

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 676 Session of 2017

INTRODUCED BY GORDNER, MENSCH, FOLMER, RAFFERTY AND REGAN, MAY 4, 2017

SENATOR WARD, LABOR AND INDUSTRY, AS AMENDED, JUNE 26, 2017

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An
2 act defining the liability of an employer to pay damages for
3 injuries received by an employe in the course of employment;
4 establishing an elective schedule of compensation; providing
5 procedure for the determination of liability and compensation
6 thereunder; and prescribing penalties," in liability and
7 compensation, further providing for injuries outside this
8 Commonwealth; IN PROCEDURE, FURTHER PROVIDING FOR THE <--
9 WORKMEN'S COMPENSATION ADMINISTRATION FUND; and, in the
10 Uninsured Employers Guaranty Fund, further providing for
11 definitions, for fund, for claims, for claim petition and, <--
12 for department AND FOR ASSESSMENTS AND TRANSFERS and <--
13 providing for uninsured employer obligations and for
14 administrative penalties and stop-work orders.

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

17 Section 1. Section 305.2(c) of the act of June 2, 1915
18 (P.L.736, No.338), known as the Workers' Compensation Act, is
19 amended and the section is amended by adding a subsection to
20 read:

21 Section 305.2. \* \* \*

22 (c) If an employe is entitled to the benefits of this act by
23 reason of an injury sustained in this State in employment by an
24 employer who is domiciled in another state and who has not

1 secured the payment of compensation as required by this act, the  
2 [employer or his carrier may file with the director a  
3 certificate, issued by] department may verify with the  
4 commission or agency of such other state having jurisdiction  
5 over [workmen's] workers' compensation claims[, certifying] that  
6 such employer has secured the payment of compensation under the  
7 [workmen's] workers' compensation law of such other state and  
8 that with respect to said injury such employe is entitled to the  
9 benefits provided under such law.

10 In such event:

11 [(1) The filing of such certificate shall constitute an  
12 appointment by such employer or his carrier of the Secretary of  
13 Labor and Industry as his agent for acceptance of the service of  
14 process in any proceeding brought by such employe or his  
15 dependents to enforce his or their rights under this act on  
16 account of such injury;

17 (2) The secretary shall send to such employer or carrier, by  
18 registered or certified mail to the address shown on such  
19 certificate, a true copy of any notice of claim or other process  
20 served on the secretary by the employe or his dependents in any  
21 proceeding brought to enforce his or their rights under this  
22 act;]

23 (3) The following shall apply:

24 (i) If such employer is a qualified self-insurer under the  
25 [workmen's] workers' compensation law of such other state, such  
26 employer shall[, upon submission of evidence, satisfactory to  
27 the director, of his ability to meet his liability to such  
28 employe under this act,] be deemed, for the purposes of such  
29 employe, to be a qualified self-insurer under this act[;].

30 (ii) If such employer's liability under the workmen's

1 compensation law of such other state is insured, such employer's  
2 carrier, as to such employe or his dependents only, shall be  
3 deemed to be an insurer authorized to write insurance under and  
4 be subject to this act: Provided, however, That unless its  
5 contract with said employer requires it to pay an amount  
6 equivalent to the compensation benefits provided by this act,  
7 its liability for income benefits or medical and related  
8 benefits shall not exceed the amounts of such benefits for which  
9 such insurer would have been liable under the workmen's  
10 compensation law of such other state[;].

11 (4) If the total amount for which such employer's insurance  
12 is liable under clause (3) above is less than the total of the  
13 compensation benefits to which such employe is entitled under  
14 this act, the [secretary] department may, if [he deems it]  
15 necessary, require the employer to file security[, satisfactory  
16 to the secretary, to secure] to guarantee the payment of  
17 benefits due such employe or his dependents under this act[;  
18 and].

19 (5) Upon compliance with the preceding requirements of this  
20 subsection (c), such employer, as to such employe only, shall be  
21 deemed to have secured the payment of compensation under this  
22 act[.], and shall not be an uninsured employer for purposes of  
23 Article XVI.

24 (c.1) If an employe alleges an injury that is incurred with  
25 an employer which is domiciled in another state and which has  
26 not secured the payment of compensation as required by this act,  
27 such employe shall provide to the Uninsured Employers Guaranty  
28 Fund and to any worker's compensation judge hearing a petition  
29 against the fund, a written notice, denial, citation of law or  
30 court or administrative ruling from such other state or an

1 insurer licensed to write insurance in that state as to that  
2 employer, indicating that the employe is not entitled to  
3 workers' compensation benefits in that state. No compensation  
4 shall be payable from the Uninsured Employers Guaranty Fund  
5 until the employe submits the notice, denial, citation or  
6 ruling, however, the employe may file a notice or petition  
7 against the fund under Article XVI of this act prior to the  
8 submission.

