert**, and the reasonable traveling expenses and loss of wages incurred by the employe in order to submit himself to such examination **or expert interview**. The refusal or neglect, without reasonable cause or excuse, of the employe to submit to such examination **or expert interview** ordered by the [referee] **workers' compensation judge**, either before or after an agreement or award, shall deprive him of the right to compensation, under this article, during the continuance of such refusal or neglect, and the period of such neglect or refusal shall be deducted from the period during which compensation would otherwise be payable.

(b) [The] **In the case of a physical examination, the** employe shall be entitled to have a [physician or physicians] **health care provider** of his own selection, to be paid by him, participate in [any] **such** examination requested by his employer or ordered by the [referee.] **workers' compensation judge. In instances where an examination is requested in relation to section 306(a.2)(1), such examination shall be performed by a physician who is licensed in this Commonwealth, who is certified by an American Board of Medical Specialties approved board or its osteopathic equivalent and who is in active clinical practice for at least twenty (20) hours per week.**

Section 10. Section 316 of the act, amended February 28, 1956 (1955 P.L.1120, No.356), is amended to read:

Section 316. The compensation contemplated by this article may at any time be commuted by the board, at its then value when discounted at five per centum interest, with annual rests, upon application of either party, with due notice to the other,

if it appear that such commutation will be for the best interest of the employe or the dependents of the deceased employe, and that it will avoid undue expense or undue hardship to either party, or that such employe or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the whole or the greater part of his business or assets: Provided, however, That unless the employer agrees to make such commutation, the board may require the employe or the dependents of the deceased employe to furnish proper indemnity safeguarding the employer's rights. **Nothing in this section shall prohibit, restrict or impair the right of the parties to enter into a compromise and release by stipulation in accord with section 449.**

Section 11. Section 321 of the act, amended July 2, 1993 (P.L.190, No.44), is amended to read:

Section 321. Nothing contained in this act shall apply to or in any way affect:

(1) Any person who at the time of injury is engaged in domestic service: Provided, however, That in cases where the employer of any such person shall have, prior to such injury, by application to the department and approved by the department, elected to come within the provisions of the act, such exemption shall not apply.

(2) Any person who is a licensed real estate salesperson or an associate real estate broker affiliated with a licensed real estate broker **or a licensed insurance agent affiliated with a licensed insurance agency**, under a written agreement, remunerated on a commission-only basis and who qualifies as an independent contractor for State tax purposes [under the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."] **or for Federal tax purposes under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).**

Section 12. The second paragraph of section 401 and section 402 of the act, amended February 8, 1972 (P.L.25, No.12), are amended to read:

Section 401. * * *

The term "board," when used in this article, shall mean the [Workmen's] **Workers'** Compensation Appeal Board, a departmental administrative board as provided in sections 202, 207, 503 and 2208 of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," exercising its powers and performing its duties as an appellate board independently of the Secretary of Labor and Industry and any other official of the department.

* * *

Section 402. All proceedings before any [referee] **workers' compensation judge, except those for which an informal conference has been applied for as provided by section 402.1,** shall be instituted by claim petition or other petition as the case may be or on the department's own motion, and all appeals to the board, shall be instituted by appeal addressed to the board. All claim petitions, **requests for informal conferences** and other petitions and appeals shall be in writing and in the form prescribed by the department.

Section 13. The act is amended by adding a section to read:

Section 402.1. (a) In any action for which a petition has been filed under this act, the parties by joint agreement may file a notice of request with the department for an informal conference pursuant to this act. The department shall assign the matter to a workers' compensation judge or hearing officer

for an informal conference. Unless the parties jointly agree to a time extension, all proceedings within an informal conference shall be completed within thirty-five days of the filing of the request for informal conference. Joint agreement to a time extension shall stay the adjudication proceedings for the time agreed upon.

(b) At any informal conference held pursuant to this section:

(i) the workers' compensation judge or hearing officer may accept the statements of both parties, together with any medical reports, witnesses' statements or other documents which the parties would like to present;

(ii) all communications, verbal or written, from the parties to the workers' compensation judge or hearing officer and any information and evidence presented to the workers' compensation judge or hearing officer during the informal conference proceedings are confidential and shall not be a part of the record of testimony; and

(iii) each party may be represented, but the employer may only be represented by an attorney at the informal conference if the employe is also represented by an attorney at the informal conference.

(c) The workers' compensation judge or hearing officer shall attempt to resolve the issues in dispute between the parties, but in no event shall any recommendations or findings made by the workers' compensation judge or hearing officer be binding upon the parties unless accepted in writing by both parties. If the parties come to agreement, the workers' compensation judge or hearing officer shall reduce such agreement to writing, which shall be signed by all parties and filed with the department.

(d) In the event that the parties cannot resolve their dispute, the petition will be reassigned to a different workers' compensation judge for adjudication of the dispute, or, by joint agreement of the parties, the workers' compensation judge who was originally assigned the matter will proceed with the adjudication of the petition.

(e) The information provided at the informal conference does not constitute established evidence for any subsequent proceeding on the petition.

(f) No workers' compensation judge or hearing officer who participates in an informal conference conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding pursuant to this act, except matters involving fraud.

Section 14. Section 406.1(d) of the act, amended July 2, 1993 (P.L.190, No.44), is amended to read:

Section 406.1. * * *

(d) (1) In any instance where an employer is uncertain whether a claim is compensable under this act or is uncertain of the extent of its liability under this act, the employer may initiate compensation payments without prejudice and without admitting liability pursuant to a notice of temporary compensation payable as prescribed by the department.

(2) The notice of temporary compensation payable shall be sent to the claimant and a copy filed with the department and shall notify the claimant that the payment of temporary compensation is not an admission of liability of the employer with respect to the injury which is the subject of the notice of temporary compensation payable. The department shall, upon

receipt of a notice of temporary compensation payable, send a notice to the claimant informing the claimant that:

(i) the payment of temporary compensation and the claimant's acceptance of that compensation does not mean the claimant's employer is accepting responsibility for the injury or that a compensation claim has been filed or commenced;

(ii) the payment of temporary compensation entitles the claimant to a maximum of [six weeks] **ninety (90) days** of compensation; and

(iii) the claimant may need to file a claim petition in a timely fashion under section 315, enter into an agreement with his employer or receive a notice of compensation payable from his employer to ensure continuation of compensation payments.

(3) Payments of temporary compensation shall commence and the notice of temporary compensation payable shall be sent within the time set forth in [subsection] **clause** (a).

(4) Payments of temporary compensation may continue until such time as the employer decides to controvert the claim [or six (6) weeks from the date the employer has notice or knowledge of the employe's disability, whichever shall first occur].

(5) (i) If the employer ceases making payments pursuant to a notice of temporary compensation payable, a notice in the form prescribed by the department shall be sent to the claimant and a copy filed with the department, but in no event shall this notice be sent or filed later than five (5) days after the last payment.

(ii) This notice shall advise the claimant, that if the employer is ceasing payment of temporary compensation, that the payment of temporary compensation was not an admission of liability of the employer with respect to the injury subject to the notice of temporary compensation payable, and the employe must file a claim to establish the liability of the employer.

(iii) If the employer ceases making payments pursuant to a notice of temporary compensation payable, after complying with this clause, the employer and employe retain all the rights, defenses and obligations with regard to the claim subject to the notice of temporary compensation payable, and the payment of temporary compensation may not be used to support a claim for compensation.

(iv) Payment of temporary compensation shall be considered compensation for purposes of tolling the statute of limitations under section 315.

(6) If the employer does not file a notice under paragraph (5) within the [six-week] **ninety-day** period during which temporary compensation is paid or payable, the employer shall be deemed to have admitted liability and the notice of temporary compensation payable shall be converted to a notice of compensation payable.

Section 15. Section 412 of the act, amended February 8, 1972 (P.L.25, No.12), is amended to read:

Section 412. If any party shall desire the commutation of future installments of compensation, he shall present a petition therefor to the department to be heard and determined by a [referee] **workers' compensation judge**: Provided, That where there are no more than [twenty-five] **fifty-two** weeks of compensation to be commuted, the insurer or self-insurer may commute such future installments without discount upon furnishing the employe written notice of the commutation on a form prescribed by the department, a copy of which shall be filed immediately with the department. **Nothing in this section shall prohibit, restrict or impair the right of the parties to**

enter into a compromise and release by stipulation in accord with section 449.

