

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,
LEACH, MACKERETH, MARKOSEK, McCALL, McILHATTAN, METCALFE,
R. MILLER, MUSTIO, NICKOL, PICKETT, PYLE, REED, REICHLEY,
SABATINA, SATHER, SCAVELLO, SCHRODER, STEIL, STERN,
R. STEVENSON, TANGRETTI, E. Z. TAYLOR, TIGUE, TRUE, WALKO,
WANSACZ, WILT, ADOLPH, GERBER, DALLY, JOSEPHS, KENNEY,
SIPTROTH, GEIST, BEYER, GRELL AND CLYMER, JUNE 7, 2006

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 26, 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

1 December 5, 1974 (P.L.782, No.263), is amended to read:

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

4 * * *

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

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

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

1 reference in any statute to a workmen's compensation referee
2 shall be deemed to be a reference to a workers' compensation
3 judge.

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

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

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

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

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

1 THE TERM "RESOLUTION HEARING," WHEN USED IN THIS ARTICLE,
2 SHALL MEAN A PROCEDURE ESTABLISHED BY THE OFFICE OF ADJUDICATION
3 WITH THE SOLE PURPOSE OF PROVIDING A VENUE TO PRESENT A
4 COMPROMISE AND RELEASE TO A JUDGE IN AN EXPEDITED FASHION.

5 The term "mediation," when used in this article, shall mean a
6 conference conducted by a workers' compensation judge, but not
7 necessarily the judge assigned to the actual case involving the
8 parties, and shall require the attendance in person of all
9 parties including the claimant and employer, and their
10 respective counsel. The representative from the employer must
11 have requisite authority to bring about settlement of the case
12 or must have the ability to obtain said authority during the
13 course of the mediation.

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

16 Section 401.1. The department shall, in fulfillment of its
17 responsibilities under this act, enforce the time standards and
18 other performance standards herein provided for the prompt
19 processing of injury cases and payment of compensation when due
20 by employers and insurers both upon petition by a party or on
21 its own motion. In any case in which compensation has not been
22 timely paid, or in which notice of denial of compensation has
23 been given, the department shall hear and determine all claim
24 petitions for compensation filed by employes or their
25 dependents. The department shall also hear and determine all
26 petitions by employers or insurers to suspend, terminate, reduce
27 or otherwise modify compensation payments, awards, or agreements
28 and petitions by employes or their dependents to increase,
29 modify or reinstate compensation payments, awards, or
30 agreements. Hearings shall be scheduled forthwith upon receipt

1 of the claim petition or other petition, as the case may be, and
2 determinations thereon shall be made promptly and in conformity
3 with time standards herein or hereunder established. Such
4 hearings shall be conducted by a [referee] workers' compensation
5 judge or other hearing officer designated by the secretary.

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

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

1 ONE HUNDRED TWENTY (120) DAYS OF THE EFFECTIVE DATE OF THIS
2 PARAGRAPH, THE OFFICE OF ADJUDICATION SHALL CREATE A RESOLUTION
3 HEARING PROCEDURE TO HEAR COMPROMISE AND RELEASE AGREEMENTS IN
4 AN EXPEDITED MANNER. THE HEARING SHALL BE HELD WITHIN FOURTEEN
5 (14) BUSINESS DAYS OF NOTICE OF A COMMUTATION OR COMPROMISE AND
6 RELEASE.

7 THE WORKERS' COMPENSATION JUDGE CONDUCTING A RESOLUTION
8 HEARING WILL NOT BE REQUIRED TO HAVE RECEIVED FORMAL ASSIGNMENT
9 BY THE WORKERS' COMPENSATION BUREAU OF THE COMPROMISE AND
10 RELEASE PETITION PRIOR TO CONDUCTING THE RESOLUTION HEARING. AT
11 THE TIME OF HEARING, THE PARTIES SHALL SUBMIT PROOF OF FILING A
12 PETITION TO THE WORKERS' COMPENSATION JUDGE HEARING THE
13 COMPROMISE AND RELEASE MATTER. A WORKERS' COMPENSATION JUDGE
14 SHALL RENDER A DECISION WITHIN FIVE (5) BUSINESS DAYS OF THE
15 HEARING.