9 \* \* \*

10 ~~Section 2. Sections 1601, 1602, 1603, 1604 and 1605 of the~~ <--  
11 ~~act are amended to read:~~

12 SECTION 2. SECTIONS 446(A) AND (B), 1601, 1602, 1603, 1604, <--  
13 1605 AND 1607(A) OF THE ACT ARE AMENDED TO READ:

14 SECTION 446. (A) THERE IS HEREBY CREATED A SPECIAL FUND IN  
15 THE STATE TREASURY, SEPARATE AND APART FROM ALL OTHER PUBLIC  
16 MONEYS OR FUNDS OF THIS COMMONWEALTH, TO BE KNOWN AS THE  
17 WORKMEN'S COMPENSATION ADMINISTRATION FUND.

18 (A.1) THE PURPOSE OF [THIS FUND] THE WORKMEN'S COMPENSATION  
19 ADMINISTRATION FUND SHALL BE TO FINANCE:

20 (1) THE PREFUND ACCOUNT ESTABLISHED IN SECTION 909(A); AND

21 (2) THE OPERATING AND ADMINISTRATIVE EXPENSES OF THE  
22 DEPARTMENT OF LABOR AND INDUSTRY, INCLUDING THE WORKMEN'S  
23 COMPENSATION APPEAL BOARD AND STAFF, BUT NOT THE STATE WORKMEN'S  
24 INSURANCE FUND, IN THE DIRECT ADMINISTRATION OF THE PENNSYLVANIA  
25 WORKMEN'S COMPENSATION ACT AND THE PENNSYLVANIA OCCUPATIONAL  
26 DISEASE ACT [INCLUDING].

27 (A.2) THE OPERATING AND ADMINISTRATIVE EXPENSES IN  
28 SUBSECTION (A.1) (2) SHALL INCLUDE ONLY THE FOLLOWING:

29 (1) WAGES AND SALARIES OF EMPLOYES FOR SERVICES PERFORMED IN  
30 THE ADMINISTRATION OF THESE ACTS;

1 (2) REASONABLE TRAVEL EXPENSES FOR EMPLOYEES WHILE ENGAGED IN  
2 OFFICIAL BUSINESS; AND

3 (3) MONEYS EXPENDED FOR OFFICE RENTAL, EQUIPMENT RENTAL,  
4 SUPPLIES, EQUIPMENT, REPAIRS, SERVICES, POSTAGE, BOOKS, AND  
5 PERIODICALS.

6 (B) THE [FUND] WORKMEN'S COMPENSATION ADMINISTRATION FUND  
7 SHALL BE MAINTAINED BY NO MORE THAN ONE (1) ANNUAL ASSESSMENT  
8 PAYABLE IN ANY CALENDAR YEAR ON INSURERS AND SELF-INSURERS UNDER  
9 THIS ACT, INCLUDING THE STATE WORKERS' INSURANCE FUND[. AFTER  
10 THE INITIAL TERM, BUDGETED EXPENSES SHALL BE APPROVED BY THE  
11 GENERAL ASSEMBLY ON A FISCAL YEAR BASIS. THEREAFTER, THE] AS  
12 FOLLOWS:

13 (1) THE DEPARTMENT SHALL [MAKE ASSESSMENTS AND] SUBMIT FOR  
14 APPROVAL TO THE GENERAL ASSEMBLY ON A FISCAL YEAR BASIS A  
15 PROPOSED BUDGET SUFFICIENT TO COVER THE PREFUND ACCOUNT AND  
16 OTHER OPERATING AND ADMINISTRATIVE EXPENSES UNDER SUBSECTION  
17 (A.1). THE TOTAL AMOUNT APPROVED BY THE GENERAL ASSEMBLY SHALL  
18 BE THE APPROVED BUDGET. THE DEPARTMENT SHALL COLLECT MONEYS  
19 BASED ON THE RATIO THAT SUCH INSURER'S OR SELF-INSURER'S  
20 PAYMENTS OF COMPENSATION BEAR TO THE TOTAL COMPENSATION PAID IN  
21 THE PRECEDING CALENDAR YEAR IN WHICH THE ANNUAL ASSESSMENT IS  
22 MADE. [THE TOTAL AMOUNT ASSESSED SHALL BE THE APPROVED BUDGET.]

