

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2561 Session of
1998

INTRODUCED BY VEON, GEORGE, BEBKO-JONES, STEELMAN, LEVDANSKY,
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APRIL 29, 1998

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 29, 1998

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 safety
8 committees; imposing duties on the Department of Labor and
9 Industry; establishing a grant program for safety and health
10 education; identifying extrahazardous employers; and imposing
11 penalties.

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

14 Section 1. Section 1002 of the act of June 2, 1915 (P.L.736,
15 No.338), known as the Workers' Compensation Act, amended June
16 24, 1996 (P.L.350, No.57), is amended to read:

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

1 (b) Upon the renewal of the employer's workers' compensation
2 policy [next following receipt of department certification], the
3 employer shall receive a [five] seven per centum discount in the
4 rate or rates applicable to the policy [for a period of one
5 year. The five per centum discount shall continue for a total of
6 five years if the employer, by affidavit, provides annual
7 verification to the department and to the employer's insurer
8 that the safety committee continues to be operative and
9 continues to meet the certification requirements.] after all
10 other rating factors are applied to the policy, provided that
11 the employer maintains a certified safety committee and provides
12 a copy of the current department certification to the insurer.

13 (c) The secretary may certify upon application that health
14 and safety committees established under a collective bargaining
15 agreement meet the minimum purposes and intent of the standards
16 established by the secretary and are thereby exempt from the
17 specific requirements of standards established by the secretary.
18 Certification shall be granted only upon written application
19 signed by the collective bargaining agent and the employer. The
20 standards established by the secretary shall be construed as
21 creating minimum requirements, and no collective bargaining
22 agreements which establish additional duties and
23 responsibilities for the health and safety committee shall be
24 deemed to be in conflict with those standards.

25 Section 2. The act is amended by adding sections to read:

26 Section 1003. (a) (1) The department shall collect and
27 serve as a repository for statistical information on workers'
28 health and safety. The department shall analyze and use the
29 information to identify and assign priorities to safety needs
30 and to better coordinate the safety service provided by public

or private organizations, health and safety through educational programs and other innovative programs developed by the department.

(2) The department shall coordinate or supervise the collection of information relating to job safety by Federal or State entities, including information collected for the supplementary data system and the annual survey for the Bureau of Labor Statistics of the United States Department of Labor.

(b) With the approval of the secretary, the department may enter into contracts with the Federal Government to perform occupational safety projects and may apply for funds from the Federal Government through any Federal program relating to occupational safety.

(c) The secretary shall establish a grant program to provide occupational safety and health education and training services concerning the prevention of occupational diseases and injuries to employes and employers at locations throughout this Commonwealth. The department shall follow standard requirements that may be applicable or may promulgate rules and regulations, establish procedures and criteria necessary and appropriate to carry out this subsection, including, but not limited to, criteria for the evaluation and selection of applications for grants and the auditing of performance thereunder.

(d) The department shall publish or procure and issue or make available educational books, pamphlets, brochures, films, videotapes, and other informational and educational material directed to high-risk industries and employers and shall specifically address means and methods of avoiding common workers' injuries. Specific decisions as to what issues and problems should be addressed by such information shall be made

by the department after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries and similar considerations. Such educational materials shall include specific references to the requirements of Federal and State laws and regulations, to recommendations and practices of business, industry, and trade associations, and, where needed, to recommend work practices based on recommendations made by the department for the prevention of injury.

(e) (1) The department shall cooperate with business and industry trade associations, labor organizations and other entities to develop means and methods of educating employes and employers with regard to workplace safety.

(2) The department shall cooperate with other entities in the development and approval of safety courses, safety plans and safety programs.

(f) The department shall advise insurance carrier loss control service organizations of hazard classifications, specific employers, industries, occupations or geographic regions to which loss control services should be directed or of the identity and types of injuries or occupational diseases and means and methods for prevention of the same to which loss control services should be directed and shall advise insurance carrier loss control service organizations of safety needs and priorities developed by the department.

Section 1004. (a) The department shall establish and maintain a job safety information system. The department shall obtain from any State agency, including specifically the Department of Health and the Insurance Department, data and statistics including specifically those compiled for the purpose of ratemaking. The department shall consult with the Insurance

1 Department in the design of data information and retrieval
2 systems that will accomplish the mutual purposes of the
3 Insurance Department and of the department. The Department of
4 Health, the Insurance Department and all other departments,
5 agencies, bureaus, boards and commissions of the Commonwealth,
6 and rating bureaus approved by the Insurance Commissioner shall
7 cooperate with the department in furtherance of the purposes of
8 this article.