16 Delays in hearings will be granted according to rules
17 established by the department, and any party who unreasonably
18 delays a hearing will be subject to a penalty as provided in
19 section 435. Subject to the provisions of the act of July 31,
20 1968 (P.L.769, No.240), known as the "Commonwealth Documents
21 Law," the department shall adopt such rules and regulations as
22 it finds necessary or desirable for the enforcement of this act.

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

24 Section 401.2. (a) The Workers' Compensation Appeal Board
25 shall consist of at least three, and not more than fifteen,
26 appointed members, of whom the Governor shall designate one as
27 chairman; the Governor may, on the recommendation of the
28 Secretary of Labor and Industry, increase the number of
29 appointed members on the board. An en banc board shall consist
30 of all the appointed members on the board, a majority of which

1 shall constitute a quorum, and no action of the board shall be
2 valid unless it shall have the concurrence of such number of
3 members and that number constitutes a majority of the votes
4 cast. Where there are more than three appointed members, the
5 board may sit in panels of three, all three members shall
6 constitute a quorum and no action taken by a panel shall be
7 valid unless it shall have the concurrence of a majority of the
8 panel members. When a majority of any such panel has reached a
9 decision, the chair of the panel shall assign the writing of an
10 opinion and order to a panel member. The panel member shall
11 prepare a draft opinion and award and transmit it to the
12 secretary of the board for circulation and review to all members
13 of the Workers' Compensation Appeal Board. Each member of the
14 Workers' Compensation Appeal Board shall be entitled to a period
15 of thirty (30) days from the date a draft opinion on behalf of a
16 majority of a panel is placed in circulation by the secretary of
17 the board in which to concur in, comment on, object to or
18 dissent from the proposed draft opinion and award. Concurrences,
19 comments, objections and dissents shall be transmitted to the
20 chairman of the board, the secretary of the board and the board
21 member responsible for writing the draft opinion. A board member
22 who does not submit a written response to a proposed draft
23 opinion and order circulated shall be deemed to concur in the
24 opinion and order as drafted and initially placed in circulation
25 in conformity with the procedure set forth in subsection (a). If
26 at the conclusion of the thirty-day (30-day) period a majority
27 of the members of the board have failed to concur in the draft
28 opinion and order as circulated, the Chairman of the Workers'
29 Compensation Appeal Board, in consultation with the chair of the
30 panel that heard the case in question shall reassign the opinion

1 to a board member for the purpose of redrafting and circulating
2 a draft opinion and order in conformity with the procedures
3 articulated in this subsection (a). A vacancy on the board shall
4 not impair the right of a quorum to exercise all the rights and
5 perform all the duties of the board. The Secretary of Labor and
6 Industry, with the approval of the Governor, shall appoint a
7 secretary to the Workers' Compensation Appeal Board, who shall
8 receive such salary as the Secretary of Labor and Industry, with
9 the approval of the Governor, shall determine.

10 (b) Members of the board shall be required to annually
11 attend and participate in a minimum of eight (8) hours of
12 workers' compensation related education approved by the
13 Pennsylvania Supreme Court Continuing Legal Education Board or a
14 similar reputable agency approved by the department.

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

17 (1) Avoid impropriety and the appearance of impropriety in
18 all activities.

19 (2) Perform duties impartially and diligently.

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

22 (4) Abstain from expressing publicly, except in
23 administrative disposition or adjudication, personal views on
24 the merits of an adjudication pending before the department and
25 require similar abstention on the part of department personnel
26 subject to the member's direction and control.

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

30 (6) ~~Initiate appropriate~~ REFER TO THE SECRETARY OF LABOR AND <—

1 INDUSTRY disciplinary measures against department personnel
2 subject to the member's direction and control for unethical
3 conduct.

