

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 676 Session of 2017

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

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 1, 2018

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, for
12 department and for assessments and transfers and providing
13 for uninsured employer obligations and for administrative
14 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

1 employer who is domiciled in another state and who has not
2 secured the payment of compensation as required by this act, the
3 [employer or his carrier may file with the director a
4 certificate, issued by] department may verify with the
5 commission or agency of such other state having jurisdiction
6 over [workmen's] workers' compensation claims[, certifying] that
7 such employer has secured the payment of compensation under the
8 [workmen's] workers' compensation law of such other state and
9 that with respect to said injury such employe is entitled to the
10 benefits provided under such law.

11 In such event:

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

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

24 (3) The following shall apply:

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

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

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

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

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

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

10 * * *

11 Section 2. Sections 446(a) and (b), 1601, 1602, 1603, 1604,
12 1605 and 1607(a) of the act are amended to read:

13 Section 446. (a) There is hereby created a special fund in
14 the State Treasury, separate and apart from all other public
15 moneys or funds of this Commonwealth, to be known as the
16 Workmen's Compensation Administration Fund.

17 (a.1) The purpose of [this fund] the Workmen's Compensation
18 Administration Fund shall be to finance:

19 (1) the Prefund Account established in section 909(a); and

20 (2) the operating and administrative expenses of the
21 Department of Labor and Industry, including the Workmen's
22 Compensation Appeal Board and staff, but not the State Workmen's
23 Insurance Fund, in the direct administration of The Pennsylvania
24 Workmen's Compensation Act and The Pennsylvania Occupational
25 Disease Act [including].

26 (a.2) The operating and administrative expenses in
27 subsection (a.1)(2) shall include only the following:

28 (1) wages and salaries of employes for services performed in
29 the administration of these acts;

30 (2) reasonable travel expenses for employes while engaged in

1 official business; and

2 (3) moneys expended for office rental, equipment rental,
3 supplies, equipment, repairs, services, postage, books, and
4 periodicals.

5 (b) The [fund] Workmen's Compensation Administration Fund
6 shall be maintained by no more than one (1) annual assessment
7 payable in any calendar year on insurers and self-insurers under
8 this act, including the State Workers' Insurance Fund[. After
9 the initial term, budgeted expenses shall be approved by the
10 General Assembly on a fiscal year basis. Thereafter, the] as
11 follows:

12 (1) The department shall [make assessments and] submit for
13 approval to the General Assembly on a fiscal year basis a
14 proposed budget sufficient to cover the Prefund Account and
15 other operating and administrative expenses under subsection
16 (a.1). The total amount approved by the General Assembly shall
17 be the approved budget. The department shall collect moneys
18 based on the ratio that such insurer's or self-insurer's
19 payments of compensation bear to the total compensation paid in
20 the preceding calendar year in which the annual assessment is
21 made. [The total amount assessed shall be the approved budget.]

22 (2) If on January 31, there exists in the [administration
23 fund] Workmen's Compensation Administration Fund any money in
24 excess of one hundred [thirty-three] twenty per centum of the
25 [current] approved budget, the following fiscal year's
26 assessment shall be reduced by an amount equal to that excess
27 amount.

28 * * *

29 Section 1601. Definitions.

30 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

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

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

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

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

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

21 (a) Establishment.--

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

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

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

28 (1) Assessments provided for under section 1607.

29 (2) Reimbursements or restitution.

30 (3) Interest on money in the fund.

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

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

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

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

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

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

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

30 (2) the department determines that the employer failed

1 to voluntarily accept and pay the claim or subsequently
2 defaulted on payments of compensation. [No compensation shall
3 be due until notice is given.]

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

6 (d) Petitions.--

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

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

14 (e) List of providers.--

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

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

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

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

30 (ii) notify the employee of the requirements of this

1 subsection.

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

9 Section 1604. Claim petition.

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

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

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

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

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

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

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

29 (6) Testimony of the uninsured employer presented under
30 oath at a hearing or deposition.

