

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2192

Session of
2005

INTRODUCED BY GEORGE, BELFANTI, DeWEESE, COHEN, BEBKO-JONES,
BLACKWELL, CALTAGIRONE, CURRY, FABRIZIO, GOODMAN, GRUCELA,
JAMES, PHILLIPS, SIPTROTH, SHANER, SOLOBAY, STABACK, SURRA,
TANGRETTI, THOMAS, TIGUE, YOUNGBLOOD AND YUDICHAK,
NOVEMBER 2, 2005

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 14, 2006

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 the Uninsured Employers
8 Guaranty Fund; AND MAKING AN APPROPRIATION. <—

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 an article to read:

14 ARTICLE XVI

15 UNINSURED EMPLOYERS GUARANTY FUND

16 Section 1601. Definitions.

17 The following words and phrases when used in this article
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

1 "Compensation." Benefits paid pursuant to sections 306 and
2 307.

3 "Employer." Any employer as defined in section 303 103. The <—
4 term does not include a person that qualifies as a self-insured
5 employer under section 305.

6 "Fund." The Uninsured Employers Guaranty Fund established in
7 section 1602. THE FUND SHALL NOT BE CONSIDERED AN INSURER AND <—
8 SHALL NOT BE SUBJECT TO PENALTIES, UNREASONABLE CONTEST FEES OR
9 ANY REPORTING AND LIABILITY REQUIREMENTS UNDER SECTION 440.

10 "Policyholder." A holder of a workers' compensation policy
11 issued by the State Workers' Insurance Fund, or an insurer that
12 is a domestic, foreign or alien mutual association or stock
13 company writing workers' compensation insurance on risks which
14 would be covered by this act.

15 "Secretary." The Secretary of Labor and Industry of the
16 Commonwealth.
17 Section 1602. Fund.

18 (a) Establishment.--

19 (1) There is established a special fund to be known as
20 the Uninsured Employers Guaranty Fund.

21 (2) The fund shall be maintained as a separate fund in
22 the State Treasury subject to the procedures and provisions
23 set forth in this article.

24 (b) Source.--The sources of the fund are:

25 ~~(1) Assessments made to employers and insurance~~ <—
26 ~~carriers.~~

27 ~~(2) Reimbursements or restitution.~~

28 ~~(3) Surcharges under section 1607.~~

29 ~~(4) (1) APPROPRIATIONS MADE BY THE GENERAL ASSEMBLY.~~ <—

30 (2) REIMBURSEMENTS OR RESTITUTION.

1 (3) Interest on money in the fund.

2 (c) Use.--The administrator shall establish and maintain the
3 fund for the exclusive purpose of paying workers' compensation
4 benefits to injured workers or their dependents for claims
5 arising from injuries or deaths sustained while in the course
6 and scope of employment with employers that failed to carry
7 workers' compensation insurance coverage at the time the
8 injuries took place.

9 (d) Administration.--The secretary shall be the
10 administrator of the fund and shall have the power to collect
11 money for and disburse money from the fund.

12 (e) Status.--The fund shall have all of the same rights,
13 duties, responsibilities and obligations as an insurer.

14 Section 1603. Claims.

15 (a) Scope.--This section shall apply to claims for an injury
16 or a death which occurs on or after the effective date of this
17 article.

18 (b) Time.--An injured worker must notify the fund within 21 <—
19 SHALL NOTIFY THE FUND WITHIN 45 days after the worker knew that <—
20 the employer was uninsured or received confirmation of
21 noninsurance from the Rating Bureau or any other agency charged
22 with providing notice that a claim against the fund is being <—
23 made. FUND. THE DEPARTMENT SHALL HAVE ADEQUATE TIME TO MONITOR <—
24 THE CLAIM AND SHALL DETERMINE THE OBLIGATIONS OF THE EMPLOYER.
25 NO COMPENSATION SHALL BE PAID FROM THIS FUND UNTIL NOTICE IS
26 GIVEN AND THE DEPARTMENT DETERMINES THAT THE EMPLOYER FAILS TO
27 VOLUNTARILY ACCEPT AND PAY THE CLAIM OR SUBSEQUENTLY DEFAULTS ON
28 PAYMENTS OF COMPENSATION. No compensation shall be due until
29 notice is given. Unless notice is given within 120 days of when <—
30 the employee knew that the employer was uninsured or received

~~notice of noninsurance from the Rating Bureau or any other agency charged with providing such notice, no compensation shall be allowed.~~

(c) Process.--After notice, the fund shall process the claim in accordance with the provisions of this act.

