

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2738 Session of
2006

INTRODUCED BY ALLEN, COHEN, PERZEL, EACHUS, PHILLIPS,
S. H. SMITH, BAKER, BALDWIN, BASTIAN, BENNINGHOFF, BIRMELIN,
BOYD, BUNT, BUXTON, CAPPELLI, CAUSER, CRAHALLA, DENLINGER,
FLEAGLE, GEORGE, GILLESPIE, GOOD, GOODMAN, HARRIS, HENNESSEY,
HERSHEY, HESS, HICKERNELL, HUTCHINSON, KAUFFMAN, KOTIK,
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R. MILLER, MUSTIO, NICKOL, PICKETT, PYLE, REED, REICHLEY,
SABATINA, SATHER, SCAVELLO, SCHRODER, STEIL, STERN,
R. STEVENSON, TANGRETTI, E. Z. TAYLOR, TIGUE, TRUE, WALKO,
WANSACZ AND WILT, JUNE 7, 2006

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 7, 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," further providing for schedule of
8 compensation, for definitions relating to procedure and for
9 enforcement of standards and processing of claims; providing
10 for the Workers' Compensation Appeal Board; further providing
11 for assignment of claims to referees, for rehearings, for
12 counsel fees and for the Office of Adjudication; providing
13 for an Uninsured Employers Guaranty Fund; and making a
14 related repeal.

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

17 Section 1. Section 306(h) of the act of June 2, 1915
18 (P.L.736, No.338), known as the Workers' Compensation Act,
19 reenacted and amended June 21, 1939 (P.L.520, No.281) and added
20 December 5, 1974 (P.L.782, No.263), is amended to read:

1 Section 306. The following schedule of compensation is
2 hereby established:

3 * * *

4 (h) Any person receiving compensation under sections 306(a),
5 [306(b), 306(c)(23), or section] 306(c)(23) or 307, as a result
6 of an [accident] injury which occurred prior to [the effective
7 date of the amendatory act of January 17, 1968 (P.L.6, No.4)
8 shall have the compensation rate adjusted to the level they
9 would have received had the injury occurred on the effective
10 date of the amendatory act of January 17, 1968 (P.L.6, No.4) and
11 had the injured employe been earning wages equal to ninety
12 dollars (\$90) per week.] August 31, 1993, shall, beginning July
13 1, 2006, receive a minimum amount of one hundred dollars (\$100)
14 per week. The additional compensation shall be paid by the self-
15 insured employer or insurance carrier making payment and shall
16 be reimbursed in advance by the Commonwealth on a quarterly
17 basis as provided in rules and regulations of the department.
18 The payment of additional compensation shall be made by the
19 carrier or self-insured employer only during those fiscal years
20 for which appropriations are made to cover reimbursement.

21 Section 2. Section 401 of the act, amended February 8, 1972
22 (P.L.25, No.12), July 2, 1993 (P.L.190, No.44) and June 24, 1996
23 (P.L.350, No.57), is amended to read:

24 Section 401. The term "referee," when used in this act,
25 shall mean a Workers' Compensation Judge of the Department of
26 Labor and Industry, appointed by and subject to the general
27 supervision of the Secretary of Labor and Industry for the
28 purpose of conducting departmental hearings under this act. The
29 secretary may establish different classes of these judges. Any
30 reference in any statute to a workmen's compensation referee

1 shall be deemed to be a reference to a workers' compensation
2 judge.

3 The term "board," when used in this article, shall mean the
4 Workers' Compensation Appeal Board, a departmental
5 administrative board as provided in sections 202, 207, 503 and
6 2208 of the act of April 9, 1929 (P.L.177), known as "The
7 Administrative Code of 1929," exercising its powers and
8 performing its duties as an appellate board independently of the
9 Secretary of Labor and Industry and any other official of the
10 department.

11 The term "fund," when used in this article, shall mean the
12 State Workmen's Insurance Fund of this Commonwealth, the State-
13 operated insurance carrier from which workmen's compensation
14 insurance policies may be purchased by employers to cover all
15 risks of liability under this act including those declined by
16 private carriers.