Section 16. Section 413 of the act, amended March 29, 1972 (P.L.159, No.61), April 4, 1974 (P.L.239, No.56), December 5, 1974 (P.L.782, No.263) and July 1, 1978 (P.L.692, No.119), is amended to read:

Section 413. (a) A [referee of the department] **workers' compensation judge** may, at any time, review and modify or set aside a notice of compensation payable and an original or supplemental agreement or upon petition filed by either party with the department, or in the course of the proceedings under any petition pending before such [referee] **workers' compensation judge**, if it be proved that such notice of compensation payable or agreement was in any material respect incorrect.

A [referee] **workers' compensation judge** designated by the department may, at any time, modify, reinstate, suspend, or terminate a notice of compensation payable, an original or supplemental agreement or an award of the department or its [referee] **workers' compensation judge**, upon petition filed by either party with the department, upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed: Provided, That, except in the case of eye injuries, no notice of compensation payable, agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the department within three years after the date of the most recent payment of compensation made prior to the filing of such petition. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period in which a petition to review, modify, or reinstate a notice of compensation, agreement or award must be filed, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act: And provided further, That any payment made under an established plan or policy of insurance for the payment of benefits on account of nonoccupational illness or injury and which payment is identified as not being workmen's compensation shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations: And provided further, That where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the injury that payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable, unless it be shown that the loss in earnings does not result from the disability due to the injury.

The [referee] **workers' compensation judge** to whom any such petition has been assigned may subpoena witnesses, hear evidence, make findings of fact, and award or disallow compensation, in the same manner and with the same effect and subject to the same right of appeal, as if such petition were an original claim petition.

(a.1) The filing of a petition to terminate, **suspend** or modify a notice of compensation payable or a compensation agreement or award as provided in this section shall [operate as a supersedeas, and shall suspend the payment of compensation

fixed in the agreement or by the award in whole or to such extent as the facts alleged in the petition would, if proved, require only when such petition alleges that the employe has returned to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within fifteen days of the filing of the petition.] **automatically operate as a request for a supersedeas to suspend the payment of compensation fixed in the agreement or the award where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect, which is based upon an examination made within twenty-one days of the filing of the petition. A special supersedeas hearing before a workers' compensation judge shall be held within twenty-one days of the assignment of such petition. All parties to the special supersedeas hearing shall have the right to submit, and the workers' compensation judge may consider testimony of any party or witness; the record of any physician; the records of any physician, hospital, clinic or similar entity; the written statements or reports of any other person expected to be called by any party at the hearing of the case; and any other relevant materials. The workers' compensation judge shall rule on the request for supersedeas within seven days of the hearing and shall approve the request if prima facia evidence of a change in the medical status or of any other fact which would serve to modify or terminate payment of compensation is submitted at the hearing, unless the employe establishes, by a preponderance of the evidence, a likelihood of prevailing on the merits of his defense. The workers' compensation judge's decision on supersedeas shall be interlocutory and shall not be appealable. The determination of full recovery with respect to either the petition to terminate or modify or the request for supersedeas shall be made without consideration of whether a specific job vacancy exists for the employe for work which the employe is capable of performing or whether the employe would be hired if the employe applied for work which the employe is capable of performing.**

(a.2) In any other case, a petition to terminate, **suspend** or modify a compensation agreement or other payment arrangement or award as provided in this section shall not automatically operate as a supersedeas but may be designated as a request for a supersedeas, which may then be granted at the discretion of the [referee] **workers' compensation judge** hearing the case. A supersedeas shall serve to suspend the payment of compensation in whole or to such extent as the facts alleged in the petition would, if proved, require. The [referee] **workers' compensation judge** hearing the case shall rule on the request for a supersedeas as soon as possible and may approve the request if proof of a change in medical status, or proof of any other fact which would serve to modify or terminate payment of compensation is submitted with the petition. The [referee] **workers' compensation judge** hearing the case may consider any other fact which he deems to be relevant when making the decision on the supersedeas request and the decision shall not be appealable.

(b) Any insurer who suspends, terminates or decreases payments of compensation without submitting an agreement or supplemental agreement therefor as provided in section 408, or a final receipt as provided in section 434, or without filing a petition and either alleging that the employe has returned

to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within [fifteen] **twenty-one** days of the filing of the petition or having requested and been granted a supersedeas as provided in this section, shall be subject to penalty as provided in section 435.

(c) Notwithstanding any provision of this act, an [employer] **insurer** may suspend the compensation during the time the employe has returned to work at his prior or increased earnings [if the employer files a petition to terminate or modify a notice of compensation payable or a compensation agreement or award within fifteen days of the return to work.] **upon written notification of suspension by the insurer to the employe and the department, on a form prescribed by the department for this purpose. The notification of suspension shall include an affidavit by the insurer that compensation has been suspended because the employe has returned to work at prior or increased earnings. The insurer must mail the notification of suspension to the employe and the department within seven days of the insurer suspending compensation.**

(1) If the employe contests the averments of the insurer's affidavit, a special supersedeas hearing before a workers' compensation judge may be requested by the employe indicating by a checkoff on the notification form that the suspension of benefits is being challenged and filing the notification of challenge with the department within twenty days of receipt of the notification of suspension from the insurer. The special supersedeas hearing shall be held within twenty-one days of the employe's filing of the notification of challenge.

(2) If the employe does not challenge the insurer's notification of suspension within twenty days under paragraph (1), the employe shall be deemed to have admitted to the return to work and receipt of wages at prior or increased earnings. The insurer's notification of suspension shall be deemed to have the same binding effect as a fully executed supplemental agreement for the suspension of benefits.

(d) Notwithstanding any provision of this act, an insurer may modify the compensation payments made during the time the employe has returned to work at earnings less than the employe earned at the time of the work-related injury, upon written notification of modification by the insurer to the employe and the department, on a form prescribed by the department for this purpose. The notification of modification shall include an affidavit by the insurer that compensation has been modified because the employe has returned to work at lesser earnings. The insurer must mail the notification of modification to the employe and the department within seven days of the insurer's modifying compensation.

(1) If the employe contests the averments of the insurer's affidavit, a special supersedeas hearing before a workers' compensation judge may be requested by the employe indicating by a checkoff on the notification form that the modification of benefits is being challenged and filing the notification of challenge with the department within twenty days of receipt of the notification of modification from the insurer. The special supersedeas hearing shall be held within twenty-one days of the employe's filing of the notification of challenge.

(2) If the employe does not challenge the insurer's notification of modification within twenty days under paragraph (1), the employe shall be deemed to have admitted to the return

to work and receipt of wages at lesser earnings as alleged by the insurer. The insurer's notification of modification shall be deemed to have the same binding effect as a fully executed supplemental agreement for the modification of benefits.

Section 16.1. Section 416 of the act, amended February 8, 1972 (P.L.25, No.12), is amended to read:

Section 416. Within [fifteen] **twenty** days after a copy of any claim petition or other petition has been served upon an adverse party, he may file with the department or its [referee] **workers' compensation judge** an answer in the form prescribed by the department.

Every fact alleged in a claim petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any party or of all of them to deny a fact alleged in any other petition shall not preclude the [referee] **workers' compensation judge** before whom the petition is heard from requiring, of his own motion, proof of such fact. If a party fails to file an answer and/or fails to appear in person or by counsel at the hearing without adequate excuse, the [referee] **workers' compensation judge** hearing the petition shall decide the matter on the basis of the petition and evidence presented.

Section 17. Sections 420 and 422 of the act, amended July 2, 1993 (P.L.190, No.44), are amended to read:

Section 420. (a) The board, the department or a [referee] **workers' compensation judge**, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make or cause to be made an investigation of the facts set forth in the petition or answer or facts pertinent in any injury under this act. The board, department or [referee] **workers' compensation judge** may appoint one or more impartial physicians or surgeons to examine the injuries of the plaintiff and report thereon, or may employ the services of such other experts as shall appear necessary to ascertain the facts. The [referee] **workers' compensation judge** when necessary or appropriate or upon request of a party in order to rule on requests for review filed under section 306(f.1), or under other provisions of this act, may ask for an opinion from peer review about the necessity or frequency of treatment under section 306(f.1). The peer review report or the peer report of any physician, surgeon, or expert appointed by the department or by a [referee] **workers' compensation judge**, including the report of a peer review organization, shall be filed with the board or [referee] **workers' compensation judge**, as the case may be, and shall be a part of the record and open to inspection as such. The [referee] **workers' compensation judge** shall consider the report as evidence but shall not be bound by such report.

(b) The board or [referee] **workers' compensation judge**, as the case may be, shall fix the compensation of such physicians, surgeons, and experts, and other peer review organizations which, when so fixed, shall be paid out of the Workmen's Compensation Administration Fund.

