

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1244 Session of
1999INTRODUCED BY ARMSTRONG, KUKOVICH, MELLOW, BELAN AND WAGNER,
DECEMBER 9, 1999

AS AMENDED ON THIRD CONSIDERATION, MAY 8, 2000

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 for payments of benefits to~~ <—
8 ~~certain claimants who are not covered by the Self Insurance~~
9 ~~Guaranty Fund; establishing rights and obligations of the~~
10 ~~Department of Labor and Industry relating to such payments;~~
11 ~~providing for restriction on the amount of such benefits that~~ <—
12 ~~may be paid; and making an appropriation.~~ FURTHER PROVIDING
13 FOR ASSESSMENTS; PROVIDING FOR PAYMENTS OF CLAIMS FOR
14 BENEFITS TO CERTAIN INDIVIDUALS; AND ESTABLISHING RIGHTS AND
15 OBLIGATIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY.

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

18 ~~Section 1. The act of June 2, 1915 (P.L.736, No.338), known~~ <—
19 ~~as the Workers' Compensation Act, reenacted and amended June 21,~~
20 ~~1939 (P.L.520, No.281), is amended by adding a section to read:~~

21 SECTION 1. SECTION 446(B) OF THE ACT OF JUNE 2, 1915 <—
22 (P.L.736, NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT,
23 REENACTED AND AMENDED JUNE 21, 1939 (P.L.520, NO.281) AND ADDED
24 FEBRUARY 2, 1976 (P.L.2, NO.2), IS AMENDED TO READ:

SECTION 446. * * *

(B) THE FUND SHALL BE MAINTAINED BY NO MORE THAN ONE (1) ANNUAL ASSESSMENT PAYABLE IN ANY CALENDAR YEAR ON INSURERS AND SELF-INSURERS UNDER THIS ACT, INCLUDING THE STATE [WORKMEN'S] WORKERS' INSURANCE FUND. [THE INITIAL ASSESSMENT FOR THE PERIOD COMMENCING JULY 1, 1975 THROUGH DECEMBER 31, 1976, SHALL BE SEVEN PER CENTUM OF THE TOTAL COMPENSATION PAID BY EACH INSURER, SELF-INSURER AND THE STATE WORKMEN'S INSURANCE FUND IN THE CALENDAR YEAR 1974.] AFTER THE INITIAL TERM, BUDGETED EXPENSES SHALL BE APPROVED BY THE GENERAL ASSEMBLY ON A FISCAL YEAR BASIS. THEREAFTER, THE DEPARTMENT SHALL MAKE ASSESSMENTS AND COLLECT MONEYS BASED ON THE RATIO THAT SUCH INSURER'S OR SELF-INSURER'S PAYMENTS OF COMPENSATION BEAR TO THE TOTAL COMPENSATION PAID IN THE PRECEDING CALENDAR YEAR IN WHICH THE ASSESSMENT IS MADE. THE TOTAL AMOUNT ASSESSED SHALL BE THE APPROVED BUDGET. IF ON JANUARY 31, THERE EXISTS IN THE ADMINISTRATION FUND ANY MONEY IN EXCESS OF [ONE HUNDRED FIFTY] ONE HUNDRED THIRTY-THREE PER CENTUM OF THE CURRENT BUDGET THE FOLLOWING FISCAL YEAR'S ASSESSMENT SHALL BE REDUCED BY AN AMOUNT EQUAL TO THAT EXCESS AMOUNT.

* * *

SECTION 2. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

Section 451. (a) The term "ACCOUNT," WHEN USED IN THIS ARTICLE, SHALL MEAN THE PREFUND ACCOUNT ESTABLISHED IN SECTION 451.1(A).

THE TERM "defaulted self-insured employer," when used in this article, shall mean an employer exempted by the Department of Labor and Industry from the requirement to insure its liability under section 305 of this act or section 305 of the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania

<—

Occupational Disease Act," for claims on injuries or exposures to the hazard of disease which occurred prior to October 30, 1993, and which has failed to pay that liability due to its financial inability or due to it filing for bankruptcy or being declared bankrupt or insolvent.