17 The terms "insurer" and "carrier," when used in this article,
18 shall mean the State Workmen's Insurance Fund or other insurance
19 carrier which has insured the employer's liability under this
20 act, or the employer in cases of self-insurance.

21 The term "employer," when used in this article, shall mean
22 the employer as defined in article one of this act, or his duly
23 authorized agent, or his insurer if such insurer has assumed the
24 employer's liability or the fund if the employer be insured
25 therein.

26 The term "resolution court," when used in this article, shall
27 mean a court established in each district with the sole purpose
28 of providing a vehicle to present a compromise and release to a
29 judge in an expedited fashion.

30 The term "mediation," when used in this article, shall mean a

1 conference conducted by a workers' compensation judge, but not
2 necessarily the judge assigned to the actual case involving the
3 parties, and shall require the attendance in person of all
4 parties including the claimant and employer, and their
5 respective counsel. The representative from the employer must
6 have requisite authority to bring about settlement of the case
7 or must have the ability to obtain said authority during the
8 course of the mediation.

9 Section 3. Section 401.1 of the act, added February 8, 1972
10 (P.L.25, No.12), is amended to read:

11 Section 401.1. The department shall, in fulfillment of its
12 responsibilities under this act, enforce the time standards and
13 other performance standards herein provided for the prompt
14 processing of injury cases and payment of compensation when due
15 by employers and insurers both upon petition by a party or on
16 its own motion. In any case in which compensation has not been
17 timely paid, or in which notice of denial of compensation has
18 been given, the department shall hear and determine all claim
19 petitions for compensation filed by employees or their
20 dependents. The department shall also hear and determine all
21 petitions by employers or insurers to suspend, terminate, reduce
22 or otherwise modify compensation payments, awards, or agreements
23 and petitions by employees or their dependents to increase,
24 modify or reinstate compensation payments, awards, or
25 agreements. Hearings shall be scheduled forthwith upon receipt
26 of the claim petition or other petition, as the case may be, and
27 determinations thereon shall be made promptly and in conformity
28 with time standards herein or hereunder established. Such
29 hearings shall be conducted by a [referee] workers' compensation
30 judge or other hearing officer designated by the secretary.

1 Each workers' compensation judge assigned to conduct hearings
2 shall set forth a mandatory trial schedule at the first hearing.
3 This trial schedule shall include specific deadlines for the
4 presentation of evidence by the parties and dates for future
5 hearings. Judges shall strictly enforce their schedules, and no
6 party will be excused from honoring the schedule absent good
7 cause shown. Every trial schedule shall include a specific date
8 and time for a mediation conference. Mediations shall take place
9 no later than thirty (30) days prior to the date set for filing
10 proposed findings of fact and conclusions on law or legal briefs
11 or memoranda, unless, upon good cause shown, the workers'
12 compensation judge determines mediation would be futile. In the
13 event that the parties reach a settlement on a case that is
14 presently in litigation, the workers' compensation judge, upon
15 being provided notice of a settlement, shall hold compromise and
16 release hearing within fourteen (14) days of receipt of notice
17 of the settlement.

18 Each district within the Commonwealth shall create a
19 resolution court that will have the ability to hear compromise
20 and release agreements in an expedited manner. The workers'
21 compensation judge who is sitting in resolution court will not
22 be required to have received formal assignment by the bureau of
23 the compromise and release petition prior to conducting the
24 settlement hearing. A workers' compensation judge shall render a
25 decision within five (5) business days of the hearing.

26 Delays in hearings will be granted according to rules
27 established by the department, and any party who unreasonably
28 delays a hearing will be subject to a penalty as provided in
29 section 435. Subject to the provisions of the act of July 31,
30 1968 (P.L.769, No.240), known as the "Commonwealth Documents

1 Law," the department shall adopt such rules and regulations as
2 it finds necessary or desirable for the enforcement of this act.