Section 422. (a) Neither the board nor any of its members nor any [referee] **workers' compensation judge** shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify same. All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was

reached. The [adjudicator] **workers' compensation judge** shall specify the evidence upon which the [adjudicator] **workers' compensation judge** relies and state the reasons for accepting it in conformity with this section. **When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection.** The adjudication shall provide the basis for meaningful appellate review.

(b) If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a [referee] **workers' compensation judge**, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the department may, by special order or general rule, prescribe. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein.

(c) Where any claim for compensation at issue before a [referee] **workers' compensation judge** involves fifty-two weeks or less of disability, either the employe or the employer may submit a certificate by any [qualified physician] **health care provider** as to the history, examination, treatment, diagnosis [and], cause of the condition **and extent of disability, if any,** and sworn reports by other witnesses as to any other facts and such statements shall be admissible as evidence of medical and surgical or other matters therein stated and findings of fact may be based upon such certificates or such reports. **Where any claim for compensation at issue before a workers' compensation judge exceeds fifty-two weeks of disability, a medical report shall be admissible as evidence unless the party that the report is offered against objects to its admission.**

(d) Where an employer shall have furnished surgical and medical services or hospitalization in accordance with the provisions of section 306(f.1), or where the employe has himself procured them, the employer or employe shall, upon request, in any pending proceeding, be furnished with, or have made available, a true and complete record of the medical and surgical services and hospital treatment, including X rays, laboratory tests, and all other medical and surgical data in the possession or under the control of the party requested to furnish or make available such data.

(e) The department may adopt rules and regulations governing the conduct of all hearings held pursuant to any provisions of this act, and hearings shall be conducted in accordance therewith, and in such manner as best to ascertain the substantial rights of the parties.

Section 18. Section 423 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 423. **(a)** Any party in interest may, within twenty days after notice of a [referee's award or disallowance of compensation] **workers' compensation judge's adjudication** shall have been served upon him, take an appeal to the board on the ground: (1) that the [award or disallowance of compensation] **adjudication** is not in conformity with the terms of this act, or that the [referee] **workers' compensation judge** committed any other error of law; (2) that the findings of fact and [award or disallowance of compensation] **adjudication** was unwarranted

by sufficient, competent evidence or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

[In any such appeal the board may disregard the findings of fact of the referee if not supported by competent evidence and if it deem proper may hear other evidence, and may substitute for the findings of the referee such findings of fact as the evidence taken before the referee and the board, as hereinbefore provided, may, in the judgment of the board, require, and may make such disallowance or award of compensation or other order as the facts so founded by it may require.]

(b) If a timely appeal is filed by a party in interest pursuant to clause (a), any other party may file a cross-appeal within fourteen days of the date on which the first appeal was filed or within the time prescribed by clause (a), whichever period last expires.

(c) The board shall hear the appeal on the record certified by the workers' compensation judge's office. The board shall affirm the workers' compensation judge adjudication, unless it shall find that the adjudication is not in compliance with section 422(a) and the other provisions of this act.

Section 18.1. Section 435 of the act, amended or added February 8, 1972 (P.L.25, No.12) and October 17, 1972 (P.L.930, No.223), is amended to read:

Section 435. (a) The department shall establish and promulgate rules and regulations consistent with this act, which are reasonably calculated to:

(i) expedite the reporting and processing of injury cases,

(ii) insure full payment of compensation when due,

(iii) expedite the hearing and determination of claims for compensation and petitions filed with the department under this act,

(iv) provide the disabled employe or his dependents with timely notice and information of his or their rights under this act,

(v) explain and enforce the provisions of this act.

(b) If it appears that there has not been compliance with this act or rules and regulations promulgated thereunder the department may, on its own motion give notice to any persons involved in such apparent noncompliance and schedule a hearing for the purpose of determining whether there has been compliance. The notice of hearing shall contain a statement of the matter to be considered.

(c) The board shall establish rules of procedure, consistent with this act, which are reasonably calculated to expedite the hearing and determination of appeals to the board and to insure full payment of compensation when due.

(d) The department, the board, or any court which may hear any proceedings brought under this act shall have the power to impose penalties as provided herein for violations of the provisions of this act or such rules and regulations or rules of procedure:

(i) Employers and insurers may be penalized a sum not exceeding ten per centum of the amount awarded and interest accrued and payable: Provided, however, That such penalty may be increased to [twenty] **fifty** per centum in cases of unreasonable or excessive delays. Such penalty shall be payable to the same persons to whom the compensation is payable.

(ii) Any penalty or interest provided for anywhere in this act shall not be considered as compensation for the purposes

of any limitation on the total amount of compensation payable which is set forth in this act.

(iii) Claimants shall forfeit any interest that would normally be payable to them with respect to any period of unexcused delay which they have caused.

(e) The department shall furnish to persons adversely affected by occupational disease appropriate counseling services, vocational rehabilitation services, and other supportive services designed to promote employability to the extent that such services are available and practical.

Section 19. Section 440 of the act, amended July 2, 1993 (P.L.190, No.44), is amended to read:

Section 440. (a) In any contested case where the insurer has contested liability in whole or in part, including contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards, agreements or other payment arrangements or to set aside final receipts, the employe or his dependent, as the case may be, in whose favor the matter at issue has been finally determined in whole or in part shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimbursed lost time to attend the proceedings: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established by the employer or the insurer.

(b) If counsel fees are awarded and assessed against the insurer or employer, then the [referee] **workers' compensation judge** must make a finding as to the amount and the length of time for which such counsel fee is payable based upon the complexity of the factual and legal issues involved, the skill required, the duration of the proceedings and the time and effort required and actually expended. If the insurer has paid or tendered payment of compensation and the controversy relates to the amount of compensation due, costs for attorney's fee shall be based only on the difference between the final award of compensation and the compensation paid or tendered by the insurer.

Section 20. Section 442 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 442. All counsel fees, agreed upon by claimant and his attorneys, for services performed in matters before any [referee] **workers' compensation judge** or the board, whether or not allowed as part of a judgment, shall be approved by the [referee] **workers' compensation judge** or board as the case may be, providing the counsel fees do not exceed twenty per centum of the amount awarded. The official conducting any hearing, upon cause shown, may allow a reasonable attorney fee exceeding twenty per centum of the amount awarded at the discretion of the hearing official.

In cases where the efforts of [claimants'] **claimant's** counsel produce a result favorable to the claimant but where no immediate award of compensation is made such as in cases of termination or suspension the hearing official shall allow or award reasonable counsel fees, as agreed upon by claimant and his attorneys, without regard to any per centum.

Section 21. Sections 447(b)(5), (6) and (7) and (c) and 448 of the act, amended or added July 2, 1993 (P.L.190, No.44), are amended to read:

Section 447. * * *

(b) * * *

(5) The council shall make recommendations to the [Secretary of Health] **secretary** regarding quality and cost-effective health care.

(6) The council shall review the annual accessibility study required by section 306(f.1)(3)(iv) and shall make recommendations to the [Secretary of Health] **secretary** regarding the need for new allowances for health care providers.

(7) The council shall make recommendations to the [Secretary of Health] **secretary** regarding the certification of coordinated care organizations and the approval of utilization review organizations and persons qualified to perform peer review.

* * *

(c) The members of the advisory council, once appointed, shall serve **a term of two years and** until [the expiration of the terms of office of their appointing authority] **their successors have been appointed**. Members shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred in the discharge of their duties. The secretary shall provide facilities and clerical and professional support as needed by the council in the performance of its duties. The compensation of such staff and the amounts allowed them and to members of the council for traveling and other council expenses shall be deemed part of the expenses incurred in connection with the administration of this act.

Section 448. (a) An insurer issuing a workers' compensation and employers' liability insurance policy shall offer, upon request, as part of the policy or by endorsement, deductibles optional to the policyholder for benefits payable under the policy, subject to approval by the commissioner and subject to underwriting by the insurer consistent with the principles in [subsection] **clause** (b). The commissioner shall promulgate at least three (3) plans with varying deductible options, the least amount of which shall be no less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500). The commissioner's authority to promulgate any such plans shall not preclude an insurer from negotiating a deductible in excess of the largest deductible plan herein authorized, subject to approval by the commissioner and subject to underwriting by the insurer consistent with the principles in [subsection] **clause** (b).

(b) The following standards shall govern the commissioner's promulgation and an insurer's offer of deductible plans:

(1) Claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible.

(2) Appropriate premium reductions reflect the type and level of any deductible approved by the commissioner and selected by the policyholder.

(3) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge or premium discount.

(4) Recognition is given to policyholder characteristics, including size, financial capabilities, nature of activities and number of employes.