The term "fiscal year," when used in this article, shall mean the fiscal year of the Commonwealth of Pennsylvania.

The term ~~"preguaranty fund~~ PREFUND claimant," when used in this article, shall mean an employee or a dependent of an employee of a defaulted self-insured employer who is entitled to benefits under this act or the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania Occupational Disease Act," as the result of an injury or exposure to hazard of disease which ~~occurred prior to October 30, 1993, the effective date for coverage by the Self Insurance Guaranty Fund.~~ OCCURRED PRIOR TO OCTOBER 30, 1993.

The term "security," when used in this article, shall mean surety bonds, cash, negotiable securities of the United States or the Commonwealth or letters of credit posted by a defaulted self-insured employer to guaranty the payment of its workers' compensation liability.

The term "Self-Insurance Guaranty Fund," when used in this article, shall mean the special fund established in section 902.

The term "Workmen's Compensation Administration Fund," when used in this article, shall mean the special fund established in section 446.

~~(b) Moneys from investment income of the Workmen's Compensation Administration Fund shall be used to pay benefits under sections 306(a), (b), (c) and (f.1) and 307 for loss of wages occurring or medical treatment provided after the~~

~~effective date of this section to a preguaranty fund claimant after the security posted by the defaulted self insured employer liable for the benefits has been exhausted, Provided:~~

~~(1) That the benefits are payable under an award from a petition or a notice of compensation payable or agreement for compensation which was filed with the department prior to January 1, 1996;~~

~~(2) That such investment income of the Workmen's Compensation Administration Fund shall not be used to pay interest, penalties or attorney fees related to the payment of such benefits; and~~

~~(3) further Provided, That such investment income of the Workmen's Compensation Administration Fund shall only pay benefits relating to medical treatment under section 306(f.1) which are not covered by other types of insurance or Federal, State or private benefit programs.~~

~~(c) When payments are made from investment income of the Workmen's Compensation Administration Fund under this section, the department assumes the rights and obligations of the defaulted self insured employer under this act and "The Pennsylvania Occupational Disease Act" with regard to the payment of compensation. The department shall have the right to:~~

~~(1) Initiate and prosecute legal action against the defaulted self insured employer to require the payment of compensation under this act or "The Pennsylvania Occupational Disease Act."~~

~~(2) Obtain, in any manner or by the use of any process or procedure, including, but not limited to, the commencement and prosecution of legal action, reimbursement from a defaulted self insured employer and its successors, assigns and estate all~~

~~1 moneys paid from investment income of the Workmen's Compensation
2 Administration Fund to the preguaranty fund claimants,
3 including, but not limited to, reimbursement for all
4 compensation paid as well as reasonable administrative and legal
5 costs associated with such payment.~~

~~6 (d) Total payments made from investment income of the
7 Workmen's Compensation Administration Fund pursuant to this
8 section in any fiscal year shall not exceed the total investment
9 income earned by the Workmen's Compensation Administration Fund
10 in the prior fiscal year. After payments made from investment
11 income of the Workmen's Compensation Administration Fund in any
12 fiscal year equal the total investment income earned by the
13 Workmen's Compensation Administration Fund in the prior fiscal
14 year, benefits payments pursuant to this section shall resume
15 only for loss of wages occurring or medical treatment provided
16 after the beginning of the next fiscal year.~~

~~17 (e) If the department projects that total payments made from
18 investment income of the Workmen's Compensation Administration
19 Fund during a fiscal year pursuant to this section may exceed
20 the total investment income earned by the Workmen's Compensation
21 Administration Fund in the prior fiscal year, the secretary may
22 order the payment of benefits under sections 306(a), (b) and (c)
23 and 307 at a percentage of the full amounts payable under this
24 act. That percentage shall be uniformly applied to all benefits
25 under those sections paid during the fiscal year. The secretary
26 may adjust that percentage from time to time as is necessary
27 based on updated projections on payment of benefits.~~

~~28 (f) Payments from investment income of the Workmen's
29 Compensation Administration Fund for compensation payments under
30 this section shall not cause an increase to the amount assessed~~