3 Section 4. The act is amended by adding a section to read:

4 Section 401.2. (a) The Workers' Compensation Appeal Board
5 shall consist of at least three, and not more than fifteen,
6 appointed members, of whom the Governor shall designate one as
7 chairman; the Governor may, on the recommendation of the
8 Secretary of Labor and Industry, increase the number of
9 appointed members on the board. An en banc board shall consist
10 of all the appointed members on the board, a majority of which
11 shall constitute a quorum, and no action of the board shall be
12 valid unless it shall have the concurrence of such number of
13 members and that number constitutes a majority of the votes
14 cast. Where there are more than three appointed members, the
15 board may sit in panels of three, a majority of the panel shall
16 constitute a quorum and no action taken by a panel shall be
17 valid unless it shall have the concurrence of a majority of the
18 votes cast. A vacancy on the board shall not impair the right of
19 a quorum to exercise all the rights and perform all the duties
20 of the board. The Secretary of Labor and Industry, with the
21 approval of the Governor, shall appoint a secretary to the
22 Workers' Compensation Appeal Board, who shall receive such
23 salary as the Secretary of Labor and Industry, with the approval
24 of the Governor, shall determine.

25 (b) Members of the Workers' Compensation Appeal Board shall
26 meet the following minimum requirements:

27 (1) Be an attorney in good standing before the Supreme
28 Court.

29 (2) Have five (5) years of workers' compensation practice
30 before administrative agencies or equivalent experience.

1 (c) A member of the Workers' Compensation Appeal Board shall
2 conform to the following code of ethics:

3 (1) Avoid impropriety and the appearance of impropriety in
4 all activities.

5 (2) Perform duties impartially and diligently.

6 (3) Avoid ex parte communications in any contested, on-the-
7 record matter pending before the department.

8 (4) Abstain from expressing publicly, except in
9 administrative disposition or adjudication, personal views on
10 the merits of an adjudication pending before the department and
11 require similar abstention on the part of department personnel
12 subject to the member's direction and control.

13 (5) Require staff and personnel subject to the member's
14 direction and control to observe the standards of fidelity and
15 diligence that apply to a member.

16 (6) Initiate appropriate disciplinary measures against
17 department personnel subject to the member's direction and
18 control for unethical conduct.

19 (7) Disqualify himself from proceedings in which
20 impartiality may be reasonably questioned.

21 (8) Keep informed about the personal and fiduciary interests
22 of himself and his immediate family.

23 (9) Regulate outside activities to minimize the risk of
24 conflict with official duties. A member may speak, write or
25 lecture, and reimbursed expenses, honoraria, royalties or other
26 money received in connection therewith shall be disclosed
27 annually. A disclosure statement shall be filed with the
28 secretary and the State Ethics Commission and shall be open to
29 inspection by the public during the normal business hours of the
30 department and the commission during the tenure of the member.

1 (10) Refrain from direct or indirect solicitation of funds
2 for political, educational, religious, charitable, fraternal or
3 civic purposes: Provided, however, That a member may be an
4 officer, a director or a trustee of such organizations.

5 (11) Refrain from financial or business dealings which would
6 tend to reflect adversely on impartiality. A member may hold and
7 manage investments which are not incompatible with the duties of
8 office.

9 (12) Uphold the integrity and independence of the workers'
10 compensation system.

11 (d) Individuals who are currently serving as members of the
12 Workers' Compensation Appeal Board shall continue to serve,
13 subject to the provisions of subsection (c).

14 (e) The secretary shall ensure that there are at least two
15 opinion writers assigned to each member of the board.

16 Section 5. Section 414 of the act, amended February 8, 1972
17 (P.L.25, No.12), is amended to read:

18 Section 414. Whenever a claim petition or other petition is
19 presented to the department, the department shall, by general
20 rules or special order, assign it to a referee for hearing. When
21 assigning petitions, the department shall not assign to a
22 particular referee more than seventy-five per centum of the
23 petitions from a particular county.

24 The department shall serve upon each adverse party a copy of
25 the petition, together with a notice that such petition will be
26 heard by the referee to whom it has been assigned (giving his
27 name and address) as the case may be, and, shall mail the
28 original petition to such referee, together with copies of the
29 notices served upon the adverse parties.