1 (7) Testimony of the claimant, if found credible by the
2 judge., WHICH IS PROVIDED IN ADDITION TO ONE OR MORE OF THE <--
3 ITEMS LISTED IN PARAGRAPHS (1), (2), (3), (4), (5) AND (6).

4 ~~(c) Limitation on wage loss payments. If a judge accepts~~ <--
5 ~~testimony and finds it to be credible under subsection (b) (7) as~~
6 ~~the sole basis for determining wage loss payments, without~~
7 ~~supporting evidence established in subsection (b) (1), (2), (3),~~
8 ~~(4), (5) or (6), the wage loss payment rate shall be sixty six~~
9 ~~and two thirds per centum of the average weekly wage for the~~
10 ~~claimant's occupation. The judge may reduce the average weekly~~
11 ~~wage loss payment upon the submission of evidence indicating a~~
12 ~~lesser wage amount or based on the claimant's length of~~
13 ~~employment with the employer. For the purposes of this~~
14 ~~subsection, the term "average weekly wage" is the average weekly~~
15 ~~wage for the claimant's occupation by metropolitan statistical~~
16 ~~area, as determined by the United States Department of Labor for~~
17 ~~the calendar year prior to the year in which the claimant's~~
18 ~~injury occurred, and shall be based on the metropolitan~~
19 ~~statistical area in which the claimant's injury occurred.~~

20 (C) REPORTS.--IF THE DEPARTMENT HAS REASONABLE CAUSE TO <--
21 SUSPECT THAT A CLAIMANT OR UNINSURED EMPLOYER HAS NOT REPORTED,
22 HAS UNDERREPORTED OR IS DELINQUENT IN THE PAYMENT OF ANY FEDERAL
23 OR STATE TAX, THE DEPARTMENT SHALL MAKE A REPORT WITHIN 30 DAYS
24 TO THE DEPARTMENT OF REVENUE, THE UNITED STATES INTERNAL REVENUE
25 SERVICE OR ANY OTHER APPLICABLE FEDERAL OR STATE AGENCY. THE
26 DEPARTMENT SHALL COOPERATE WITH AN INVESTIGATION INITIATED AS
27 THE RESULT OF A REPORT MADE UNDER THIS SUBSECTION.

28 Section 1605. Department.

29 (a) Insurance inquiry.--Within ten days of notice of a
30 claim, the fund shall demand from the employer proof of

1 applicable insurance coverage. Within 14 days from the date of
2 the fund's request, the employer must provide proof of
3 insurance. If the employer does not provide proof, there shall
4 be rebuttable presumption of uninsurance.

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

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

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

1 common pleas, and the prothonotary shall enter the entire
2 balance as a judgment against the employer. The judgment shall
3 be a statutory lien against property of the employer in the
4 manner set forth in section 308.1 of the act of December 5, 1936
5 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
6 Compensation Law, and execution may issue on it. The fund has
7 the right to update the amount of the lien as payments are made.
8 Section 1607. Assessments and transfers.

9 (a) [For the purpose of establishing and maintaining the
10 fund, the sum of \$1,000,000 is hereby transferred from the
11 Administration Fund established under section 446 to the fund
12 for operation of the fund for the period commencing on the
13 effective date of this section through June 30, 2007.] (1) The
14 department shall calculate the amount necessary to maintain the
15 fund and shall assess insurers and self-insured employers as is
16 necessary to provide an amount sufficient to pay outstanding and
17 anticipated claims in the following year in a timely manner and
18 to meet the costs of the department to administer the fund. The
19 fund shall be maintained in the same manner as the Workmen's
20 Compensation Administration Fund under section 446 and the
21 regulations thereunder.

22 (2) In no event shall any annual assessment exceed
23 [0.1%] 0.25% of the total compensation paid by all insurers
24 or self-insured employers during the previous calendar year.

25 (3) Each fiscal year, the department shall determine the
26 expenses of the fund for the prior fiscal year. If the total
27 amount assessed for the prior fiscal year exceeds 130% of the
28 expenses for that prior fiscal year, the current fiscal year
29 assessment shall be reduced by an amount equal to that excess
30 amount.