(5) If the policyholder selects a deductible, the policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(6) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(7) Failure to reimburse deductible amounts by the policyholder to the insurer is treated under the policy in the same manner as nonpayment of premiums.

(c) An insurer issuing a workers' compensation and employers' liability insurance policy may offer an endorsement for deductible or retrospective rating plans for groups of five (5) or more employers, subject to approval by the commissioner and subject to underwriting by the insurer consistent with the principles in clause (b).

(d) The following standards shall govern the commissioner's authorization of an insurer's offer of a group deductible or retrospective plan endorsement:

(1) Individual workers' compensation and employers' liability insurance policies will be issued for each member of the group.

(2) Each member will be held jointly and severally liable for the payment of premiums or deductible amounts with regard to benefits paid for compensable claims of the group as a whole.

Section 22. The act is amended by adding sections to read:

Section 449. (a) Nothing in this act shall impair the right of the parties interested to compromise and release, subject to the provisions herein contained, any and all liability which is claimed to exist under this act on account of injury or death.

(b) Upon or after filing a petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. The workers' compensation judge shall consider the petition and the proposed agreement in open hearing and shall render a decision. The workers' compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement. The agreement must be explicit with regard to the payment, if any, of reasonable, necessary and related medical expenses. Hearings on the issue of a compromise and release shall be expedited by the department, and the decision shall be issued within thirty days.

(c) Every compromise and release by stipulation shall be in writing and duly executed, and the signature of the employe, widow or widower or dependent shall be attested by two witnesses or acknowledged before a notary public. The document shall specify:

(1) the date of the injury or occupational disease;

(2) the average weekly wage of the employe as calculated under section 309;

(3) the injury, the nature of the injury and the nature of disability, whether total or partial;

(4) the weekly compensation rate paid or payable;

(5) the amount paid or due and unpaid to the employe or dependent up to the date of the stipulation or agreement or death and the amount of the payment of disability benefits then or thereafter to be made;

(6) the length of time such payment of benefits is to continue;

(7) in the event of a lien for subrogation under section 319, the total amount of compensation paid or payable which should be allowed to the employer or insurer;

(8) in the case of death:

(i) the date of death;

(ii) the name of the widow or widower;

(iii) the names and ages of all children;

(iv) the names of all other dependents; and

(v) the amount paid or to be paid under section 307 and to whom payment is to be made;

(9) a listing of all benefits received or available to the claimant;

(10) a disclosure of the issues of the case and the reasons why the parties are agreeing to the agreement; and

(11) the fact that the claimant is represented by an attorney of his or her own choosing or that the claimant has been specifically informed of the right to representation by an attorney of his or her own choosing and has declined such representation.

(d) The department shall prepare a form to be utilized by the parties for a compromise and release of any and all liability under this act in accordance with the stipulation requirements of this section, and it shall issue such rules and regulations necessary for it and the board to enforce the procedure allowed by this section. No compromise and release shall be considered for approval unless a vocational evaluation of the claimant is completed and filed with the compromise and release and made a part of the record: Provided, however, That this requirement may be waived by mutual agreement of the parties or by a determination of a workers' compensation judge as inappropriate or unnecessary. The vocational evaluation shall be completed:

(1) by a qualified vocational expert approved by the department; or

(2) by the department on a fee-for-service basis.

Nothing in this clause shall serve to impose an obligation of liability or responsibility regarding vocational rehabilitation on either party or to require the implementation of vocational rehabilitation.

Section 450. (a) Any employer and the recognized or certified and exclusive representative of its employe may agree by collective bargaining to establish certain binding obligations and procedures relating to workers' compensation: Provided, however, That the scope of the agreement shall be limited to:

(1) benefits supplemental to those provided in sections 306 and 307;

(2) an alternative dispute resolution system which may include, but is not limited to, arbitration, mediation and conciliation;

(3) the use of a limited list of providers for medical treatment for any period of time agreed upon by the parties;

(4) the use of a limited list of impartial physicians;

(5) the creation of a light duty, modified job or return to work program;

(6) the adoption of twenty-four-hour medical coverage; and

(7) the establishment of safety committees; and

(8) a vocational rehabilitation or retraining program.

(b) Nothing contained in this section shall in any manner affect the rights of an employer or its employes in the event that the parties to a collective bargaining agreement refuse or fail to reach agreement concerning the matters referred to in clause (a). In the event a municipality and its police or fire employes fail to agree by collective bargaining concerning matters referred to in clause (a), nothing in this section shall be binding upon the municipality or its police or fire employes as a result of an arbitration ruling or award.

(c) Nothing in this section shall allow any agreement that diminishes an employe's entitlement to benefits as otherwise

set forth in this section. Any agreement in violation of this provision shall be null and void.

(d) (1) Determinations rendered as a result of an alternative dispute resolution procedure shall remain in force during a period in which the employer and a recognized or certified exclusive collective bargaining representative are renegotiating a collective bargaining agreement.

(2) Upon the expiration of an agreement which contains a provision for an alternative dispute resolution procedure for workers' compensation claims, the resolution of claims relating to injuries sustained as a result of a work-related accident or occupational disease may, if the agreement so provides, be subject to the terms and conditions set forth in the expired agreement until the employer and a recognized or certified exclusive bargaining representative agree to a new agreement.

(3) Upon the termination of an agreement which is not subject to renegotiation and upon severance of the employment relationship, the employer and employes shall become fully subject to the provisions of this act to the same extent that they were prior to the implementation of the agreement.

Section 23. Section 707 of the act is amended by adding a clause to read:

Section 707. * * *

(g) The commissioner shall promulgate a plan by which all insurers writing workers' compensation insurance in this Commonwealth shall grant premium discounts or assess premium surcharges to employers who do not qualify for the uniform experience rating plan in accordance with the following:

(1) An employer who has not experienced a compensable employe lost-time injury during the most recent two-year period for which statistics are available shall receive a discount of five per centum on the amount of the workers' compensation insurance premium.

(2) An employer who has experienced two or more compensable employe lost-time injuries during the most recent two-year period for which statistics are available shall be assessed a surcharge of five per centum on the amount of the workers' compensation insurance premium.

(3) The premium discounts or premium surcharges established under this section shall be made on an annual basis but shall not be cumulative: Provided, however, That an employer is entitled to receive the premium discount provided by this section in addition to any other reductions or deviations in the insurance premiums available to all other nonexperienced-rated employers in the same classification. For any annual workers' compensation premium, an employer shall not receive a premium discount of more than five per centum and shall not be required to pay a surcharge of more than five per centum.

(4) Insurers writing workers' compensation insurance in this Commonwealth may file a schedule rating plan based upon defined risk characteristics. Prior approval of this plan by the commissioner is required.

For purposes of this clause, "employer" shall include a municipality or a municipal pool.

Section 24. Sections 717(a) and 802(b)(11) of the act, added July 2, 1993 (P.L.190, No.44), are amended to read:

Section 717. (a) Each rating organization and every insurer to which this article applies which makes its own rates shall provide within this Commonwealth reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by the person's authorized representative

on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the aggrieved person. **For the purposes of this section, "reasonable means" shall include at least the following:**

(1) A committee to hear the appeals of aggrieved persons which is comprised of an equal number of representatives of employers and insurers.

(2) If travel is required for the aggrieved person to be heard in person, reimbursement to the aggrieved person for reasonable travel expenses.

* * *

Section 802. * * *

(b) A group of homogeneous employers may be approved by the department to act as a fund if the proposed group:

* * *

(11) Provides security in a form and amount prescribed by the department. **This paragraph shall not apply to pools created by and exclusively for political subdivisions or municipalities which self-insure.**

* * *

Section 25. The act is amended by adding a section to read:

Section 819. If an association of employers establishes more than one group under this article, the association may organize a single board of trustees to oversee the operations of the several groups: Provided, however, That each of the several groups shall be equally represented on the board.

Section 26. Sections 1002, 1102, 1109 and 1111 of the act, added July 2, 1993 (P.L.190, No.44), are amended to read:

Section 1002. (a) An insured employer may make application to the department for the certification of any established safety committee operative within its workplace developed for the purpose of hazard detection and accident prevention. The department shall develop such certification criteria.

(b) Upon the renewal of the employer's workers' compensation policy next following receipt of department certification, the employer shall receive a five per centum discount in the rate or rates applicable to the policy for a period of one year. **The five per centum discount shall continue for a total of five years if the employer, by affidavit, provides annual verification to the department and to the employer's insurer that the safety committee continues to be operative and continues to meet the certification requirements.**

Section 1102. A person, including, but not limited to, the employer, the employe, the health care provider, the attorney, the insurer, the State Workmen's Insurance Fund and self-insureds, commits an offense if the person does any of the following:

(1) Knowingly and with the intent to defraud a State or local government agency files, presents or causes to be filed with or presented to the government agency a document that contains false, incomplete or misleading information concerning any fact or thing material to the agency's determination in approving or disapproving a workers' compensation insurance rate filing, a workers' compensation transaction or other workers' compensation insurance action which is required or filed in response to an agency's request.