30 Section 6. Section 426 of the act, amended February 8, 1972

1 (P.L.25, No.12) and repealed in part April 28, 1978 (P.L.202,
2 No.53), is amended to read:

3 Section 426. The board, upon petition of any party and upon
4 cause shown, may grant a rehearing of any petition upon which
5 the board has made an award or disallowance of compensation or
6 other order or ruling, or upon which the board has sustained or
7 reversed any action of a referee; but such rehearing shall not
8 be granted more than eighteen months after the board has made
9 such award, disallowance, or other order or ruling, or has
10 sustained or reversed any action of the referee: Provided,
11 however, That nothing contained in this section shall limit or
12 restrict the right of the board, or a referee to review, modify,
13 set aside, reinstate, suspend, or terminate, an original or
14 supplemental agreement, or an award in accordance with the
15 provisions of section four hundred thirteen of this article. A
16 rehearing shall be conducted by the board en banc.

17 Section 7. Section 442 of the act, amended June 24, 1996
18 (P.L.350, No.57), is amended to read:

19 Section 442. All counsel fees, agreed upon by claimant and
20 his attorneys, for services performed in matters before any
21 workers' compensation judge or the board, whether or not allowed
22 as part of a judgment, shall be approved by the workers'
23 compensation judge or board as the case may be, providing the
24 counsel fees do not exceed twenty per centum of the amount
25 awarded. [The official conducting any hearing, upon cause shown,
26 may allow a reasonable attorney fee exceeding twenty per centum
27 of the amount awarded at the discretion of the hearing
28 official.]

29 In cases where the efforts of claimant's counsel produce a
30 result favorable to the claimant but where no immediate award of

1 compensation is made such as in cases of termination or
2 suspension the hearing official shall allow or award reasonable
3 counsel fees, as agreed upon by claimant and his attorneys,
4 without regard to any per centum. In the case of compromise and
5 release settlement agreements, where there is no underlying
6 litigation, no counsel fees shall exceed twenty per centum of
7 the workers' compensation settlement amount.

8 Section 8. Section 1401 of the act, added June 24, 1996
9 (P.L.350, No.57), is amended to read:

10 Section 1401. (a) There is created within the department an
11 office to be known as the Office of Adjudication.

12 (b) The secretary shall appoint as many qualified and
13 competent workers' compensation judges as necessary to conduct
14 matters under this act.

15 (c) The secretary shall set normal working hours for
16 workers' compensation judges. During those hours, workers'
17 compensation judges shall devote full time to their official
18 duties and shall perform no work inconsistent with their duties
19 as workers' compensation judges. Workers' compensation judges
20 shall not engage in any unapproved activities during normal
21 working hours.

22 (d) Workers' compensation judges shall be afforded
23 employment security as provided by the act of August 5, 1941
24 (P.L.752, No.286), known as the "Civil Service Act."

25 (e) Compensation for workers' compensation judges shall be
26 established by the Executive Board. Compensation for workers'
27 compensation judges shall be established by the executive board
28 at a pay range not less than the pay range for administrative
29 law judges appointed under section 212 of the act of April 12,
30 1951 (P.L.90, No.21), known as the "Liquor Code," and 66 Pa.C.S.

1 § 304 (relating to administrative law judges). A workers'
2 compensation judge's step classification shall not be decreased
3 upon reassignment of workers' compensation judges to a higher
4 pay range.

5 (f) The secretary shall develop and require all workers'
6 compensation judges to complete a course of training and
7 instruction in the duties of their respective offices and pass
8 an examination prior to assuming office. The course of training
9 and instruction shall not exceed four weeks in duration and
10 shall consist of a minimum of forty hours of class instruction
11 in medicine and law.

12 (g) The secretary shall develop a continuing professional
13 development plan for workers' compensation judges which shall
14 require the annual completion of twenty hours of approved
15 continuing professional development courses.

16 (h) The secretary may adopt additional rules to establish
17 standards and procedures for the evaluation, training, promotion
18 and discipline of workers' compensation judges.

19 Section 9. The act is amended by adding an article to read:

20 ARTICLE XVI

21 UNINSURED EMPLOYERS GUARANTY FUND

22 Section 1601. Definitions.

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

26 "Compensation." Benefits paid pursuant to sections 306 and
27 307.