1 * * *

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

3 Section 1609. Uninsured employer obligations.

4 Nothing in this article shall alter the uninsured employer's
5 obligations under this act.

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

7 (a) Certification.--

8 (1) If the department receives information indicating
9 that an employer has failed to insure the employer's
10 obligations as required by this act, the department may
11 require the employer to certify, on a form prescribed by the
12 department, that the employer meets one of the following:

13 (i) Possesses the requisite insurance. This
14 subparagraph shall require the identification of the
15 insurer, policy period and policy number.

16 (ii) No longer operates a business. This
17 subparagraph shall require a statement of the dates of
18 operation and cessation of operation.

19 (iii) Does not employ an individual entitled to
20 compensation under this act.

21 (iv) Is otherwise exempt from the requirements of
22 obtaining insurance under this act. This paragraph shall
23 require the identification of the applicable exemption.

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

27 (i) If an employer does not return the form within
28 15 days of service by the department, the department may
29 assess an administrative penalty of \$200 per day until
30 the earlier of:

1 (A) the date the employer complies; or
2 (B) 30 days from service under this paragraph.

3 (ii) If an employer does not comply with this
4 paragraph within 45 days of service under this paragraph,
5 the department may proceed with further enforcement under
6 subsection (d).

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

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

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

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

23 (2) The order shall take effect when served upon the
24 employer by first class mail or posting at the employer's
25 worksite.

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

28 (4) The order shall be effective against a successor
29 entity that:

30 (i) has one or more of the same principals or

1 officers as the employer against whom the order was
2 issued; and

3 (ii) is engaged in the same or equivalent trade or
4 activity.

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

7 (f) Appeal.--

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

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

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

16 (g) Noncompliance.--

17 (1) Upon failure to comply with an order under
18 subsection (d) and (f), the department may institute an
19 action to enforce the order.

20 (2) An action under this subsection may be initiated as
21 follows:

22 (i) In Commonwealth Court under 42 Pa.C.S. §
23 761(a)(2) (relating to original jurisdiction).

24 (ii) In a court of common pleas under 42 Pa.C.S. §
25 931(b) (relating to original jurisdiction and venue).

26 Venue for an action under this subparagraph lies in
27 either:

28 (A) the Twelfth Judicial District; or

29 (B) the judicial district where the violation
30 occurred.

1 (H) SUSPENSION AND REINSTATEMENT OF LICENSES OR
2 CERTIFICATIONS.--TO ENFORCE A STOP-WORK ORDER ISSUED UNDER
3 SUBSECTION (D), THE DEPARTMENT, AT ITS DISCRETION, MAY SUSPEND
4 ANY LICENSE OR CERTIFICATION ISSUED BY THE COMMONWEALTH FOR AN
5 EMPLOYER SUBJECT TO A STOP-WORK ORDER. THE DEPARTMENT MAY
6 PROVIDE ANY COMMONWEALTH AGENCY WITH A COPY OF A VALID STOP-WORK
7 ORDER AND REQUEST THAT THE AGENCY SUSPEND ANY LICENSE OR
8 CERTIFICATION WHICH THE AGENCY HAS ISSUED TO THE EMPLOYER. IF
9 THE STOP-WORK ORDER IS RELEASED BY THE DEPARTMENT OR A COURT OF
10 COMPETENT JURISDICTION, THE DEPARTMENT SHALL IMMEDIATELY REQUEST
11 THE REINSTATEMENT OF ANY LICENSE OR CERTIFICATION SUSPENDED
12 UNDER THIS SUBSECTION. A COMMONWEALTH AGENCY SHALL COMPLY WITH A
13 REQUEST FOR SUSPENSION OR REINSTATEMENT OF A LICENSE OR
14 CERTIFICATION UNDER THIS SUBSECTION WITHIN ONE BUSINESS DAY.

15 Section 4. Applicability is as follows:

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

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

- 23 (i) The amendment of section 305.2(c) of the act.
- 24 (ii) The amendment of section 1601 of the act.
- 25 (iii) The amendment of section 1603(b) of the act.
- 26 (iv) The amendment of section 1604 of the act.

27 Section 5. This act shall take effect immediately.