~~against insurers and self insurers under section 446(b).~~

~~(g) Moneys from investment income of the Workmen's
Compensation Administration Fund are hereby specifically
appropriated in such amounts as are necessary on a continuing
basis to the department for the purposes of this section. The
secretary shall have the power to dispense and disburse moneys
from investment income of the Workmen's Compensation
Administration Fund for compensation payments under this
section.~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 451.1. (A) THERE IS ESTABLISHED IN THE SELF-
INSURANCE GUARANTY FUND A RESTRICTED ACCOUNT KNOWN AS THE
PREFUND ACCOUNT. THE DEPARTMENT SHALL ANNUALLY TRANSFER UP TO
ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) OF
ACCUMULATED INTEREST IN THE WORKMEN'S COMPENSATION
ADMINISTRATION FUND TO THE ACCOUNT.

(B) ACCUMULATED INTEREST IN THE WORKMEN'S COMPENSATION
ADMINISTRATION FUND IS SPECIFICALLY APPROPRIATED TO THE
DEPARTMENT ON A CONTINUING BASIS IN SUCH AMOUNTS AS ARE
NECESSARY FOR THE PURPOSE OF THIS SECTION. THE SECRETARY SHALL
HAVE THE POWER TO DISPENSE AND DISBURSE ACCUMULATED INTEREST IN
THE WORKMEN'S COMPENSATION ADMINISTRATION FUND UNDER THIS
SECTION.

(C) TRANSFERS TO THE ACCOUNT PURSUANT TO SUBSECTION (A)
SHALL BE USED TO PAY CLAIMS FOR LOSS OF WAGES OCCURRING OR
MEDICAL TREATMENT PROVIDED AFTER THE EFFECTIVE DATE OF THIS
SECTION UNDER SECTIONS 306(A), (B), (C) AND (F.1) AND 307 UNDER
THE ACT OF JUNE 21, 1939 (P.L.566, NO.284), KNOWN AS "THE
PENNSYLVANIA OCCUPATIONAL DISEASE ACT" TO A PREFUND CLAIMANT
UPON EXHAUSTION OF THE SECURITY POSTED BY THE LIABLE DEFAULTED

1 SELF-INSURED EMPLOYER, PROVIDED, THAT:

2 (1) THE BENEFITS ARE PAYABLE UNDER AN AWARD FROM A PETITION,
3 A NOTICE OF COMPENSATION PAYABLE OR AN AGREEMENT FOR
4 COMPENSATION THAT WAS FILED WITH THE DEPARTMENT BEFORE JANUARY
5 1, 1996;

6 (2) PAYMENTS FROM THE ACCOUNT ARE NOT USED TO PAY INTEREST,
7 PENALTIES OR ATTORNEY FEES RELATED TO THE PAYMENT OF BENEFITS;
8 AND

9 (3) PAYMENTS FROM THE ACCOUNT ARE USED TO PAY CLAIMS FOR
10 BENEFITS RELATING TO MEDICAL TREATMENT UNDER SECTION 306(F.1)
11 WHICH ARE NOT COVERED BY OTHER TYPES OF INSURANCE OR FEDERAL,
12 STATE OR PRIVATE BENEFIT PROGRAMS.

13 (D) IF THE DEPARTMENT PROJECTS THAT THE AGGREGATE PAYMENTS
14 TO PREFUND CLAIMANTS PURSUANT TO THIS SECTION DURING ANY ONE
15 FISCAL YEAR MAY EXCEED THE TRANSFER TO THE ACCOUNT FOR THAT
16 YEAR, THE SECRETARY MAY ORDER THE PAYMENT OF BENEFITS UNDER
17 SECTIONS 306(A), (B) AND (C) AND 307 AT A PERCENTAGE OF THE FULL
18 AMOUNTS PAYABLE UNDER THIS ACT. THE PERCENTAGE SHALL BE
19 UNIFORMLY APPLIED TO ALL BENEFITS UNDER THOSE SECTIONS PAID
20 DURING THAT FISCAL YEAR. THE SECRETARY MAY ADJUST THAT
21 PERCENTAGE FROM TIME TO TIME AS IS NECESSARY BASED ON UPDATED
22 PROJECTIONS ON PAYMENT OF BENEFITS.

23 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.