(d) Petitions.--No claim petition may be filed against the fund until at least 21 days after notice of the claim is made to the fund.

Section 1604. Claim petition.

If a claim for compensation is filed under this article and the claim is not voluntarily accepted as compensable, the employee may file a claim petition naming both the employer and the fund as defendants. A responsive pleading filed by the fund to the claim petition shall serve as an answer on behalf of the uninsured employer. Failure of the uninsured employer to answer a claim petition shall not serve as an admission or otherwise bind the fund under section 416.

Section 1605. Department.

(a) Insurance inquiry.--Within ten days of notice of a claim, the fund shall demand from the employer proof of applicable insurance coverage. Within 14 days from the date of the fund's request, the employer must provide proof of insurance. If the employer does not provide proof, there shall be a rebuttable presumption of noninsurance; and the fund shall serve as the uninsured employer's insurer for purposes of the claim in question.

(b) Reimbursement.--The department shall, on behalf of the fund, exhaust all remedies at law against the uninsured employer in order to collect the amount of a voluntary payment or award, including voluntary payment or award itself and reimbursement of

costs, interest, penalties, fees under section 440 and costs of
the fund's attorney, which have been paid by the fund. The fund
shall also be reimbursed for costs or attorney fees which are
incurred in seeking reimbursement under this subsection. The
~~department shall also report the violation of section 305 to the~~ <—
~~Office of Attorney General, for prosecution of the uninsured~~
~~employer pursuant to section 305(b). Any restitution obtained~~
~~shall be paid to the fund.~~ DEPARTMENT IS AUTHORIZED TO <—
INVESTIGATE VIOLATIONS OF SECTION 305 FOR PROSECUTION OF THE
UNINSURED EMPLOYER PURSUANT TO SECTION 305(B) AND SHALL PURSUE
SUCH PROSECUTIONS THROUGH COORDINATION WITH THE APPROPRIATE
PROSECUTING AUTHORITY. ANY RESTITUTION OBTAINED SHALL BE PAID TO
THE FUND.

(c) Bankruptcy.--The department has the right to appear and
represent the fund as a creditor in a bankruptcy proceeding
involving the uninsured employer.

(d) Liens.--If payments of any nature have been made by the
fund on behalf of an uninsured employer, the fund shall file a
certified proof of payment with the prothonotary of a court of
common pleas; and the prothonotary shall enter the entire
balance as a judgment against the employer. The judgment shall
be a STATUTORY lien against property of the employer, and <—
execution may issue on it. The fund has the right to update the
amount of the lien as payments are made.

Section 1606. Other remedies.

Nothing contained in this article shall serve to abrogate the
provisions of section 305(d) allowing the claimant or dependents
to bring a direct suit for damages at law as provided by Article
II. The fund shall be entitled to assert rights to subrogation
under section 319 for recovery made from the employer or any

1 other third party.

2 Section 1607. Surcharge.

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3 For the purpose of establishing and maintaining this fund,
4 the secretary shall impose on January 1 an annual surcharge upon
5 each workers' compensation policyholder. Each insurer shall be
6 liable for payment of the annual surcharge under this section.
7 The annual surcharge shall apply to all workers' compensation
8 policies written or renewed. The surcharge shall not apply to
9 reinsurance.

10 Section 1608 1607. Regulations.

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11 The department may promulgate regulations for the
12 administration and enforcement of this article.

13 SECTION 2. THE SUM OF \$1,000,000, OR AS MUCH THEREOF AS MAY
14 BE NECESSARY, IS HEREBY APPROPRIATED TO THE UNINSURED EMPLOYERS
15 GUARANTY FUND FOR THE FISCAL YEAR JULY 1, 2006, TO JUNE 30,
16 2007, TO CARRY OUT THE PURPOSES OF ARTICLE XVI OF THE ACT.

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17 Section 2 3. This act shall take effect in 60 days.

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