9 (b) Employers shall file with the department a report as
10 required by section 438 of this act.

11 (c) The job safety information system shall include a
12 comprehensive data base that incorporates all pertinent
13 information relating to each reported injury, including, but not
14 limited to:

15 (1) Age, sex, wage level, occupation, and insurance company
16 payroll classification code of the injured employee.

17 (2) The nature, source and severity of the injury.

18 (3) The reported cause of the injury.

19 (4) The part of the body affected.

20 (5) Any equipment involved in the injury.

21 (6) The prior loss history of the employer.

22 (7) The standard industrial classification code of the
23 employer.

24 (8) Any other information deemed useful for the purpose of
25 statistical analysis.

26 (d) The identity of an employee shall be confidential and may
27 not be disclosed as part of the job safety information system.

28 Section 1005. (a) The department shall develop a program
29 for identifying extrahazardous employers and shall notify each
30 identified extrahazardous employer and its insurance carrier

1 that the employer has been identified as an extrahazardous
2 employer.

3 (b) An employer that receives notification under this
4 section shall obtain a safety consultation within thirty (30)
5 days from the department or a safety consultant approved by the
6 department. A written report by the safety consultant shall be
7 filed with the department and the employer specifying any
8 hazardous condition or practice identified by the safety
9 consultant.

10 (c) A safety consultant referred to in this section shall be
11 trained in the field of occupational safety and occupational
12 health, where appropriate, depending upon the nature of the
13 employer's establishment and the types of safety and health
14 hazards identified therein. The consultant shall have a least
15 three (3) years' experience in developing workplace accident and
16 illness prevention plans and be:

17 (1) an industrial hygienist;

18 (2) a safety professional; or

19 (3) an individual who has completed a certified training
20 program in accident or illness prevention services approved by
21 the department.

22 (d) An employer that receives notification under this
23 section must obtain a safety and health consultation from either
24 the department or a safety and health consultant approved by the
25 department within thirty (30) days of notification. Within sixty
26 (60) days of an employer's receipt of notification pursuant to
27 this section, a written report prepared by either the department
28 or a safety and health consultant shall be filed with the
29 department and with the employer. The report shall set forth any
30 hazardous conditions or practices identified by the safety and

1 health consultation. Said report shall also formulate a specific
2 accident and illness prevention plan addressing the hazardous
3 conditions or practices identified by said report.

4 (e) An employer shall comply with any accident and illness
5 prevention plan submitted to it under subsection (d) of this
6 section.

7 (f) Six (6) months after the filing of an accident and
8 illness prevention plan prescribed by subsection (d) of this
9 section, the department shall inspect the employer's premises to
10 evaluate compliance with the plan. The department may require
11 the participation of the safety and health consultant who
12 performed the initial consultation and formulated the plan. If
13 the department determines that the employer has complied with
14 the terms of the plan or has implemented other acceptable
15 corrective measures, the department shall certify that
16 determination.

17 (g) Failure to obtain or implement an accident and illness
18 prevention plan as required by this section shall constitute a
19 continuing civil violation subject to a maximum fine of two
20 thousand dollars (\$2,000) per day for each day. Each day of
21 noncompliance with this section shall be a separate violation.
22 All fines recovered under this section shall be paid to the
23 department and deposited by the department into a restricted
24 account to be established in the Workmen's Compensation
25 Administration Fund created by section 446 of this act. The
26 restricted account shall be known as the Health and Safety
27 Account.

28 (h) If at the time of the follow-up inspection by the
29 consultant required under this section, the employer continues
30 to be an extrahazardous employer, the department shall continue

1 to monitor the safety conditions at the worksite, including
2 conducting safety and health inspections where necessary and may
3 formulate additional safety plans reasonably calculated to abate
4 hazards. The employer shall comply with such plans and is
5 subject to additional penalties for failure to implement the
6 plan or plans.

7 (i) The department may investigate accidents occurring at
8 the worksites of an employer for whom a plan has been formulated
9 under this section, and the department may otherwise monitor the
10 implementation of the accident and illness prevention plan as it
11 finds necessary.