28 "Employer." Any employer as defined in section 103. The term
29 does not include a person that qualifies as a self-insured
30 employer under section 305.

1 "Fund." The Uninsured Employers Guaranty Fund established in
2 section 1602. The fund shall not be considered an insurer and
3 shall not be subject to penalties, unreasonable contest fees or
4 any reporting and liability requirements under section 440.

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

10 "Secretary." The Secretary of Labor and Industry of the
11 Commonwealth.

12 Section 1602. Fund.

13 (a) Establishment.--

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

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

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

20 (1) Appropriations made by the General Assembly.

21 (2) Reimbursements or restitution.

22 (3) Interest on money in the fund.

23 (c) Use.--The administrator shall establish and maintain the
24 fund for the exclusive purpose of paying workers' compensation
25 benefits to injured workers or their dependents for claims
26 arising from injuries or deaths sustained while in the course
27 and scope of employment with employers that failed to carry
28 workers' compensation insurance coverage at the time the
29 injuries took place.

30 (d) Administration.--The secretary shall be the

1 administrator of the fund and shall have the power to collect
2 money for and disburse money from the fund.

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

5 Section 1603. Claims.

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

9 (b) Time.--An injured worker shall notify the fund within 45
10 days after the worker knew that the employer was uninsured or
11 received confirmation of noninsurance from the rating bureau or
12 any other agency charged with providing notice of a claim
13 against the fund. The department shall have adequate time to
14 monitor the claim and shall determine the obligations of the
15 employer. No compensation shall be paid from this fund until
16 notice is given and the department determines that the employer
17 failed to voluntarily accept and pay the claim or subsequently
18 defaulted on payments of compensation. No compensation shall be
19 due until notice is given.

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

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

25 Section 1604. Claim petition.

26 If a claim for compensation is filed under this article and
27 the claim is not voluntarily accepted as compensable, the
28 employee may file a claim petition naming both the employer and
29 the fund as defendants. A responsive pleading filed by the fund
30 to the claim petition shall serve as an answer on behalf of the

1 uninsured employer. Failure of the uninsured employer to answer
2 a claim petition shall not serve as an admission or otherwise
3 bind the fund under section 416.

4 Section 1605. Department.

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

13 (b) Reimbursement.--The department shall, on behalf of the
14 fund, exhaust all remedies at law against the uninsured employer
15 in order to collect the amount of a voluntary payment or award,
16 including voluntary payment or award itself and reimbursement of
17 costs, interest, penalties, fees under section 440 and costs of
18 the fund's attorney, which have been paid by the fund. The fund
19 shall also be reimbursed for costs or attorney fees which are
20 incurred in seeking reimbursement under this subsection. The
21 department is authorized to investigate violations of section
22 305 for prosecution of the uninsured employer pursuant to
23 section 305(b) and shall pursue such prosecutions through
24 coordination with the appropriate prosecuting authority. Any
25 restitution obtained shall be paid to the fund.

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

29 (d) Liens.--If payments of any nature have been made by the
30 fund on behalf of an uninsured employer, the fund shall file a

1 certified proof of payment with the prothonotary of a court of
2 common pleas and the prothonotary shall enter the entire balance
3 as a judgment against the employer. The judgment shall be a
4 statutory lien against property of the employer, and execution
5 may issue on it. The fund has the right to update the amount of
6 the lien as payments are made.

7 Section 1606. Other remedies.

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

14 Section 1607. Regulations.

15 The department may promulgate regulations for the
16 administration and enforcement of this article.

17 Section 10. The sum of \$1,000,000, or as much thereof as may
18 be necessary, is hereby appropriated to the Uninsured Employers
19 Guaranty Fund for the fiscal year July 1, 2006, to June 30,
20 2007, to carry out the provisions of Article XVI of the act.

21 Section 11. Repeals are as follows:

22 (1) The General Assembly declares that the repeal under
23 paragraph 2 is necessary to effectuate the addition of
24 section 401.2 of the act.

25 (2) Section 441 of the act of April 9, 1929 (P.L.177,
26 No.175), known as The Administrative Code of 1929, is
27 repealed.

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