4 (7) Disqualify himself from proceedings in which
5 impartiality may be reasonably questioned.

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

8 (9) Regulate outside activities to minimize the risk of
9 conflict with official duties. A member may speak, write or
10 lecture, and reimbursed expenses, honoraria, royalties or other
11 money received in connection therewith shall be disclosed
12 annually. A disclosure statement shall be filed with the
13 ~~secretary~~ SECRETARY OF LABOR AND INDUSTRY and the State Ethics <—
14 Commission and shall be open to inspection by the public during
15 the normal business hours of the department and the commission
16 during the tenure of the member.

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

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

25 (12) Uphold the integrity and independence of the workers'
26 compensation system.

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

30 (e) The secretary shall ensure that there are at least two

1 opinion writers assigned to each member of the board. Opinion
2 writers employed by or on behalf of the board whose duties
3 involve, in whole or in part, the writing or drafting of
4 proposed opinions, decisions or orders for the board or any
5 member of the board shall be required to annually attend and
6 participate in a minimum of eight (8) hours of continuing legal
7 education in the field of workers' compensation practice and
8 procedure in courses approved by the Pennsylvania Supreme Court
9 Continuing Legal Education Board.

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

12 Section 414. Whenever a claim petition or other petition is
13 presented to the department, the department shall, by general
14 rules or special order, assign it to a [referee] workers'
15 compensation judge for hearing. When assigning petitions,
16 including those of the resolution court, FOR RESOLUTION <—
17 HEARINGS, the department shall not assign to a particular
18 workers' compensation judge more than seventy-five per centum of
19 the petitions from a particular county.

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

26 Section 6. Section 426 of the act, amended February 8, 1972
27 (P.L.25, No.12) and repealed in part April 28, 1978 (P.L.202,
28 No.53), is amended to read:

29 Section 426. The board, upon petition of any party and upon
30 cause shown, may grant a rehearing of any petition upon which

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

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

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

25 In cases where the efforts of claimant's counsel produce a
26 result favorable to the claimant but where no immediate award of
27 compensation is made such as in cases of termination or
28 suspension the hearing official shall allow or award reasonable
29 counsel fees, as agreed upon by claimant and his attorneys,
30 without regard to any per centum. In the case of compromise and

1 release settlement agreements, where there is no underlying
2 litigation, no counsel fees shall exceed twenty per centum of
3 the workers' compensation settlement amount.

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

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

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

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

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

21 (e) Compensation for workers' compensation judges shall be
22 established by the Executive Board. Compensation for workers'
23 compensation judges shall be established by the executive board
24 at a pay range not less than the pay range for administrative
25 law judges appointed under section 212 of the act of April 12,
26 1951 (P.L.90, No.21), known as the "Liquor Code," and 66 Pa.C.S.
27 § 304 (relating to administrative law judges). A workers'
28 compensation judge's step classification shall not be decreased
29 upon reassignment of workers' compensation judges to a higher
30 pay range.

<—

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

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

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

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

ARTICLE XVI

UNINSURED EMPLOYERS GUARANTY FUND

Section 1601. Definitions.

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

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

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

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

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

6 "Secretary." The Secretary of Labor and Industry of the
7 Commonwealth.
8 Section 1602. Fund.

9 (a) Establishment.--

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

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

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

16 ~~(1) Appropriations made by the General Assembly.~~ <—

17 (1) ASSESSMENTS PROVIDED FOR UNDER SECTION 1607. <—

18 (2) Reimbursements or restitution.

19 (3) Interest on money in the fund.