23 (2) IF ON JANUARY 31, THERE EXISTS IN THE [ADMINISTRATION  
24 FUND] WORKMEN'S COMPENSATION ADMINISTRATION FUND ANY MONEY IN  
25 EXCESS OF ONE HUNDRED [THIRTY-THREE] TWENTY PER CENTUM OF THE  
26 [CURRENT] APPROVED BUDGET, THE FOLLOWING FISCAL YEAR'S  
27 ASSESSMENT SHALL BE REDUCED BY AN AMOUNT EQUAL TO THAT EXCESS  
28 AMOUNT.

29 \* \* \*

30 Section 1601. Definitions.

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

4 "Compensation." Benefits paid pursuant to sections 306 and  
5 307.

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

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

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

19 "Secretary." The Secretary of Labor and Industry of the  
20 Commonwealth.  
21 Section 1602. Fund.

22 (a) Establishment.--

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

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

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

29 (1) Assessments provided for under section 1607.

30 (2) Reimbursements or restitution.

1 (3) Interest on money in the fund.

2 (4) Administrative penalties provided for under section  
3 1610.

4 (c) Use.--The administrator shall establish and maintain the  
5 fund for the exclusive purpose of paying to any claimant or his  
6 dependents workers' compensation benefits due and payable under  
7 this act and the act of June 21, 1939 (P.L.566, No.284), known  
8 as The Pennsylvania Occupational Disease Act, and any costs  
9 specifically associated therewith where the employer liable for  
10 the payments failed to insure or self-insure its workers'  
11 compensation liability under section 305 at the time the  
12 injuries took place.

13 (d) Administration.--The secretary shall be the  
14 administrator of the fund and shall have the power to collect  
15 money for and disburse money from the fund.

16 (e) Status.--The fund shall have all of the same rights[,  
17 duties, responsibilities and obligations] as an insurer.  
18 Section 1603. Claims.

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

22 (b) Time.--An injured worker shall notify the fund within 45  
23 days after the worker [knew] has been advised by the employer or  
24 another source that the employer was uninsured. The department  
25 shall have adequate time to monitor the claim and shall  
26 determine the obligations of the employer. No employee shall  
27 receive compensation [shall be paid] from the fund [until notice  
28 is given] unless:

29 (1) the employee notifies the fund within the time  
30 period specified in this subsection; and

1           (2) the department determines that the employer failed  
2 to voluntarily accept and pay the claim or subsequently  
3 defaulted on payments of compensation. [No compensation shall  
4 be due until notice is given.]

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

7           (d) Petitions.--

8           (1) No claim petition may be filed against the fund  
9 until at least 21 days after notice of the claim is made to  
10 the fund.

11           (2) A claim petition shall be filed within 180 days  
12 after notice of the claim is made to the fund. If the time  
13 requirement under this paragraph is not met, a claim petition  
14 shall not be allowed.

15           (e) List of providers.--

16           (1) The fund may establish lists of at least six  
17 designated health care providers that are accessible in each  
18 county in specialties relevant to the treatment of work  
19 injuries in this Commonwealth, as referenced in section  
20 306(f.1)(1).

21           (2) If the fund establishes a list under paragraph (1),  
22 the fund shall be responsible only to reimburse expenses of  
23 medical treatments, services and accommodations rendered by  
24 the physicians or other health care providers that are  
25 designated on the list for the period provided in section  
26 306(f.1)(1) from the date of the employee's notice to the  
27 fund under subsection (b).

28           (3) On the notice under subsection (b), the fund shall:

29           (i) provide access to the list of designated  
30 providers to the employee; and



1           (ii) notify the employee of the requirements of this  
2           subsection.

3           (4) If the employee receives medical treatments,  
4           services or accommodations from a health care provider that  
5           is not designated on the list, the fund shall be relieved of  
6           liability for the payment of medical treatments, services or  
7           accommodations rendered during the period provided in section  
8           306(f.1)(1) from the date of the employee's notice to the  
9           fund under subsection (b).

10 Section 1604. Claim petition.

11       (a) Authorization.--If a claim for compensation is filed  
12 under this article and the claim is not voluntarily accepted as  
13 compensable, the employee may file a claim petition naming both  
14 the employer and the fund as defendants. Failure of the  
15 uninsured employer to answer a claim petition shall not serve as  
16 an admission or otherwise bind the fund under section 416.

17       (b) Amount of wages.--In a proceeding under this article,  
18 the fund shall not be liable for wage loss benefits unless the  
19 amount of wages the employee earned at the time of injury is  
20 established by one of the following:

21           (1) A check, check stub or payroll record.

22           (2) A tax return. This paragraph includes IRS form W-2  
23 and form 1099, and successors to those forms.