(2) Knowingly and with intent to defraud any insurer presents or causes to be presented to any insurer any statement forming a part of or in support of a workers' compensation insurance claim that contains any false, incomplete or

misleading information concerning any fact or thing material to the workers' compensation insurance claim.

(3) Knowingly and with the intent to defraud any insurer assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to any insurer in connection with or in support of a workers' compensation insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the workers' compensation insurance claim.

(4) Engages in unlicensed agent or broker activity as defined by the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921," knowingly and with the intent to defraud an insurer or the public.

(5) Knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this section due to the assistance, conspiracy or urging of any person.

(6) Is the owner, administrator or employe of any health care facility and knowingly allows the use of such facility by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this section.

(7) Knowingly and with the intent to defraud assists, abets, solicits or conspires with any person who engages in an unlawful act under this section.

(8) Makes or causes to be made any knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

(9) Knowingly and with the intent to defraud makes any false statement for the purpose of avoiding or diminishing the amount of the payment in premiums to an insurer or self-insurance fund.

(10) Knowingly and with intent to defraud, fails to make the report required under section 311.1.

(11) Knowingly and with intent to defraud, receives total disability benefits under this act while employed or receiving wages.

(12) Knowingly and with intent to defraud, receives partial disability benefits in excess of the amount permitted with respect to the wages received.

Section 1109. (a) The district attorneys of the several counties shall have authority to investigate and to institute criminal proceedings for any violation of this article.

(b) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this article by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of the Commonwealth to the person making the challenge.

(c) Nothing in this act shall prevent prosecution under 18 Pa.C.S. § 4117 (relating to insurance fraud) or any other provision of law.

Section 1111. **(a) A person found by a court of competent jurisdiction, pursuant to a claim initiated by a prosecuting authority, to have violated any provision of section 1102 shall be subject to civil penalties of not more than five thousand**

dollars ($5,000) for the first violation, ten thousand dollars ($10,000) for the second violation and fifteen thousand dollars ($15,000) for each subsequent violation. The penalty shall be paid to the prosecuting authority to be used to defray the operating expenses of investigating and prosecuting violations of this article. The court may also award court costs and reasonable attorney fees to the prosecuting authority.

(b) If a prosecuting authority has probable cause to believe that a person has violated this section, nothing in this clause shall be construed to prohibit the prosecuting authority and the person from entering into a written agreement in which that person does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding, but notification thereof shall be made to the licensing authority if the person is licensed by a licensing authority of the Commonwealth so that the licensing authority may take appropriate administrative action.

(c) All fines and penalties imposed following a conviction for a violation of this article shall be collected in the manner provided by law and shall be paid in the following manner:

(1) If the prosecutor is a district attorney, the fines and penalties shall be paid into the operating fund of the county in which the district attorney is elected.

(2) If the prosecutor is the Attorney General, the fines and penalties shall be paid into the State Treasury **and appropriated to the Office of Attorney General.**

Section 27. The act is amended by adding a section to read:

Section 1112. A prosecution for an offense under this act must be commenced within five years after commission of the offense.

Section 28. Section 1303 of the act, added July 2, 1993 (P.L.190, No.44), is amended to read:

Section 1303. **(a)** In addition to any other assessment authorized by section 446, an additional annual assessment shall be made on insurers, including the State Workmen's Insurance Fund but not including self-insureds, as a percentage of the total compensation paid for the purpose of funding the operations of the Office of Small Business Advocate pursuant to this act. Assessments under this section shall be made by the department and deposited into the Workmen's Compensation Administration Fund in a restricted account to be used by the Office of Small Business Advocate. The total amount assessed shall be the amount of the budget approved annually by the General Assembly for the operations of the Office of Small Business Advocate pursuant to this act.

(b) The total moneys assessed under the act of December 28, 1994 (P.L.1414, No.166), known as the Insurance Fraud Prevention Act, shall be permitted to be utilized by the Section of Insurance Fraud, within the Office of Attorney General, for prosecution and investigation of crimes arising under section 1102 and 18 Pa.C.S. § 4117 (relating to insurance fraud), as well as other grants by the Insurance Fraud Prevention Authority.

Section 29. The act is amended by adding articles to read:

ARTICLE XIV.

WORKERS' COMPENSATION JUDGES

Section 1401. (a) There is created within the department an office to be known as the Office of Adjudication.

(b) The secretary shall appoint as many qualified and competent workers' compensation judges as necessary to conduct matters under this act.

(c) The secretary shall set normal working hours for workers' compensation judges. During those hours, workers' compensation judges shall devote full time to their official duties and shall perform no work inconsistent with their duties as workers' compensation judges. Workers' compensation judges shall not engage in any unapproved activities during normal working hours.

(d) Workers' compensation judges shall be afforded employment security as provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

(e) Compensation for workers' compensation judges shall be established by the Executive Board.

(f) The secretary shall develop and require all workers' compensation judges to complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. The course of training and instruction shall not exceed four weeks in duration and shall consist of a minimum of forty hours of class instruction in medicine and law.

(g) The secretary shall develop a continuing professional development plan for workers' compensation judges which shall require the annual completion of twenty hours of approved continuing professional development courses.

(h) The secretary may adopt additional rules to establish standards and procedures for the evaluation, training, promotion and discipline of workers' compensation judges.

Section 1402. (a) The secretary shall appoint a director of adjudication, who:

(1) must meet the qualifications under section 1403;

(2) shall serve at the pleasure of the secretary; and

(3) shall report directly to the secretary or a designee.

(b) The position of director of adjudication shall be part of the unclassified service, as provided for by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

(c) The director of adjudication shall be responsible for assigning a workers' compensation judge to every matter which may require the utilization of a workers' compensation judge. The director of adjudication shall also have other responsibilities as the secretary may prescribe.

(d) The director of adjudication shall receive remuneration above that of any other workers' compensation judge.

Section 1403. Workers' compensation judges shall be management level employes and must meet the following minimum requirements:

(1) Be an attorney in good standing before the Supreme Court.

(2) Have five years of workers' compensation practice before administrative agencies or equivalent experience.

(3) Complete the course of training and instruction and pass the examination under section 1401(f).

(4) Meet the annual continuing professional development requirement established by the secretary under section 1401(g).

(5) Conform to other requirements as established by the secretary.

Section 1404. (a) A workers' compensation judge shall conform to the following code of ethics:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform duties impartially and diligently.

(3) Avoid ex parte communications in any contested, on-the-record matter pending before the department.

(4) Abstain from expressing publicly, except in administrative disposition or adjudication, personal views on the merits of an adjudication pending before the department and require similar abstention on the part of department personnel subject to the workers' compensation judge's direction and control.

(5) Require staff and personnel subject to the workers' compensation judge's direction and control to observe the standards of fidelity and diligence that apply to a workers' compensation judge.

(6) Initiate appropriate disciplinary measures against department personnel subject to the workers' compensation judge's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. A workers' compensation judge may speak, write or lecture, and reimbursed expenses, honorariums, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the secretary and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the workers' compensation judge.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes: Provided, however, That a workers' compensation judge may be an officer, a director or a trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. A workers' compensation judge may hold and manage investments which are not incompatible with the duties of office.

(12) Conform to additional requirements as the secretary may prescribe.

(13) Uphold the integrity and independence of the workers' compensation system.

(b) Any workers' compensation judge who violates the provisions of clause (a) shall be removed from office in accordance with the provisions of the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

Section 1405. The secretary shall determine the appropriate staff, facilities and administrative support so that the duties of workers' compensation judges may be performed.

Section 1406. Individuals who are currently serving as workers' compensation judges shall continue to serve as workers' compensation judges, subject to sections 1401(c) and 1404.

ARTICLE XV.
STATE WORKERS' INSURANCE FUND

Section 1501. As used in this article:

"Advisory council" means the Advisory Council to the State Workers' Insurance Board.

"Board" means the State Workers' Insurance Board.

"Bureau" means the Bureau of Workers' Compensation of the Department of Labor and Industry.

"Downward deviation" means the extent to which the State Workers' Insurance Board provides deviations under section 654 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," in the premiums charged to State Workers' Insurance Fund subscribers below the otherwise

applicable premium rates approved by the Insurance Commissioner for use by the board.

