

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1121 Session of
1975

INTRODUCED BY MESSRS. IRVIS, MANDERINO, BERSON, ENGLEHART AND
BELLOMINI, APRIL 28, 1975

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JULY 9, 1975

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 amended, "An act defining the liability of an employer to pay
3 damages for injuries received by an employe in the course of
4 employment; establishing an elective schedule of
5 compensation; providing procedure for the determination of
6 liability and compensation thereunder; and prescribing
7 penalties," providing for the establishment of the Workmen's
8 Compensation Supersedeas Fund, and requiring annual reports
9 of compensation paid.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. ~~Section~~ SUBSECTIONS (A) AND (B) OF SECTION 441 <—
13 AND SECTION 443, act of June 2, 1915 (P.L.736, No.338), known as
14 "The Pennsylvania Workmen's Compensation Act," reenacted and
15 amended June 21, 1939 (P.L.520, No.281), added February 8, 1972
16 (P.L.25, No.12), ~~is~~ ARE amended to read: <—

17 SECTION 441. (A) IF ANY INSURER LICENSED TO TRANSACT THE <—
18 BUSINESS OF WORKMEN'S COMPENSATION INSURANCE WITHIN THIS
19 COMMONWEALTH REPEATEDLY OR UNREASONABLY FAILS TO PAY PROMPTLY
20 COMPENSATION FOR WHICH IT IS LIABLE OR FAILS OR REFUSES TO
21 SUBMIT ANY REPORT OR TO PAY ANY ASSESSMENT MADE UNDER THIS ACT,

1 THE SECRETARY MAY RECOMMEND TO THE INSURANCE COMMISSIONER THAT
2 THE LICENSE OF THE COMPANY TO TRANSACT SUCH BUSINESS BE REVOKED,
3 OR SUSPENDED SETTING FORTH IN DETAIL THE REASONS FOR HIS
4 RECOMMENDATION. THE INSURANCE COMMISSIONER SHALL THEREUPON
5 FURNISH A COPY OF THE SECRETARY'S REPORT TO THE INSURER AND
6 SHALL SET A DATE FOR PUBLIC HEARING, AT WHICH BOTH THE INSURER
7 AND THE SECRETARY SHALL BE AFFORDED AN OPPORTUNITY TO PRESENT
8 EVIDENCE. IF, AFTER THE HEARING, THE COMMISSIONER IS SATISFIED
9 THAT THE INSURER HAS FAILED TO LIVE UP TO HIS OBLIGATIONS UNDER
10 THIS ACT, HE SHALL PROMPTLY REVOKE OR SUSPEND ITS LICENSE.

11 (B) IF ANY EMPLOYER WHO IS SUBJECT TO THIS ACT AS AN
12 APPROVED SELF-INSURER REPEATEDLY OR UNREASONABLY FAILS TO PAY
13 PROMPTLY COMPENSATION FOR WHICH IT IS LIABLE OR FAILS OR REFUSES
14 TO SUBMIT ANY REPORT OR TO PAY ANY ASSESSMENT MADE UNDER THIS
15 ACT, THE SECRETARY MAY REVOKE OR SUSPEND THE PRIVILEGE GRANTED
16 TO THE EMPLOYER TO CARRY ITS OWN RISK AND REQUIRE IT TO INSURE
17 ITS LIABILITY. THE SECRETARY SHALL NOT TAKE SUCH ACTION AGAINST
18 ANY EMPLOYER UNTIL THE EMPLOYER HAS BEEN NOTIFIED IN WRITING OF
19 THE CHARGES MADE AGAINST IT AND HAS BEEN GIVEN AN OPPORTUNITY TO
20 BE HEARD BEFORE THE SECRETARY IN ANSWER TO THE CHARGES. FROM THE
21 REVOCATION OR SUSPENSION OF SUCH LICENSE OR PRIVILEGE UNDER
22 SUBSECTIONS (A) AND (B) OF THIS SECTION AN APPEAL SHALL LIE TO
23 THE COMMONWEALTH COURT.