24           (3) Unemployment compensation records, including form  
25 UC-2A.

26           (4) Bank statements or records showing regular and  
27 recurring deposits.

28           (5) Written documentation created contemporaneously with  
29 the payment of wages.

30           (6) Testimony of the uninsured employer presented under

1 oath at a hearing or deposition.

2 (7) Testimony of the claimant, if found credible by the  
3 judge, which is provided in addition to one or more of the  
4 items listed in paragraphs (1), (2), (3), (4), (5) and (6).

5 Section 1605. Department.

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

12 (b) Reimbursement.--The department shall, on behalf of the  
13 fund, exhaust all remedies at law against the uninsured employer  
14 in order to collect the amount of a voluntary payment or award,  
15 including voluntary payment or award itself and reimbursement of  
16 costs, interest, penalties, fees under section 440 and costs of  
17 the fund's attorney, which have been paid by the fund. The fund  
18 shall also be reimbursed for costs or attorney fees which are  
19 incurred in seeking reimbursement under this subsection. The  
20 department is authorized to investigate violations of section  
21 305 for prosecution of the uninsured employer pursuant to  
22 section 305(b) and shall pursue such prosecutions through  
23 coordination with the appropriate prosecuting authority. [Any  
24 restitution obtained shall be paid to the fund.] The fund shall  
25 be entitled to restitution of all payments made under this  
26 article as the result of an injury to an employee of an  
27 uninsured employer. Restitution to the fund under section 305  
28 shall not be limited to the amount specified in the award of  
29 compensation and shall include the amount of a voluntary payment  
30 or award and reimbursement of the fund's costs and the fees of

1 the fund's attorney.

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

5 (d) Liens.--If payments of any nature have been made by the  
6 fund on behalf of an uninsured employer, the fund shall file a  
7 certified proof of payment with the prothonotary of a court of  
8 common pleas, and the prothonotary shall enter the entire  
9 balance as a judgment against the employer. The judgment shall  
10 be a statutory lien against property of the employer in the  
11 manner set forth in section 308.1 of the act of December 5, 1936  
12 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment  
13 Compensation Law, and execution may issue on it. The fund has  
14 the right to update the amount of the lien as payments are made.

15 SECTION 1607. ASSESSMENTS AND TRANSFERS. <--

16 (A) [FOR THE PURPOSE OF ESTABLISHING AND MAINTAINING THE  
17 FUND, THE SUM OF \$1,000,000 IS HEREBY TRANSFERRED FROM THE  
18 ADMINISTRATION FUND ESTABLISHED UNDER SECTION 446 TO THE FUND  
19 FOR OPERATION OF THE FUND FOR THE PERIOD COMMENCING ON THE  
20 EFFECTIVE DATE OF THIS SECTION THROUGH JUNE 30, 2007.] (1) THE  
21 DEPARTMENT SHALL CALCULATE THE AMOUNT NECESSARY TO MAINTAIN THE  
22 FUND AND SHALL ASSESS INSURERS AND SELF-INSURED EMPLOYERS AS IS  
23 NECESSARY TO PROVIDE AN AMOUNT SUFFICIENT TO PAY OUTSTANDING AND  
24 ANTICIPATED CLAIMS IN THE FOLLOWING YEAR IN A TIMELY MANNER AND  
25 TO MEET THE COSTS OF THE DEPARTMENT TO ADMINISTER THE FUND. THE  
26 FUND SHALL BE MAINTAINED IN THE SAME MANNER AS THE WORKMEN'S  
27 COMPENSATION ADMINISTRATION FUND UNDER SECTION 446 AND THE  
28 REGULATIONS THEREUNDER.

29 (2) IN NO EVENT SHALL ANY ANNUAL ASSESSMENT EXCEED  
30 [0.1%] 0.25% OF THE TOTAL COMPENSATION PAID BY ALL INSURERS

1 OR SELF-INSURED EMPLOYERS DURING THE PREVIOUS CALENDAR YEAR.

2 (3) EACH FISCAL YEAR, THE DEPARTMENT SHALL DETERMINE THE  
3 EXPENSES OF THE FUND FOR THE PRIOR FISCAL YEAR. IF THE TOTAL  
4 AMOUNT ASSESSED FOR THE PRIOR FISCAL YEAR EXCEEDS 130% OF THE  
5 EXPENSES FOR THAT PRIOR FISCAL YEAR, THE CURRENT FISCAL YEAR  
6 ASSESSMENT SHALL BE REDUCED BY AN AMOUNT EQUAL TO THAT EXCESS  
7 AMOUNT.

