

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3

Session of
1995

INTRODUCED BY GLADECK, RYAN, PERZEL, BARLEY, FARGO, PICCOLA,
DEMPSEY, FARMER, MASLAND, MILLER, CHADWICK, PITTS, SCHULER,
L. I. COHEN, SCHRODER, HESS, PHILLIPS, EGOLF, RUBLEY, TRUE,
CLYMER, PETTIT, LEH, REBER, ADOLPH, BROWN, PLATTS, KING,
CORNELL, E. Z. TAYLOR, HERMAN, MERRY, WAUGH, ZUG, ROHRER,
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M. N. WRIGHT, MAITLAND, MARSICO, SHEEHAN, FLEAGLE, RAYMOND,
STRITTMATTER, BIRMELIN, FAIRCHILD, MICOZZIE, STERN, HERSHEY,
FEESE, HENNESSEY, SEMMEL, GEIST, SAYLOR, FICHTER,
D. W. SNYDER, DURHAM, ARMSTRONG AND STISH, JANUARY 19, 1995

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JANUARY 30, 1995

AN ACT

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

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

11 Section 1. The act of June 2, 1915 (P.L.736, No.338), known
12 as the Workers' Compensation Act, reenacted and amended June 21,
13 1939 (P.L.520, No.281), is amended by adding sections to read:

14 Section 105.4. The term "hazardous occupational noise," as
15 used in this act, means noise levels exceeding permissible noise
16 exposures as defined in Table G-16 of OSHA Occupational Noise

1 Exposure Standards, 29 C.F.R. Part 1910.95 (relating to
2 occupational noise exposure) (July 1, 1994).

3 Section 105.5. The term "Impairment Guides," as used in this
4 act, means the American Medical Association's Guides to the
5 Evaluation of Permanent Impairment, Fourth Edition (June 1993).

6 Section 105.6. The term "long-term exposure," as used in
7 this act, means exposure to noise exceeding the permissible
8 daily exposure for at least three days each week for forty weeks
9 of one year.

10 Section 2. Section 306(c)(8) of the act, amended March 29,
11 1972 (P.L.159, No.61), is amended to read:

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

14 * * *

15 (c) For all disability resulting from permanent injuries of
16 the following classes, the compensation shall be exclusively as
17 follows:

18 * * *

19 (8) (i) For [the complete loss of hearing, in both ears,
20 sixty-six and two-thirds per centum of wages during two hundred
21 sixty weeks; for complete loss of hearing in one ear, sixty-six
22 and two-thirds per centum of wages during sixty weeks.]
23 permanent loss of hearing which is medically established as an
24 occupational hearing loss caused by long-term exposure to
25 hazardous occupational noise, the percentage of impairment shall
26 be calculated by using the binaural formula provided in the
27 Impairment Guides. The number of weeks for which compensation
28 shall be payable shall be determined by multiplying the
29 percentage of binaural hearing impairment as calculated under
30 the Impairment Guides by two hundred sixty weeks. Compensation

1 payable shall be sixty-six and two-thirds per centum of wages
2 during this number of weeks, subject to the provisions of clause
3 (1) of subsection (a) of this section.

4 (ii) For permanent loss of hearing not caused by long-term
5 exposure to hazardous occupational noise which is medically
6 established to be due to other occupational causes such as
7 acoustic trauma or head injury, the percentage of hearing
8 impairment shall be calculated by using the formulas as provided
9 in the Impairment Guides. The number of weeks for which
10 compensation shall be payable for such loss of hearing in one
11 ear shall be determined by multiplying the percentage of
12 impairment by sixty weeks. The number of weeks for which
13 compensation shall be payable for such loss of hearing in both
14 ears shall be determined by multiplying the percentage of
15 impairment by two hundred sixty weeks. Compensation payable
16 shall be sixty-six and two-thirds per centum of wages during
17 this number of weeks, subject to the provisions of clause (1) of
18 subsection (a) of this section.