24 * * *

25 Section 443. [If, in any case in which a supersedeas has
26 been denied under the provisions of section 413 or section 430,
27 payments of compensation are made as a result thereof and upon
28 the final outcome of the proceedings, it is determined that such
29 compensation was not in fact payable, the insurer who has made
30 such payments shall be reimbursed therefor. A fund shall be

1 credited for this purpose, to be maintained as follows: The
2 department shall assess and collect from each insurer the
3 proportion of the amount of such payments made during the
4 preceding year that the total compensation paid by such insurer
5 during such year bore to the total compensation paid by all
6 insurers during that year: Provided, however, That in the first
7 year in which assessments are made under this provision, the
8 total amount assessed and collected shall be two hundred per
9 cent of the amount paid in such cases during the preceding
10 year.] (a) If, in any case in which a supersedeas has been
11 requested and denied under the provisions of section 413 or
12 section 430, payments of compensation are made as a result
13 thereof and upon the final outcome of the proceedings, it is
14 determined that such compensation was not, in fact, payable, the
15 insurer who has made such payments shall be reimbursed therefor.
16 Application for reimbursement shall be made to the department on
17 forms prescribed by the department and furnished by the insurer.
18 Applications may be assigned to a workmen's compensation referee
19 for a hearing and determination of eligibility for reimbursement
20 pursuant to this act. An appeal shall lie in the manner and on
21 the grounds provided in section 423 of this act, from any
22 allowance or disallowance of reimbursement under this section.
23 (b) There is hereby established a special fund in the State
24 Treasury, separate and apart from all other public moneys or
25 funds of this Commonwealth, to be known as the Workmen's
26 Compensation Supersedeas Fund. The purpose of this fund shall be
27 to provide moneys for payments pursuant to subsection (a), to
28 include reimbursement to the Commonwealth for any such payments
29 made from general revenues. The department shall be charged with
30 the maintenance and conservation of this fund. The fund shall be

1 maintained by annual assessments on insurers and self-insurers
2 under this act, including the State Workmen's Insurance Fund.
3 The department shall make assessments and collect moneys
4 pursuant to this section of the act. Assessments shall be based
5 on the ratio that such insurer's or self-insurer's payments of
6 compensation bear to the total compensation paid in the year
7 preceding the year of assessment. The total amount to be
8 assessed shall be one hundred percent of the amount reimbursed
9 to insurers and self-insurers in the preceding year pursuant to
10 this section, except that the first annual assessment made under
11 this act shall be in the amount of two hundred fifty thousand
12 dollars (\$250,000). The department shall give notice to every
13 insurer and self-insurer under this act, including the State
14 Workmen's Insurance Fund, of the amount assessed against such
15 insurer, self-insurer or the State Workmen's Insurance Fund on
16 or before June 30 of the year following the year upon which the
17 assessment is based: Provided, That notice of the first annual
18 assessment under this act shall be given to every insurer and
19 self-insurer under this act, including the State Workmen's
20 Insurance Fund, within ninety days of the effective date of this
21 amending act. Payment of assessments shall be made to the
22 department within thirty days of receipt of notice of the amount
23 assessed, UNLESS THE DEPARTMENT SPECIFIES ON THE NOTICES SENT TO <—
24 ALL INSURERS AND SELF-INSURERS AN INSTALLMENT PLAN OF PAYMENT,
25 IN WHICH CASE EACH SUCH INSURER SHALL PAY EACH INSTALLMENT ON OR
26 BEFORE THE DATE SPECIFIED THEREFORE BY THE DEPARTMENT WITHIN
27 FIFTEEN DAYS AFTER THE RECEIPT OF SUCH NOTICE, THE INSURER OR
28 SELF-INSURER AGAINST WHICH SUCH ASSESSMENT HAS BEEN MADE MAY
29 FILE WITH THE DEPARTMENT OBJECTIONS SETTING OUT IN DETAIL THE
30 GROUND UPON WHICH THE OBJECTOR REGARDS SUCH ASSESSMENT TO BE

1 EXCESSIVE, ERRONEOUS, UNLAWFUL, OR INVALID. THE DEPARTMENT,
2 AFTER NOTICE TO THE OBJECTOR, SHALL HOLD A HEARING UPON SUCH
3 OBJECTIONS. AFTER SUCH HEARING, THE DEPARTMENT SHALL RECORD ITS
4 FINDINGS ON THE OBJECTIONS AND SHALL TRANSMIT TO THE OBJECTOR,
5 BY REGISTERED OR CERTIFIED MAIL, NOTICE OF THE AMOUNT, IF ANY,
6 CHARGED AGAINST IT IN ACCORDANCE WITH SUCH FINDINGS, WHICH
7 AMOUNT OR ANY INSTALLMENT THEREOF THEN DUE, SHALL BE PAID BY THE
8 OBJECTOR WITHIN TEN DAYS AFTER RECEIPT OF NOTICE OF THE
9 FINDINGS.

