

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2773 Session of
1996

INTRODUCED BY WALKO, LEVDANSKY, SHANER, DERMODY, DeWEESE, TRICH,
DALEY, TIGUE, VAN HORNE, LUCYK, ITKIN, ROBINSON, HALUSKA,
MANDERINO, RAMOS, PETRARCA, MELIO AND JOSEPHS, JUNE 21, 1996

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 21, 1996

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," providing that the State Workmen's
8 Insurance Fund be the sole workers' compensation insurer
9 within this Commonwealth.

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

12 Section 1. The definition of "insurer" in section 109 of the
13 act of June 2, 1915 (P.L.736, No.338), known as the Workers'
14 Compensation Act, reenacted and amended June 21, 1939 (P.L.520,
15 No.281) and added July 2, 1993 (P.L.190, No.44), is amended to
16 read:

17 Section 109. In addition to the definitions set forth in
18 this article, the following words and phrases when used in this
19 act shall have the meanings given to them in this section unless
20 the context clearly indicates otherwise:

21 * * *

1 "Insurer" means an entity subject to the act of May 17, 1921
2 (P.L.682, No.284), known as "The Insurance Company Law of 1921,"
3 including the State Workmen's Insurance Fund, with which an
4 employer has insured liability under this act pursuant to
5 section 305 or a self-insured employer or fund exempted by the
6 Department of Labor and Industry pursuant to section 305. For
7 insurance policies covering periods commencing on and after
8 January, 1, 1997, for injuries occurring on and after January 1,
9 1997, the term shall mean the State Workmen's Insurance Fund, or
10 a self-insurer under section 305.

11 * * *

12 Section 2. Section 305 of the act, amended July 2, 1993
13 (P.L.190, No.44), is amended to read:

14 Section 305. (a) (1) Every employer liable under this act
15 to pay compensation shall insure the payment of compensation in
16 the State Workmen's Insurance Fund, [or in any insurance
17 company, or mutual association or company, authorized to insure
18 such liability in this Commonwealth,] unless such employer shall
19 be exempted by the department from such insurance. Such insurer
20 shall assume the employer's liability hereunder and shall be
21 entitled to all of the employer's immunities and protection
22 hereunder except, that whenever any employer shall have
23 purchased insurance to provide benefits under this act to
24 persons engaged in domestic service, neither the employer nor
25 the insurer may invoke the provisions of section 321 as a
26 defense. An employer desiring to be exempt from insuring the
27 whole or any part of his liability for compensation shall make
28 application to the department, showing his financial ability to
29 pay such compensation, whereupon the department, if satisfied of
30 the applicant's financial ability, shall, upon the payment of a

1 fee of five hundred dollars (\$500), issue to the applicant a
2 permit authorizing such exemption.

3 (2) In securing the payment of benefits, the department
4 shall require an employer wishing to self-insure its liability
5 to establish sufficient security by posting a bond or other
6 security, including letters of credit drawn on commercial banks
7 with a Thomson Bank Watch rating of B or better or a CD rating
8 of BBB or better by Standard and Poor's or Baa 2 or better by
9 Moody's. This paragraph shall not apply to municipalities.

10 (3) The department shall establish a period of twelve (12)
11 calendar months, to begin and end at such times as the
12 department shall prescribe, which shall be known as the annual
13 exemption period. Unless previously revoked, all permits issued
14 under this section shall expire and terminate on the last day of
15 the annual exemption period for which they were issued. Permits
16 issued under this act shall be renewed upon the filing of an
17 application, and the payment of a renewal fee of one hundred
18 dollars (\$100.00). The department may, from time to time,
19 require further statements of the financial ability of such
20 employer, and, if at any time such employer appear no longer
21 able to pay compensation, shall revoke its permit granting
22 exemption, in which case the employer shall immediately
23 subscribe to the State Workmen's Insurance Fund[, or insure his
24 liability in any insurance company or mutual association or
25 company], as aforesaid.

26 (b) Any employer who fails to comply with the provisions of
27 this section for every such failure, shall, upon conviction in
28 the court of common pleas, be guilty of a misdemeanor of the
29 third degree. If the failure to comply with this section is
30 found by the court to be intentional, the employer shall be

1 guilty of a felony of the third degree. Every day's violation
2 shall constitute a separate offense. A judge of the court of
3 common pleas may, in addition to imposing fines and
4 imprisonment, include restitution in his order: Provided, That
5 there is an injured employee who has obtained an award of
6 compensation. The amount of restitution shall be limited to that
7 specified in the award of compensation. It shall be the duty of
8 the department to enforce the provisions of this section; and it
9 shall investigate all violations that are brought to its notice
10 and shall institute prosecutions for violations thereof. All
11 fines recovered under the provisions of this section shall be
12 paid to the department, and by it paid into the State Treasury
13 if the prosecutor is the Attorney General and to the operating
14 fund of the county in which the district attorney is elected if
15 the prosecutor is a district attorney.

16 (c) In any proceeding against an employer under this
17 section, a certificate of non-insurance issued by the [official
18 Workmen's Compensation Rating and Inspection Bureau] State
19 Workmen's Insurance Fund and a certificate of the department
20 showing that the defendant has not been exempted from obtaining
21 insurance under this section, shall be prima facie evidence of
22 the facts therein stated.

23 (d) When any employer fails to secure the payment of
24 compensation under this act as provided in sections 305 and
25 305.2, the injured employee or his dependents may proceed either
26 under this act or in a suit for damages at law as provided by
27 article II.

28 (e) Every employer shall post a notice at its primary place
29 of business and at its sites of employment in a prominent and
30 easily accessible place, including, without limitation, areas

1 used for the treatment of injured employees or for the
2 administration of first aid, containing:

3 (1) Either the name of the [employer's carrier] State
4 Workmen's Insurance Fund and the address and telephone number
5 [of such carrier or insurer] or, if the employer is self-
6 insured, the name, address and telephone number of the person to
7 whom claims or requests for information are to be addressed.

8 (2) The following statement: "Remember, it is important to
9 tell your employer about your injury."

10 The notice shall be posted in prominent and easily accessible
11 places at the site of employment, including such places as are
12 used for treatment and first aid of injured employees. Such a
13 listing shall contain the information as specified in this
14 section, typed or printed on eight and one-half inch by eleven
15 inch or eight and one-half inch by thirteen inch paper in
16 standard size type or larger.

17 Section 3. The definitions of "insurer" and "carrier" in
18 section 401 of the act, amended February 8, 1972 (P.L.25,
19 No.12), are amended to read:

20 Section 401. * * *

21 The terms "insurer" and "carrier," when used in this article,
22 shall mean the State Workmen's Insurance Fund or other insurance
23 carrier which has insured the employer's liability under this
24 act, or the employer in cases of self-insurance. For injuries
25 occurring on and after January 1, 1997, the term shall mean the
26 State Workmen's Insurance Fund, or a self-insurer.

27 * * *

28 Section 4. Article VII of the act is repealed.

29 Section 5. The act is amended by adding an article to read:

30 ARTICLE VII-A.