"Fund" means the State Workers' Insurance Fund.

"Reserve funds" means the Sunny Day Fund and the Tax Stabilization Reserve Fund, created by the act of July 1, 1985 (P.L.120, No.32), entitled "An act creating a special fund in the Treasury Department for use in attracting major industry into this Commonwealth; establishing a procedure for the appropriation and use of moneys in the fund; establishing the Tax Stabilization Reserve Fund; and providing for expenditures from such account."

"Safely distributable" means amounts which are distributable without jeopardizing the ability of the State Worker's Insurance Fund to satisfy its present and future legal obligations to subscribers.

"Surplus" means the amount in the State Workers' Insurance Fund in excess of the fund's liabilities under this act.

"Taxes" means the amount that would be payable as taxes upon receipt of premiums by a private insurance company under section 902 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and the amount that would be payable as Federal income tax by a private insurance company under section 831 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 831), or any amendments to either statute subsequently enacted. For purposes of computing Federal capital gains or losses (for such hypothetical Federal income tax under section 831 of the Internal Revenue Code of 1986) for periods after June 30, 1990, the basis of State Worker's Insurance Fund assets will be the fair market value on June 30, 1990.

Section 1502. The State Workers' Insurance Board is hereby continued, consisting of the Secretary of Labor and Industry, the Insurance Commissioner and the State Treasurer.

Section 1503. (a) The Advisory Council to the State Workers' Insurance Board is hereby continued.

(b) The advisory council shall be appointed by the board and shall be composed of five members, with one member representing each of the following:

(1) The Pennsylvania Chamber of Business and Industry or its successor organization.

(2) The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) or its successor organization.

(3) Insureds of the fund with premiums of five thousand dollars ($5,000) or less annually.

(4) Insureds of the fund with premiums of more than five thousand dollars ($5,000) annually.

(5) The board.

The member of the advisory council representing the board shall serve as chair of the advisory council. The member representing the Pennsylvania Chamber of Business and Industry shall be selected from a list of persons recommended by that organization or its successor. The member representing the AFL-CIO shall be selected from a list of persons recommended by that organization or its successor.

(c) Each member shall serve a term of two (2) years, commencing on January 1 of each odd-numbered year, and shall serve until the board appoints a successor. The board shall make initial appointments within sixty (60) days of the effective date of this section.

(d) Members of the advisory council shall receive no compensation; each member, however, shall be entitled to be reimbursed for reasonable and legitimate expenses incurred in the performance of his duties.

(e) The advisory council shall have the following powers and duties:

(1) Commission, in its discretion, an actuarial study of the fund no more than once a year.

(2) Review any actuarial studies of the fund commissioned by the board under section 1511(b).

(3) Request and receive from the board copies of or access to audits of the fund.

(4) Recommend to the board annually the amount of surplus in the fund, if any, which is safely distributable.

(5) Recommend to the board annually the form in which any safely distributable surplus should be distributed if the board has determined that a safely distributable surplus exists.

(6) Request assistance from the board as may be necessary to fulfill the advisory council's statutory obligations under this section. The advisory council shall make no recommendation to the board unless that recommendation reflects the votes of a majority of advisory council members. Should a majority of the advisory council's members vote to commission an actuarial study of the fund independent of the board's actuarial study, the board shall pay for the reasonable and customary expense associated with the preparation of such a study.

Section 1504. Certain sums to be paid by employers, as provided in this article, are hereby continued as a fund, hereafter to be known as the State Workers' Insurance Fund, for the purpose of insuring such employers against liability under Article III of this act and of assuring the payment of the compensation therein provided and for the purpose of insuring such employers against liability under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) and the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) and of assuring the payment of benefits therein provided and further for the purpose of insuring such employers against liability for all sums such employer shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment. Such fund shall be administered by the board, without liability on the part of the Commonwealth, except as provided in this article, beyond the amount thereof, and shall be applied to the payment of such compensation.

Section 1505. The State Treasurer shall be the custodian of the fund, and all disbursements therefrom shall be paid by him by check, upon requisition of the secretary. It shall not be necessary for the State Treasurer to audit the accounts which the requisition of the secretary calls upon him to pay and for making payments according to the requisition of the secretary without audit the State Treasurer shall not be under any liability whatsoever. The State Treasurer may deposit any portion of the fund not needed for immediate use as other State funds are lawfully deposited, and the interest thereon shall be collected by him and placed to the credit of the fund.

Section 1506. On or before October 1 in each year, the board shall prepare and publish a schedule of premiums or rates of insurance for employers under Article III; employers who want insurance against liability under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.); employers who want insurance against liability under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.); and employers who want

insurance against liability for all sums such employer shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment. This schedule shall be printed and distributed free of charge to employers. An employer may pay to the fund the amount of the premium appropriate to his business or domestic affairs and, upon payment thereof, shall thereafter be considered a subscriber to the fund and shall be insured as provided in this article for the year for which the premium is paid. This insurance shall cover all payments becoming due in any year because of accidents occurring during the year for which the premium is paid.

Section 1507. The board shall determine the amount of premiums which the subscribers to the fund shall pay and shall fix the premiums for insurance in accordance with the nature of their business and of the various employments of their employes, and the probable risk of injury to their employes. They shall fix the premiums at such an amount as shall be adequate to enable them to pay all sums which may become due and payable to the employes of such subscribers, under the provisions of Article III of this act, under the provisions of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) and under the provisions of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.); and, by reason of a subscriber's liability for all sums, such subscriber shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, and to create and maintain the surplus provided in section 1509 and to provide an adequate reserve sufficient to carry all policies and claims to maturity. In fixing the premiums payable by any subscriber, the board may take into account the condition of the plant, workroom, shop, farm, mine, quarry, operation and all other property or premises of such subscriber, in respect to the safety of those employed therein, as shown by the report of any inspector appointed by the board or by the department. The board may, from time to time, change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the plant, workroom, shop, farm, mine, quarry, operation or other property or premises of such subscribers, in respect to the safety of their employes, may justify. The board may increase the premiums of any subscriber neglecting to provide safety devices required by law or disobeying the rules or regulations made by the board under section 1515. The insurance of any subscriber shall not be effective until he shall have paid in full the premium so fixed and determined.

Section 1508. The board shall file with the bureau a notice setting forth the names and places of business of those employers who from time to time shall become subscribers to the fund.

Section 1509. The board shall set aside five per centum of all premiums collected, for the creation of a surplus until this surplus shall amount to one hundred thousand dollars ($100,000), and thereafter they may set apart such percentage, not exceeding five per centum, as in their discretion they may

determine to be necessary to maintain such surplus sufficiently large to cover the catastrophe hazard of all the subscribers to the fund and to guarantee the solvency of the fund.

Section 1510. The board shall divide the subscribers into groups, in accordance with the nature of the business of such subscribers and the probable risk of injury therein, and they shall fix all premiums for each group in accordance with the experience thereof. Where the employes in any business are engaged in various employments in which the risk of injury is substantially different, the board may subdivide the employments into classes and shall fix the premium for each in accordance with the probable risk of injury therein.

Section 1511. (a) The moneys in the fund are hereby made available and shall be paid:

(1) For the expenses of administering the fund, including the purchase through the Department of General Services of surety bonds for such officers or employes of the board as may be required to furnish them, supplies, materials, motor vehicles, workers' compensation insurance covering the officers and employes of the board, and liability insurance covering vehicles purchased out of moneys of the fund and operated by the officers and employes of the board. In the event that the use of motor vehicles is required only temporarily, then such moneys in the fund are available for the payment to the Department of General Services for the use of such motor vehicles on a mileage basis, at such amount per mile as the Department of General Services, with the approval of the Governor, shall determine.

(2) For payment to the Treasury Department of the cost of making disbursements out of the fund, on behalf of the board, at such amounts as the Treasury Department, with the approval of the Executive Board, shall determine.

(3) For payment to the Department of General Services for space occupied in government buildings and for water, light, heat, power, telephone and other services utilized and consumed by the board, at such amounts as the Department of General Services, with the approval of the Executive Board, shall determine.

(4) For payment to the General Fund in amounts which would have been paid in taxes had the fund been subject to taxes for the period beginning on July 1, 1990, and thereafter. These payments shall be due annually, shall be calculated on a fiscal year basis and shall be paid in equal quarterly installments of the board's estimate of taxes for a fiscal year. Quarterly installments shall be paid after the end of each quarter, and the fourth quarterly installment for each fiscal year shall be adjusted upward or downward as necessary to pay in full the amount due.