8 \* \* \*

9 Section 3. The act is amended by adding sections to read:

10 Section 1609. Uninsured employer obligations.

11 Nothing in this article shall alter the uninsured employer's  
12 obligations under this act.

13 Section 1610. Administrative penalties and stop-work orders.

14 (a) Certification.--

15 (1) If the department receives information indicating  
16 that an employer has failed to insure the employer's  
17 obligations as required by this act, the department may  
18 require the employer to certify, on a form prescribed by the  
19 department, that the employer meets one of the following:

20 (i) Possesses the requisite insurance. This  
21 subparagraph shall require the identification of the  
22 insurer, policy period and policy number.

23 (ii) No longer operates a business. This  
24 subparagraph shall require a statement of the dates of  
25 operation and cessation of operation.

26 (iii) Does not employ an individual entitled to  
27 compensation under this act.

28 (iv) Is otherwise exempt from the requirements of  
29 obtaining insurance under this act. This paragraph shall  
30 require the identification of the applicable exemption.

1       (2) The employer shall return the form to the department  
2 within 15 days of service of the form by the department. The  
3 following shall apply:

4           (i) If an employer does not return the form within  
5 15 days of service by the department, the department may  
6 assess an administrative penalty of \$200 per day until  
7 the earlier of:

8                   (A) the date the employer complies; or

9                   (B) 30 days from service under this paragraph.

10          (ii) If an employer does not comply with this  
11 paragraph within 45 days of service under this paragraph,  
12 the department may proceed with further enforcement under  
13 subsection (d).

14       (b) Good cause.--If the department's investigation under  
15 section 1605 reveals good cause to believe that the employer is  
16 required and has failed to insure the employer's liabilities as  
17 required by this act, the department may proceed with further  
18 enforcement under subsection (d).

19       (c) Enforcement.--For the purposes of enforcing section 305  
20 and this article, each department employee or agent charged with  
21 enforcement may enter the premises or worksite of an employer  
22 that is subject to subsection (a)(2)(ii) or (b).

23       (d) Stop-work order.--The department may issue an order  
24 requiring the cessation of operations of an employer that has  
25 failed to insure its liabilities as required by this act. The  
26 following apply:

27           (1) The order may require compliance with conditions  
28 necessary to ensure that the employer insures its liabilities  
29 as required by this act.

30          (2) The order shall take effect when served upon the

1 employer by first class mail or posting at the employer's  
2 worksite.

3 (3) The order shall remain in effect until released by  
4 the department or a court of competent jurisdiction.

5 (4) The order shall be effective against a successor  
6 entity that:

7 (i) has one or more of the same principals or  
8 officers as the employer against whom the order was  
9 issued; and

10 (ii) is engaged in the same or equivalent trade or  
11 activity.

12 (e) Nonexclusivity.--An order under subsection (d) is in  
13 addition to a penalty which may be imposed pursuant to this act.

14 (f) Appeal.--

15 (1) An order under subsection (d) is subject to 2  
16 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of  
17 Commonwealth agency action).

18 (2) Except as provided in paragraph (3), an appeal of a  
19 penalty under subsection (a) (2) (i) or an order under  
20 subsection (d) shall not act as a supersedeas.

21 (3) Upon application and for cause shown, the department  
22 may issue a supersedeas.

23 (g) Noncompliance.--

24 (1) Upon failure to comply with an order under  
25 subsection (d) and (f), the department may institute an  
26 action to enforce the order.

27 (2) An action under this subsection may be initiated as  
28 follows:

29 (i) In Commonwealth Court under 42 Pa.C.S. §  
30 761(a) (2) (relating to original jurisdiction).

1           (ii) In a court of common pleas under 42 Pa.C.S. §  
2           931(b) (relating to original jurisdiction and venue).  
3           Venue for an action under this subparagraph lies in  
4           either:

5                   (A) the Twelfth Judicial District; or

6                   (B) the judicial district where the violation  
7                   occurred.

8           Section 4. Applicability is as follows:

9                   (1) The amendment or addition of section 1603(d) and (e)  
10                  of the act shall apply to every claim in which notice under  
11                  section 1603 of the act is provided to the fund on or after  
12                  the effective date of this paragraph.

13                  (2) The following provisions shall apply retroactively  
14                  to claims existing as of the effective date of this paragraph  
15                  for which compensation has not been paid or awarded:

16                          (i) The amendment of section 305.2(c) of the act.

17                          (ii) The amendment of section 1601 of the act.

18                          (iii) The amendment of section 1603(b) of the act.

19                          (iv) The amendment of section 1604 of the act.

20           Section 5. This act shall take effect immediately.