
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 88

Session of
2003

INTRODUCED BY TURZAI, CREIGHTON, DALLY, FEESE, HERSHEY, LEWIS,
MAHER, METCALFE, SATHER, SAYLOR, SCAVELLO, SCHRODER, SEMMEL,
R. STEVENSON, T. STEVENSON, E. Z. TAYLOR, TRUE, WATSON, WILT,
COLEMAN, HARPER, ARMSTRONG, CAPPELLI, HICKERNELL AND PICKETT,
FEBRUARY 3, 2003

SENATOR SCARNATI, LABOR AND INDUSTRY, AS AMENDED,
OCTOBER 22, 2003

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 the schedule of
8 compensation.

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

11 Section 1. Section 306(b) of the act of June 2, 1915
12 (P.L.736, No.338), known as the Workers' Compensation Act,
13 reenacted and amended June 21, 1939 (P.L.520, No.281), and
14 amended June 24, 1996 (P.L.350, No.57), is amended to read:

15 Section 306. The following schedule of compensation is
16 hereby established:

17 * * *

18 (b) (1) For disability partial in character caused by the

1 compensable injury or disease (except the particular cases
2 mentioned in clause (c)) sixty-six and two-thirds per centum of
3 the difference between the wages of the injured employe, as
4 defined in section 309, and the earning power of the employe
5 thereafter; but such compensation shall not be more than the
6 maximum compensation payable. This compensation shall be paid
7 during the period of such partial disability except as provided
8 in clause (e) of this section, but for not more than five
9 hundred weeks. Should total disability be followed by partial
10 disability, the period of five hundred weeks shall not be
11 reduced by the number of weeks during which compensation was
12 paid for total disability. The term "earning power," as used in
13 this section, shall in no case be less than the weekly amount
14 which the employe receives after the injury; and in no instance
15 shall an employe receiving compensation under this section
16 receive more in compensation and wages combined than the current
17 wages of a fellow employe in employment similar to that in which
18 the injured employe was engaged at the time of the injury.

19 (2) "Earning power" shall be determined by the work the
20 employe is capable of performing and shall be based upon expert
21 opinion evidence which includes job listings with agencies of
22 the department, private job placement agencies and
23 advertisements in the usual employment area. Disability partial
24 in character shall apply if the employe is able to perform his
25 previous work or can, considering the employe's residual
26 productive skill, education, age and work experience, engage in
27 any other kind of substantial gainful employment which exists in
28 the usual employment area in which the employe lives within this
29 Commonwealth. If the employe does not live in this Commonwealth,
30 then the usual employment area where the injury occurred shall

1 apply. If the employer has a specific job vacancy the employee is
2 capable of performing, the employer shall offer such job to the
3 employee. In order to accurately assess the earning power of the
4 employee, the insurer may require the employee to submit to an
5 interview by [an] a vocational expert [approved by the
6 department and] who is selected by the insurer[.] and who meets <—
7 the minimum qualifications established by the department through
8 regulation.

9 ~~(2.1) Notwithstanding any other provision of law, it is~~ <—
10 ~~unlawful for an insurer to refer an employee for an earning power~~
11 ~~assessment pursuant to this paragraph if the insurer has a~~
12 ~~financial interest with the person or in the entity that~~
13 ~~receives the referral. It is unlawful for an insurer to enter~~
14 ~~into an arrangement or scheme which the insurer knows or should~~
15 ~~know has a principal purpose of assuring referrals by the~~
16 ~~insurer to a particular entity which, if the insurer directly~~
17 ~~made referrals to such entity, would be in violation of this~~
18 ~~paragraph.~~

19 (2.1) IF AN INSURER REFERS AN EMPLOYEE FOR AN EARNING POWER <—
20 ASSESSMENT AND THE INSURER HAS A FINANCIAL INTEREST WITH THE
21 PERSON OR IN THE ENTITY THAT RECEIVES THE REFERRAL, THE INSURER
22 SHALL DISCLOSE THAT FINANCIAL INTEREST TO THE EMPLOYEE PRIOR TO
23 THE REFERRAL.

24 (3) If the insurer receives medical evidence that the
25 claimant is able to return to work in any capacity, then the
26 insurer must provide prompt written notice, on a form prescribed
27 by the department, to the claimant, which states all of the
28 following:

29 (i) The nature of the employee's physical condition or change
30 of condition.

1 (ii) That the employe has an obligation to look for
2 available employment.

3 (iii) That proof of available employment opportunities may
4 jeopardize the employe's right to receipt of ongoing benefits.

5 (iv) That the employe has the right to consult with an
6 attorney in order to obtain evidence to challenge the insurer's
7 contentions.

8 * * *

9 Section 2. All regulations and parts of regulations which
10 are inconsistent with the amendment of section 306(b) of the act
11 are abrogated.

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