HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 676 **PRINTERS NO.** 1289 **PRIME SPONSOR**: Gordner

COST / (SAVINGS)

FUND	FY 2018/19	FY 2019/20
Uninsured Employers Guaranty Fund	**See "Fiscal Impact"**	**See "Fiscal Impact"**
Workmen's Compensation Administration Fund	**See "Fiscal Impact"**	**See "Fiscal Impact"**

SUMMARY: Amends the Workers' Compensation Act to provide for the solvency of the Uninsured Employers Guaranty Fund. This legislation would take effect immediately.

ANALYSIS: This legislation amends provisions of the Workers' Compensation Act (Act 338 of 1915) to address the solvency of the Uninsured Employers Guaranty Fund (UEGF) by more tightly controlling benefits paid from the fund and providing additional revenue for the fund.

Out-of-State Employers: In cases where an employee of an out-of-state employer sustains a work-related injury in PA, the legislation allows the Department of Labor and Industry (DLI) to verify that the employer is either insured/self-insured in the state where the employer is domiciled. If the employer is insured/self-insured in another state, the employer will not be considered uninsured.

Where an employee alleges that an out-of-state employer has not secured the required payment of compensation, the employee will be required to provide UEGF (and any workers' compensation (WC) judge hearing a petition against UEGF) with evidence from the other state that the employee is not entitled to WC benefits in the other state. No compensation will be payable to the employee from UEGF until the employee submits such evidence, but the employee will be allowed to file a notice or petition against UEGF prior to providing such evidence.

Workers' Compensation Administration Fund (WCAF): The legislation clarifies that DLI operating and administrative expenses (in the direct administration of the Workers' Compensation Act and the Occupational Disease Act) allowed to be paid from the WCAF include only:

- Wages and salaries of employees for administration services;
- Reasonable travel expenses for employees engaged in official business; and
- Moneys for office expenses;

DLI is required to submit a proposed fiscal-year budget to the General Assembly. The amount approved by the General Assembly will be the approved budget. If, on January 31, WCAF holds more than 120% (reduced in the legislation from 133%) of the approved budget, the following fiscal year's assessment will be reduced by the dollar amount of the excess.

Interest: The definition of "fund" is amended to provide that UEGF is not subject to interest for benefits due.

Revenue Sources: The legislation will allow administrative penalties to be used as a revenue source for UEGF.

UEGF Process: An injured employee will have 45 days to notify UEGF after he was advised by the employer/other source that the employer was uninsured. No employee will receive compensation unless the employee notified UEGF within the 45-day period and DLI determines that the employer failed to voluntarily accept and pay the claim or defaulted on payment of compensation.

A claim petition is required to be filed between 21 and 180 days after notice of the claim is made to UEGF. If the petition is not filed within 180 days, the petition will not be allowed.

The legislation allows UEGF to establish a list of at least 6 health care providers accessible in each county in specialties relevant to the treatment of workers. If UEGF establishes that list, it will only be responsible to reimburse for services rendered by the listed providers for the 90-day period after the employee's notice to UEGF. The list of providers will be given to the employee, and UEGF will be relieved of responsibility for payment if the employee uses a provider not designated on the list.

Amount of Wages and Reporting to Tax Authorities: UEGF will not be responsible for wage loss benefits (but the claimant can still receive medical benefits), unless the amount of wages earned at the time of the injury is established by one of the following:

- A check, stub or payroll record
- A tax return (includes a W-2 or 1099 form)
- Unemployment Compensation records (including Form UC-2A)
- Bank statements or records showing regular and recurring deposits
- Written documentation created contemporaneously with the payment of wages
- Testimony of the uninsured employer presented under oath at a hearing or deposition
- Testimony of the claimant, if accompanied by one of the above forms of evidence.

Restitution: UEGF is entitled to restitution of all payments made as the result of any injury to an employee of an uninsured employer. Restitution is not limited to the amount specified in an award of compensation, and it will include any voluntary payment or award and reimbursement of UEGF's costs and attorney fees.

Assessment: The maximum annual assessment paid by insurers/self-insured employers is increased from 0.1% to 0.25% of the total compensation paid by those entities. Each fiscal year, DLI will determine UEGF's expenses for the prior fiscal year. If the total amount assessed exceeds 130% of the prior fiscal year's expenses, the assessment will be reduced by a dollar amount equal to the excess amount.

Uninsured Employer Obligations: Language is added to clarify that nothing in the article changes the uninsured employer's obligations under the act.

<u>Administrative Penalties and Stop-Work Orders:</u> If DLI receives information indicating that an employer has failed to insure its obligations under the act, DLI is allowed to verify that the employer possesses the requisite insurance, no longer operates a business, does not employ an individual entitled to compensation, or is otherwise exempt from the requirements of obtaining insurance.

If the employer does not return the verification form to DLI within 15 days, DLI may assess a $200/day penalty until the employer complies or 30 days have passed since the request for verification (whichever is earlier). If the employer does not comply within 45 days, DLI can issue a stop-work order and require the employer to cease operations. The order may be appealed. A stop-work order is not exclusive and may be applied in addition to any other penalty imposed under the act.

If the employer does not comply with the stop-work order, DLI may initiate an action to enforce the order in Commonwealth Court, the 12th Judicial District (Dauphin County) or the judicial district where the violation occurred.

<u>Applicability:</u> Changes related to the timeframe to file a claim petition with UEGF and the list of designated providers will apply to every claim where notice is provided on or after the effective date.

The following will apply retroactively to existing claims, for which compensation has not been paid or awarded:

- Department verification of out-of-state employers
- The prohibition of interest on benefits due
- Changes to the requirements for the injured employee to provide notice to UEGF
- Changes related to proof of wages and the amount of wage loss benefits

FISCAL IMPACT: According to the DLI, by increasing the UEGF maximum annual assessments to 0.25%, this will provide an estimated additional $4.2 million - $4.4 million to the fund.

Savings can be expected from the additional provisions in the legislation including placing a limit on the time period in which a claimant may file for benefits provided through the UEGF, requiring proof from the claimant of wages paid by the uninsured employer, limiting medical treatments to the list of designated health care providers, and eliminating the fund being subject to interest. These savings are indeterminable at this point.

The legislation also allows the department to assess new administrative penalties of $200 per day (30-day maximum) if the employer fails to respond to requested certification of possession of required insurance or reasons for exemption. This could provide additional revenue to the UEGF.

Under current law, the assessment for the WC Administration Fund would be reduced by $18 million for the 2018-19 fiscal year, because the fund (as of 10/16/18) holds more than 133% of the 2018-19 budget for Workers' Compensation Administration. According to DLI, if the surplus threshold is set at 120% (as proposed by this legislation), the reduction in the 2018-19 assessment would instead be $27.3 million.

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House Appropriations Committee (R)

DATE: October 16, 2018

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.