

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2771 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 injuries occurring on and after January 1, 1997, the term shall  
8 mean the State Workmen's Insurance Fund, or a self-insurer under  
9 section 305.

10 \* \* \*

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

13 Section 305. (a) (1) Every employer liable under this act  
14 to pay compensation shall insure the payment of compensation in  
15 the State Workmen's Insurance Fund, [or in any insurance  
16 company, or mutual association or company, authorized to insure  
17 such liability in this Commonwealth,] unless such employer shall  
18 be exempted by the department from such insurance. Such insurer  
19 shall assume the employer's liability hereunder and shall be  
20 entitled to all of the employer's immunities and protection  
21 hereunder except, that whenever any employer shall have  
22 purchased insurance to provide benefits under this act to  
23 persons engaged in domestic service, neither the employer nor  
24 the insurer may invoke the provisions of section 321 as a  
25 defense. An employer desiring to be exempt from insuring the  
26 whole or any part of his liability for compensation shall make  
27 application to the department, showing his financial ability to  
28 pay such compensation, whereupon the department, if satisfied of  
29 the applicant's financial ability, shall, upon the payment of a  
30 fee of five hundred dollars (\$500), issue to the applicant a

1 permit authorizing such exemption.

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

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

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

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

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

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

27 (e) Every employer shall post a notice at its primary place  
28 of business and at its sites of employment in a prominent and  
29 easily accessible place, including, without limitation, areas  
30 used for the treatment of injured employees or for the

1 administration of first aid, containing:

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

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

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

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

19 Section 401. \* \* \*

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

26 \* \* \*

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

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

29 ARTICLE VII-A.

30 PREMIUM RATES

1     Section 701-A. All of the powers, duties and functions  
2 relating to workers' compensation and occupational disease  
3 currently held by insurance rating organizations are hereby  
4 transferred to the State Workmen's Insurance Fund.

5     Section 702-A. The State Workmen's Insurance Fund shall be  
6 responsible for maintaining the classification system and other  
7 functions of rating organizations under the former provisions of  
8 Article VII. Premium rates shall be set by the fund.

9     Section 6. This act shall take effect in 60 days.