10 NO SUIT OR PROCEEDING SHALL BE MAINTAINED IN ANY COURT FOR
11 THE PURPOSE OF RESTRAINING OR IN ANYWISE DELAYING THE COLLECTION
12 OR PAYMENT OF ANY ASSESSMENT MADE UNDER THIS SUBSECTION BUT
13 EVERY INSURER OR SELF-INSURER AGAINST WHICH AN ASSESSMENT IS
14 MADE SHALL PAY THE SAME AS PROVIDED IN SUBSECTION (B) OF THIS
15 SECTION. ANY INSURER OR SELF-INSURER MAKING ANY SUCH PAYMENT
16 MAY, AT ANY TIME WITHIN TWO YEARS FROM THE DATE OF PAYMENT, SUE
17 THE COMMONWEALTH IN AN ACTION AT LAW TO RECOVER THE AMOUNT PAID,
18 OR ANY PART THEREOF, UPON THE GROUND THAT THE ASSESSMENT WAS
19 EXCESSIVE, ERRONEOUS, UNLAWFUL, INVALID, IN WHOLE OR IN PART,
20 PROVIDED OBJECTIONS, AS HEREINBEFORE PROVIDED, WERE FILED WITH
21 THE DEPARTMENT, AND PAYMENT OF THE ASSESSMENT WAS MADE UNDER
22 PROTEST EITHER AS TO ALL OR PART THEREOF. IN ANY ACTION FOR
23 RECOVERY OF ANY PAYMENTS MADE UNDER THIS SECTION, THE CLAIMANT
24 SHALL BE ENTITLED TO RAISE EVERY RELEVANT ISSUE OF LAW, BUT THE
25 FINDINGS OF FACT MADE BY THE DEPARTMENT, PURSUANT TO THIS
26 SECTION, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS THEREIN
27 STATED. IF IT IS FINALLY DETERMINED IN ANY SUCH ACTION THAT ALL
28 OR ANY PART OF THE ASSESSMENT FOR WHICH PAYMENT WAS MADE UNDER
29 PROTEST WAS EXCESSIVE, ERRONEOUS, UNLAWFUL, OR INVALID, THE
30 DEPARTMENT SHALL MAKE A REFUND TO THE CLAIMANT OUT OF THE

1 APPROPRIATION SPECIFIED IN SUBSECTION (C) AS DIRECTED BY THE
2 COURT.

3 ~~(e)~~ (C) THE DEPARTMENT SHALL KEEP A RECORD OF THE MANNER IN <—
4 WHICH IT SHALL HAVE COMPUTED THE AMOUNT ASSESSED AGAINST EVERY
5 INSURER OR SELF-INSURER. SUCH RECORDS SHALL BE OPEN TO
6 INSPECTION BY ALL INTERESTED PARTIES. THE DETERMINATION OF SUCH
7 ASSESSMENTS AND THE RECORDS AND DATA UPON WHICH THE SAME ARE
8 MADE, SHALL BE CONSIDERED PRIMA FACIE CORRECT; AND IN ANY
9 PROCEEDING INSTITUTED TO CHALLENGE THE REASONABLENESS OR
10 CORRECTNESS OF ANY ASSESSMENT UNDER THIS SECTION, THE PARTY
11 CHALLENGING THE SAME SHALL HAVE THE BURDEN OF PROOF. The fund
12 shall be subject to audit by the Auditor General and a copy of
13 the report of the audit furnished to assessed insurers and self-
14 insurers upon request. The Secretary of Labor and Industry shall
15 be the administrator of the fund and shall have the power to
16 dispense and disburse moneys from the fund for the purpose of
17 payments made pursuant to this section. All moneys in the fund
18 as are required to carry out the purposes of this section are
19 hereby specifically appropriated to the Department of Labor and
20 Industry. The State Treasurer shall be custodian of the fund.
21 Disbursements of moneys pursuant to this section shall be upon
22 final adjudication of requests for payments pursuant thereto.

23 Section 2. The act is amended by adding a section to read:

24 Section 445. Annual reports of compensation paid by
25 insurers, self-insurers and the State Workmen's Insurance Fund
26 shall be made on a calendar year basis to the department not
27 later than April 15 of the following year, except that for the
28 year 1974 reports shall be filed within sixty days of the
29 effective date of this amending act. NOTHING IN THIS ACT SHALL <—
30 BE CONSTRUED TO PRECLUDE INSURERS FROM FILING ITS ANNUAL REPORT

1 REQUIRED HEREIN IN SUBSTANTIALLY THE SAME FORM AS ITS ANNUAL
2 REPORT TO THE INSURANCE DEPARTMENT.

3 Section 3. This act shall take effect immediately.