12 (j) The department may, at any time during its monitoring of
13 an employer's compliance with an accident and illness prevention
14 plan or additional safety plan formulated by the department
15 under this section, seek an injunction in a court of competent
16 jurisdiction if the department determines:

17 (1) That there exists imminent danger resulting in serious
18 injury or death to any employee due to a hazardous workplace
19 condition or practice.

20 (2) That the employer is not complying with the accident and
21 illness prevention plan or additional safety plan formulated by
22 the department.

23 (k) The department's identification of an employer as an
24 extrahazardous employer under this section shall be inadmissible
25 as evidence in any judicial proceeding.

26 (l) As used in this section, "extrahazardous employer" means
27 an employer whose injury frequency is within the worst five per
28 centum of those employers as compared to other industry as
29 determined by the most discreet classification by the standard
30 industrial code for that industry for which the employer is

1 engaged in substantially similar employment.

2 Section 1006. (a) Notwithstanding any other provision of
3 law, an insurance company desiring to write workers'
4 compensation insurance in this Commonwealth shall maintain or
5 provide accident prevention facilities as a prerequisite for a
6 license to write such insurance. Proof of compliance with this
7 section shall be provided to the Insurance Commissioner. Such
8 facilities shall be adequate to furnish accident prevention
9 required by the nature of its business or its policyholders'
10 operations and shall include surveys, recommendations, training
11 programs, consultations, analyses of accident causes, industrial
12 hygiene and industrial health services to implement the program
13 of accident prevention services. The insurance company, pursuant
14 to its responsibilities under this section, shall employ or
15 otherwise make available qualified accident and illness
16 prevention personnel. Said personnel shall meet the
17 qualifications set forth in regulations issued by the
18 department.

19 (b) A self-insured employer shall maintain an accident and
20 illness prevention program as a prerequisite for retention of
21 its self-insured status. Such program shall be adequate to
22 furnish accident prevention required by the nature of its
23 business and shall include surveys, recommendations, training
24 programs, consultations, analyses of accident causes, industrial
25 hygiene and industrial health services. The self-insured
26 employer, pursuant to its responsibilities under this section,
27 shall employ or otherwise make available qualified accident and
28 illness prevention personnel. These personnel shall meet the
29 qualifications set forth in regulations issued by the
30 department.

1 (c) The department may conduct inspections to determine the
2 adequacy of the injury prevention services required by this
3 section at least once every two (2) years for each insurer.

4 (d) Notice that services required by this section are
5 available to the employer from an insurance company must appear
6 in no less than ten-point bold type on the front of each
7 workers' compensation insurance policy delivered or issued for
8 delivery in this Commonwealth.

9 (e) At least once each year, each insurance company must
10 submit to the department detailed information on the type of
11 accident prevention services offered or provided to the
12 insurance company's policyholders. The information must include:

13 (1) The amount of money spent by the insurance company on
14 accident prevention services.

15 (2) The number and qualifications of field safety
16 representatives employed by the insurance company.

17 (3) The number of site inspections performed.

18 (4) Any accident prevention services for which the insurance
19 company contracts.

20 (5) A breakdown of the premium size of the risks to which
21 the insurance company provided services.

22 (6) Evidence of the effectiveness of and accomplishments in
23 accident prevention.

24 (7) Any additional information required by the department.

25 (f) Failure to maintain or provide the injury prevention
26 services required by this section shall constitute a continuing
27 civil violation subject to a maximum fine of two thousand
28 dollars (\$2,000) per day for each day the accident prevention
29 services are not maintained or provided. Each day of
30 noncompliance with this section shall be a separate violation.

1 All fines recovered under this section shall be paid to the
2 department and deposited by the department into the health and
3 safety account established in section 1005(g) of this act.

4 (g) The department shall decide all resolutions of disputes
5 between insurers and insureds relating to qualification of a
6 loss control program that complies with this act.

7 Section 1007. In addition to any other assessment authorized
8 by section 446 of this act, the department shall include in the
9 section 446 assessment an amount necessary to administer and
10 enforce the provisions of this article including the safety and
11 health grant program.

12 Section 1008. The department may promulgate rules and
13 regulations for the administration and enforcement of this
14 article.

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