(b) The board shall retain the services of a certified actuary who shall be responsible for conducting an annual independent actuarial study of the fund. The purpose of the study shall be to assist the board in determining whether the moneys in the fund exceed the fund's liabilities and, if so, whether any portion of that surplus is safely distributable. Payment for the annual actuarial study shall be considered to be an expense of administering the fund. The precise nature and scope of the study shall be determined by the board. The study shall be made available to the advisory council under clause (e) of section 1503. All persons charged with the administration or management of the fund shall provide the actuary or his agents with the means, facilities and opportunity to examine all books, records and papers pertaining to the fund.

(c) The board shall keep an accurate account of the money paid in premiums by the subscribers, the income derived from investment of premiums and the disbursement of amounts paid under clause (a). At the expiration of each calendar year after 1990 and upon review of the independent actuarial study conducted under clause (b) and advisory council recommendations, if any, the board shall determine if there is a surplus remaining in the fund after deductions are made for disbursements identified in clause (a), the unearned premiums on undetermined risks, the percentage of premiums paid or payable to create or maintain the surplus provided in section 1509 and the setting aside of an adequate reserve. If a surplus exists in the fund and, if, after reviewing the recommendations of the advisory council, if any, the board determines that a portion of the surplus is safely distributable, the board shall distribute the safely distributable surplus as follows:

(1) An amount up to the amount of any downward deviation that had been granted to subscribers at the start of that calendar year may be transferred to the reserve funds, as appropriated by the General Assembly.

(2) At least one-half of any safely distributable surplus not transferred to the reserve funds under paragraph (1) shall be available for appropriation by the General Assembly for distribution to subscribers or former subscribers who paid premiums in that calendar year in proportion to the premiums each such subscriber or former subscriber paid in that year.

(3) Any portion of the remaining safely distributable surplus up to the amount distributed to subscribers or former subscribers pursuant to paragraph (2) may be transferred to the reserve funds, as appropriated by the General Assembly.

Any amount distributed to subscribers pursuant to paragraph (2) shall be distributed among the subscribers, in proportion to the premiums paid by them; and the proportionate share of such subscribers as shall remain subscribers to the fund shall be credited to the installment of premiums next due by them, and the proportionate share of such subscribers as shall have ceased to be subscribers in the fund shall be refunded to them, out of the fund.

(d) No appropriation under clause (c) shall impair the actuarial soundness of the fund.

Section 1512. The board may invest any of the surplus or reserve belonging to the fund in such securities and investments as are authorized for investment by savings banks. All such securities or evidences of indebtedness shall be placed in the hands of the State Treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof when due and pay the same into the fund. The State Treasurer shall pay for all such securities or evidences of indebtedness by check issued upon requisition of the secretary. All such payments shall be made only upon delivery of such securities or evidences of indebtedness to the State Treasurer. To all requisitions calling upon the State Treasurer to pay for any securities or evidences of indebtedness there shall be attached a certified copy of the resolution of the board authorizing the investment. The board may, upon like resolution, sell any of such securities.

Section 1513. The board shall have the power to make all contracts necessary for supplying medical, hospital, and surgical services, as provided in clause (e) of section 306.

Section 1514. The board shall have the power to reinsure any risk or join any insurance pool which it may deem necessary.

Section 1515. (a) The board shall be entitled to inspect the plant, workroom, shop, farm, mine, quarry, operation and all other property or premises of any subscriber and shall be entitled to examine from time to time the books, records and payrolls of any subscriber or intending subscriber for the purpose of determining the amount of the premium payable to such subscriber or intending subscriber. The board shall have the power to appoint those inspectors and auditors as may be necessary to carry out the powers given in this section. The board may, with the consent of the department and commissioner, cause this inspection and examination to be made by the inspectors of the department and the auditors of the Insurance Department. These inspectors and auditors shall have free access to all such premises, books, records and payrolls during the regular working and office hours.

(b) The board shall make reasonable rules and regulations for the prevention of injuries upon the premises of the subscribers, and they may refuse to insure or may terminate the insurance of any subscriber who refuses to permit such examinations or disregards such rules or regulations and may forfeit one-half of the unearned premiums previously paid by him.

Section 1516. (a) Any employer subject to Article III and who shall desire to become a subscriber to the fund for the purpose of insuring his liability to his employes; and any employer who wants insurance under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.); and any employer who wants insurance under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) and who shall desire to become a subscriber to the fund for the purpose of insuring his liability to his employes; and any employer who shall desire to become a subscriber to the fund for the purpose of insuring therein his liability for all sums the employer shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, shall make a written application for such insurance to the board. In the application, the applicant shall state:

(1) The nature of the business or domestic affairs in which insurance is desired.

(2) The average number of employes expected to be employed in such business during the year for which insurance is sought and the average number of employes, if any, engaged in such business during the year previous to the application.

(3) The approximate money wages expected to be paid during the year for which insurance is sought and the money wages paid to such employes during the preceding year.

(4) The place where the business is to be transacted.

(5) The place where the employer's payroll and books of accounts are kept and where the employes are customarily paid.

(6) Such other facts and information as the board shall require.

(b) When the employments are subdivided into classes, as provided in section 1510, the applicant shall state:

(1) The number of employes of each class expected to be employed or previously employed.

(2) The approximate money wages expected to be paid or previously paid, as aforesaid, to employes of each class for which insurance is sought.

(c) Upon submission of the application, the board shall make such investigations as it may deem necessary and, within thirty (30) days after the application, shall issue a certificate showing the classification or group in which such applicant is entitled to be placed and the amount of premium payable by such applicant for the year for which insurance is sought. No insurance shall be issued for a longer period than a single year.

Section 1517. All premiums shall be payable to the State Treasurer who shall issue an appropriate receipt therefor, and such receipt, together with the certificate of the board specified in section 1516, shall be the evidence that the applicant has become a subscriber to the fund and is insured therein.

Section 1518. Each subscriber to the fund shall, within one (1) month after his subscription has terminated, furnish a written statement to the board setting forth the maximum average and minimum number of employes insured in the fund that such subscriber had employed during the preceding year, and the actual amount of the money payroll of such employes for such year. When the board has subdivided the employments in any group into classes, as provided in section 1510, the subscriber shall state the number and actual amounts of the money payroll of such employes of each of such classes. Within thirty (30) days, the board shall state the account of each subscriber for that year, based on the facts thus proven, and shall render a copy of this statement to the subscriber. If the amount of the premium theretofore paid by a subscriber shall exceed the amount due according to such stated account, then the excess shall be forthwith refunded to the subscriber by payment out of the fund. If the amount shown by the statement exceeds the amount of the premium theretofore paid by the subscriber, the excess shall be forthwith due and payable by the subscriber into the fund, and until paid shall be a lien, as State taxes are a lien, upon the real and personal property of the subscriber and, if unpaid, shall be collectible as State taxes are now collectible, with interest at the rate of twelve per centum per annum commencing thirty (30) days after service of the copy of the account, which service shall be by registered mail.

Section 1519. Any person who shall knowingly furnish or make any false certificate, application or statement required in this article shall be guilty of a misdemeanor. Any subscriber who shall, after notice from the board, neglect or refuse to file the statement described in section 1518 within ten (10) days after such notice shall be liable to pay to the fund a penalty of ten dollars ($10) for each day that such neglect or refusal shall continue, to be recovered at the suit of the fund.

Section 1520. (a) Any subscriber to the fund who shall, within seven (7) days after knowledge or notice of an accident to an employe in the course of his employment as required by section 311, have filed with the board a true statement of such knowledge or a true copy of the notice shall be discharged from all liability for the payment of compensation for the personal injury or death of such employe by such accident, and all such compensation due therefor under Article III shall be paid out of the fund. The report of the accident required by the act of July 19, 1913 (P.L.843, No.408) , referred to as the Employee Injury Reporting Law, shall be sufficient compliance with this section if that report is made within seven (7) days of the injury and shall state that the employer making the report is a subscriber to the fund.

(b) Nothing in this section shall discharge any employer from the duty of supplying the medical and surgical services, medicine, and supplies required by section 306. Any subscriber who has supplied such services, medicines and supplies shall be reimbursed therefor from the fund. Any subscriber to the fund who, within seven (7) days after knowledge of an accident to any employe arising out of and in the course of his employment and such accident comes within the purview of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) or of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.), has filed with the board a true statement of such knowledge shall be discharged from all liability for the payment of benefits for the personal injury or death of such employe by such accident, and all such benefits due therefor under provisions of the Longshore and Harbor Workers' Compensation Act or the Federal Coal Mine Health and Safety Act of 1969 shall be paid out of the fund. Any subscriber to the fund who shall, within seven (7) days after knowledge of an accident to an employe arising out of and in the course of his employment, have filed with the board a true statement of such knowledge shall be discharged from all liability for all sums such subscriber shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, and all such sums shall be paid out of the fund.