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

27 (C) USE.--THE ADMINISTRATOR SHALL ESTABLISH AND MAINTAIN THE <—
28 FUND FOR THE EXCLUSIVE PURPOSE OF PAYING TO ANY CLAIMANT OR HIS
29 DEPENDENTS WORKERS' COMPENSATION BENEFITS DUE AND PAYABLE UNDER
30 THIS ACT AND THE OCCUPATIONAL DISEASE ACT AND ANY COSTS

1 SPECIFICALLY ASSOCIATED THEREWITH WHERE THE EMPLOYER LIABLE FOR
2 THE PAYMENTS FAILED TO CARRY WORKERS' COMPENSATION INSURANCE
3 COVERAGE AT THE TIME THE INJURIES TOOK PLACE.

4 (d) Administration.--The secretary shall be the
5 administrator of the fund and shall have the power to collect
6 money for and disburse money from the fund.

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

9 Section 1603. Claims.

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

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

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

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

29 Section 1604. Claim petition.

30 If a claim for compensation is filed under this article and

1 the claim is not voluntarily accepted as compensable, the
2 employee may file a claim petition naming both the employer and
3 the fund as defendants. A responsive pleading filed by the fund
4 to the claim petition shall serve as an answer on behalf of the
5 uninsured employer. Failure of the uninsured employer to answer
6 a claim petition shall not serve as an admission or otherwise
7 bind the fund under section 416.

8 Section 1605. Department.

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

17 (b) Reimbursement.--The department shall, on behalf of the
18 fund, exhaust all remedies at law against the uninsured employer
19 in order to collect the amount of a voluntary payment or award,
20 including voluntary payment or award itself and reimbursement of
21 costs, interest, penalties, fees under section 440 and costs of
22 the fund's attorney, which have been paid by the fund. The fund
23 shall also be reimbursed for costs or attorney fees which are
24 incurred in seeking reimbursement under this subsection. The
25 department is authorized to investigate violations of section
26 305 for prosecution of the uninsured employer pursuant to
27 section 305(b) and shall pursue such prosecutions through
28 coordination with the appropriate prosecuting authority. Any
29 restitution obtained shall be paid to the fund.

30 (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 other third party.

~~Section 1607. Regulations.~~

SECTION 1607. ASSESSMENTS.

FOR THE PURPOSE OF ESTABLISHING AND MAINTAINING THE FUND, ON THE EFFECTIVE DATE OF THIS SECTION, AND ON OR BEFORE JANUARY 31 OF EACH YEAR THEREAFTER, THE DEPARTMENT SHALL CALCULATE THE AMOUNT NECESSARY TO MAINTAIN THE FUND AND SHALL ASSESS INSURERS AND SELF-INSURED EMPLOYERS AS, IN THE DISCRETION OF THE DEPARTMENT, IS NECESSARY TO PROVIDE AN AMOUNT SUFFICIENT TO PAY OUTSTANDING AND ANTICIPATED CLAIMS IN A TIMELY MANNER AND MEET THE COSTS OF THE DEPARTMENT TO ADMINISTER THE FUND. ASSESSMENTS TO MAINTAIN THE FUND SHALL BE IMPOSED, COLLECTED AND REMITTED IN THE SAME MANNER AS ADMINISTRATION FUND ASSESSMENTS UNDER SECTION 446, AND THE REGULATIONS PROMULGATED THEREUNDER.

1 SECTION 1608. REGULATIONS.

2 The department may promulgate regulations for the
3 administration and enforcement of this article.

4 ~~Section 10. The sum of \$1,000,000, or as much thereof as may~~ <—
5 ~~be necessary, is hereby appropriated to the Uninsured Employers~~
6 ~~Guaranty Fund for the fiscal year July 1, 2006, to June 30,~~
7 ~~2007, to carry out the provisions of Article XVI of the act.~~

8 Section 11 10. Repeals are as follows: <—

9 (1) The General Assembly declares that the repeal under
10 paragraph 2 is necessary to effectuate the addition of
11 section 401.2 of the act.

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

15 ~~Section 12. This act shall take effect in 60 days.~~ <—

16 SECTION 11. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

17 (1) THE AMENDMENT OF SECTION 401.1 OF THE ACT SHALL TAKE
18 EFFECT IMMEDIATELY.

19 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

20 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
21 DAYS.