19 (iii) Notwithstanding the provision of subclauses (i) and
20 (ii) of this clause to allow for the average amount of hearing <—
21 loss from non-occupational causes found in the population at any
22 given age, there shall be deducted from the percentage of
23 impairment calculated under the Impairment Guides one half per
24 centum for each year of the employee's age over forty as of the
25 date of injury. IF THERE IS A LEVEL OF BINAURAL HEARING <—
26 IMPAIRMENT AS CALCULATED UNDER THE IMPAIRMENT GUIDES WHICH IS
27 EQUAL TO OR LESS THAN TEN PER CENTUM, NO BENEFITS SHALL BE
28 PAYABLE. NOTWITHSTANDING THE PROVISIONS OF SUBCLAUSES (I) AND
29 (II) OF THIS CLAUSE, IF THERE IS A LEVEL OF BINAURAL HEARING
30 IMPAIRMENT AS CALCULATED UNDER THE IMPAIRMENT GUIDES WHICH IS

1 EQUAL TO OR MORE THAN SEVENTY-FIVE PER CENTUM, THERE SHALL BE A
2 PRESUMPTION THAT THE HEARING IMPAIRMENT IS TOTAL AND COMPLETE;
3 AND BENEFITS SHALL BE PAYABLE FOR TWO HUNDRED SIXTY WEEKS.

4 (iv) The percentage of hearing impairment for which
5 compensation may be payable shall be established solely by
6 audiogram. The audiometric testing must conform to OSHA
7 Occupational Noise Exposure Standards, 29 C.F.R. Part 1910.95
8 (relating to occupational noise exposure) and Appendices C, D
9 and E to Part 1910.95 (July 1, 1994).

10 (v) If an employe has previously received compensation under
11 subclause (i) or (ii) of this clause, he may receive additional
12 compensation under subclause (i) or (ii) of this clause for any
13 work-related increase in hearing impairment which occurred after
14 the date of any previous award of or agreement for compensation
15 and only if the increase in hearing impairment is ten percentage
16 points greater than the previous compensated impairment. Any
17 employe who has claimed a complete loss of hearing prior to the
18 effective date of this clause and has received an award or
19 payment for hearing loss shall be barred from claiming
20 compensation for hearing loss or receiving payment therefor
21 pursuant to subclause (i) or (ii) of this clause.

22 (vi) An employer shall be liable only for the hearing
23 impairment caused by such employer. If previous occupational
24 hearing impairment or hearing impairment from non-occupational
25 causes is established at or prior to the time of employment, the
26 employer shall not be liable for the hearing impairment so
27 established whether or not compensation has previously been paid
28 or awarded.

29 (vii) An employer may require an employe to undergo
30 audiometric testing at the expense of the employer from time to

1 time. If an employer chooses to require an employee to undergo
2 audiometric testing, the employer shall be required to notify
3 the employee in writing that, unless the employee submits to
4 audiometric testing at the expense of and at the request of the
5 employer, the employee shall lose the right to pursue a claim for
6 occupational hearing loss against that employer. Any employee who
7 undergoes audiometric testing at the direction of an employer
8 may request a copy and a brief explanation of the results which
9 shall be provided to the employee within thirty days of the date
10 they are available.

11 (viii) Whenever an occupational hearing loss caused by long-
12 term exposure to hazardous occupational noise is the basis for
13 compensation or additional compensation, the claim shall be
14 barred unless a petition is filed within three years after the
15 date of last exposure to hazardous occupational noise in the
16 employ of the employer against whom benefits are sought.

17 (ix) The date of injury for occupational hearing loss under
18 subclause (i) of this clause shall be the earlier of the date on
19 which the claim is filed or the last date of long-term exposure
20 to hazardous occupational noise while in the employ of the
21 employer against whom the claim is filed.

22 (X) WHETHER THE EMPLOYEE HAS BEEN EXPOSED TO HAZARDOUS <—
23 OCCUPATIONAL NOISE OR HAS LONG-TERM EXPOSURE TO SUCH NOISE SHALL
24 BE AFFIRMATIVE DEFENSES TO A CLAIM FOR OCCUPATIONAL HEARING LOSS
25 AND NOT A PART OF THE CLAIMANT'S BURDEN OF PROOF IN A CLAIM.

26 ~~(x)~~ (XI) The healing period provided for under clause (25) <—
27 of this subsection shall not be applicable to any hearing loss
28 under subclause (i) or (ii) of this clause.

29 Section 3. This act shall apply as follows:

30 (1) The amendment or addition of sections 105.4, 105.5,

1 105.6 and 306(c)(8) of the act shall apply to claims filed on
2 or after the effective date of this act.

3 (2) The amendment of section 306(c)(8) of the act shall
4 apply retroactively to all claims existing on the effective
5 date of this act for which compensation has not been paid or
6 awarded.

7 Section 4. This act shall take effect immediately.