Section 1521. In every case where a claim is made against the fund, the fund shall be entitled to every defense against such claim that would have been open to the employer and shall be subrogated to every right of the employer arising out of such accident against the employe, the dependents and against third persons. The fund may, in the name of the State Workers' Insurance Fund, sue or be sued to enforce any right given against or to any subscriber or other person under this act or the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) or the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) and employers who want insurance against liability for all sums or under circumstances where an employer becomes legally obligated to pay any employe for damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment; proceedings provided in Article IV may be instituted by or against the fund to enforce, before the Workers' Compensation Appeal Board or any workers' compensation judge thereof, the rights given to or against the fund by this act.

Section 1522. Upon receipt of a notice or statement of knowledge of an accident to an employe of a subscriber occurring in the course of his employment, the board shall, if it deems necessary, cause an investigation to be made by an inspector appointed by it or an inspector of the department.

Section 1523. (a) The board is hereby empowered to execute the agreements provided in this act and to promulgate such regulations as they may deem necessary for this purpose. When any such agreement has been approved by the department, the same shall be properly filed and docketed, and the board shall from time to time until such agreement shall be modified or terminated as provided in this act pay the sums therein agreed upon. All such payments shall be made by check of the State

Treasurer issued upon requisition of the secretary. Every such check shall be mailed to the person or persons entitled thereto under such agreement. When any award is made by the Workers' Compensation Appeal Board or by a workers' compensation judge in any proceedings brought by an employe of a subscriber or the dependents of such employe against the fund, this award shall be filed and docketed, and the board shall from time to time until such award is modified, reversed or terminated pay the sums therein lawfully awarded against the fund. All such payments shall be made by check of the State Treasurer issued upon requisition of the secretary, and every such check shall be mailed to the person or persons entitled thereto under the award.

(b) When any proceedings brought by an employe of a subscriber or the dependents of such employe against the fund for benefits payable under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) or the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.), such proceedings shall be filed and docketed; the board shall from time to time until such benefits are modified, reversed, or terminated pay such benefit sums for which the fund is legally responsible. All such payments shall be made by check of the State Treasurer issued upon requisition of the secretary, and every such check shall be mailed to the person or persons entitled thereto.

(c) When any proceedings brought by an employe of a subscriber or the dependents of such employe against the fund for sums such subscriber shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, such proceedings shall be filed and docketed, and the board shall from time to time until such damage sums are modified, reversed or terminated pay such damage sums for which the fund is legally responsible. All such payments shall be made by check the State Treasurer issued upon requisition of the secretary, and every such check shall be mailed to the person or persons entitled thereto.

Section 1524. All salaries, wages, fees or other compensation of physicians, attorneys, investigators, assistants and other employes necessary for the proper administration of the fund and the proper conduct of the work of the board shall be paid out of the fund. All payments to employes, dependents of deceased employes, physicians, attorneys, investigators, assistants and others entitled to be paid out of the fund shall be made by the State Treasurer upon requisition of the secretary.

Section 1525. Information acquired by the fund, its officers and employes from employers, employes or insurance corporations or associations shall not be open to public inspection.

Section 1526. (a) The fund is authorized to provide to sole proprietors or partners engaged in logging or logging-related businesses coverage equivalent to that which the fund provides to employers which insure their liability under Article III. This coverage shall be provided in accordance with this article. In all cases where an injury which is compensable under the terms of this coverage is received by a sole proprietor or a partner engaged solely in logging or logging-related businesses, there is a rebuttable presumption that his wages shall be equal to fifty per centum of the Statewide average weekly wage for the purpose of computing his compensation under sections 306 and 307.

(b) For purposes of this section, "logging" or "logging-related business" means the cutting of trees, any skidding activity and the transportation of logs or raw lumber, including the construction, operation, maintenance and extension of logging roads or trails.

Section 30. For the purpose of initial filing only, notwithstanding any other provisions of this act, the following shall apply:

(1) No later than 45 days after the effective date of this section, the Insurance Commissioner shall appoint an independent actuary to provide an estimate of the total change in workers' compensation loss-cost resulting from implementation of this act and resulting from implementation of the act of July 2, 1993 (P.L.190, No.44), entitled "An act amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and amended, 'An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties,' adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of the department, referees and the board; adding provisions relating to insurance, self-insurance pooling, self-insurance guaranty fund, health and safety and the prevention of insurance fraud; further providing for certain penalties; making repeals; and making editorial changes," and an estimate of any other change attributable to data not considered in any previous loss-cost filing. The fee for this independent actuary shall be borne by the Workmen's Compensation Administration Fund. In developing the estimate, the independent actuary shall consider all of the following:

(i) The most recent policy year unit statistical and financial loss-cost data available after policy year 1993. Notwithstanding any other provision of this section, for purposes of this subparagraph, the Coal Mine Compensation Rating Bureau shall submit the most recent accident or calendar year statistical and financial loss-cost data available after accident or calendar year 1993.

(ii) The standards set forth in section 704 of the act, as applicable.

(iii) Any other relevant factors within and outside this Commonwealth in accordance with sound actuarial principles.

(2) No later than 15 days after the effective date of this section, each insurer, including the State Workmen's Insurance Fund, shall file loss data as required under paragraph (1) with its rating organization. For failure to comply, the commissioner shall impose an administrative penalty of $1,000 for every day that this data is not provided in accordance with this paragraph.

(3) No later than 45 days after the effective date of this section, each rating organization shall provide to the independent actuary, the commissioner and the small business advocate aggregate loss-cost data equal to or greater than 75% of the total data expected from all insurers, including

the State Workmen's Insurance Fund. For failure to comply by any rating organization, the commissioner shall impose an administrative penalty of $1,000 for every day that the data is not provided in accordance with this paragraph unless caused by the late reporting of any insurer. The commissioner shall impose an administrative fine of $1,000 upon any insurer whose late reporting of data causes such a delay, for every day beyond the required time frame of this paragraph until the aggregate loss-cost data is reported. This fine is in addition to any fine imposed for the late reporting of data to the rating organization under paragraph (2).

(4) No later than 95 days after the effective date of this section, the independent actuary shall complete and send the estimate of total loss-cost change to the commissioner, each rating organization, the Small Business Advocate, the President pro tempore of the Senate and the Speaker of the House of Representatives. The commissioner shall make the estimate available for public inspection.

(5) No later than 25 days after the independent actuary completes and sends the report referred to in paragraph (4), each rating organization shall, pursuant to section 709(c) of the act, file new loss-cost changes which reflect the estimate of the sum total of loss-cost data compiled under this section. For failure to comply, the commissioner shall impose an administrative penalty of $1,000 for every day that the loss-cost filing is not provided in accordance with this paragraph.

(6) The commissioner shall give full consideration to the independent actuary's estimate from paragraph (4) in approving, disapproving or modifying the filing made under paragraph (5), pursuant to Article VII of the act. No later than 30 days after the approval of the filing, each new and renewal policy for workers' compensation shall reflect the new loss-cost filing of its rating organization.

(7) The commissioner shall appoint and retain an independent actuary in accordance with this section until the independent actuary has prepared and sent the estimate as required by paragraph (4). The commissioner may appoint and retain an independent actuary after the estimate required by paragraph (4) has been completed and sent.

(8) For the purpose of this section, an "independent actuary" means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who is not an employee of the Commonwealth.

Section 31. In a provision of the act not affected by this act, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 31.1. Any reference in a statute to the Workmen's Compensation Appeal Board shall be deemed a reference to the Workers' Compensation Appeal Board.

Section 31.2. Regulations of the Department of Health promulgated under section 306(f.2)(7) of the act shall be deemed regulations of the Department of Labor and Industry. The Legislative Reference Bureau shall recodify the regulations.

Section 32. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect

other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 32.1. (a) The amendment or addition of sections 204(a), 306(a.2) and (b)(2) and 309 of the act shall apply only to claims for injuries which are suffered on or after the effective date of this section.

(b) The addition of section 1402(a)(1) of the act shall not apply to the individual acting as director of adjudication on the effective date of this section.

Section 32.2. The act of June 2, 1915 (P.L.762, No.340), referred to as the State Workmen's Insurance Fund Law, is repealed.

Section 33. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The addition of section 306(a.2) of the act.

(ii) The addition of Article XV of the act.

(iii) Section 32.1 of this act.

(iv) Section 32.2 of this act.

(v) This section.

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

APPROVED--The 24th day of June, A. D. 1996.

THOMAS J. RIDGE