AN ACT

Amending the act of June 2, 1915 (P.L. 736, No. 338), entitled "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," in liability and compensation, further providing for injuries outside this Commonwealth; in procedure, further providing for the Workmen's Compensation Administration Fund; and, in the Uninsured Employers Guaranty Fund, further providing for definitions, for fund, for claims, for claim petition, for department and for assessments and transfers and providing for uninsured employer obligations and for administrative penalties and stop-work orders.

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

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

Section 305.2. * * *

(c) If an employe is entitled to the benefits of this act by reason of an injury sustained in this State in employment by an employer who is domiciled in another state and who has not
secured the payment of compensation as required by this act, the
employer or his carrier may file with the director a
certificate, issued by] department may verify with the
commission or agency of such other state having jurisdiction
over [workmen's] workers' compensation claims[, certifying] that
such employer has secured the payment of compensation under the
[workmen's] workers' compensation law of such other state and
that with respect to said injury such employe is entitled to the
benefits provided under such law.

In such event:

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

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

(3) The following shall apply:

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

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

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

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

(c.1) If an employe alleges an injury that is incurred with an employer which is domiciled in another state and which has not secured the payment of compensation as required by this act, such employe shall provide to the Uninsured Employers Guaranty Fund and to any worker's compensation judge hearing a petition against the fund, a written notice, denial, citation of law or court or administrative ruling from such other state or an
insurer licensed to write insurance in that state as to that employer, indicating that the employee is not entitled to workers' compensation benefits in that state. No compensation shall be payable from the Uninsured Employers Guaranty Fund until the employee submits the notice, denial, citation or ruling, however, the employee may file a notice or petition against the fund under Article XVI of this act prior to the submission.

* * *

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

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

(a.1) The purpose of the Workmen's Compensation Administration Fund shall be to finance:

(1) the Prefund Account established in section 909(a); and (2) the operating and administrative expenses of the Department of Labor and Industry, including the Workmen's Compensation Appeal Board and staff, but not the State Workmen's Insurance Fund, in the direct administration of The Pennsylvania Workmen's Compensation Act and The Pennsylvania Occupational Disease Act [including].

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

(1) wages and salaries of employees for services performed in the administration of these acts; (2) reasonable travel expenses for employees while engaged in official business; and
(3) moneys expended for office rental, equipment rental, supplies, equipment, repairs, services, postage, books, and periodicals.

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

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

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

* * *

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, interest or any reporting and liability requirements under section 440.

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

"Secretary." The Secretary of Labor and Industry of the Commonwealth.

Section 1602. Fund.

(a) Establishment.--

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

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

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

(1) Assessments provided for under section 1607.

(2) Reimbursements or restitution.

(3) Interest on money in the fund.

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

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

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

Section 1603. Claims.

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

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

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

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

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

(d) Petitions.--

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

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

(e) List of providers.--

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

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

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

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

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

Section 1604. Claim petition.

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

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

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

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

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

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

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

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

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

(C) LIMITATION ON WAGE LOSS PAYMENTS.--IF A JUDGE ACCEPTS
TESTIMONY AND FINDS IT TO BE CREDIBLE UNDER SUBSECTION (B)(7) AS
THE SOLE BASIS FOR DETERMINING WAGE LOSS PAYMENTS, WITHOUT
SUPPORTING EVIDENCE ESTABLISHED IN SUBSECTION (B)(1), (2), (3),
(4), (5) OR (6), THE WAGE LOSS PAYMENT RATE SHALL BE SIXTY-SIX
AND TWO-THIRDS PER CENTUM OF THE AVERAGE WEEKLY WAGE FOR THE
CLAIMANT'S OCCUPATION. THE JUDGE MAY REDUCE THE AVERAGE WEEKLY
WAGE LOSS PAYMENT UPON THE SUBMISSION OF EVIDENCE INDICATING A
LESSER WAGE AMOUNT OR BASED ON THE CLAIMANT'S LENGTH OF
EMPLOYMENT WITH THE EMPLOYER. FOR THE PURPOSES OF THIS
SUBSECTION, THE TERM "AVERAGE WEEKLY WAGE" IS THE AVERAGE WEEKLY
WAGE FOR THE CLAIMANT'S OCCUPATION BY METROPOLITAN STATISTICAL
AREA, AS DETERMINED BY THE UNITED STATES DEPARTMENT OF LABOR FOR
THE CALENDAR YEAR PRIOR TO THE YEAR IN WHICH THE CLAIMANT'S
INJURY OCCURRED, AND SHALL BE BASED ON THE METROPOLITAN
STATISTICAL AREA IN WHICH THE CLAIMANT'S INJURY OCCURRED.

Section 1605. Department.

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

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

(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 in the manner set forth in section 308.1 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, and execution may issue on it. The fund has the right to update the amount of the lien as payments are made.
fund, the sum of $1,000,000 is hereby transferred from the
Administration Fund established under section 446 to the fund
for operation of the fund for the period commencing on the
effective date of this section through June 30, 2007.] (1) The
department shall calculate the amount necessary to maintain the
fund and shall assess insurers and self-insured employers as is
necessary to provide an amount sufficient to pay outstanding and
anticipated claims in the following year in a timely manner and
to meet the costs of the department to administer the fund. The
fund shall be maintained in the same manner as the Workmen's
Compensation Administration Fund under section 446 and the
regulations thereunder.

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

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

* * *

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

Section 1609. Uninsured employer obligations.

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

Section 1610. Administrative penalties and stop-work orders.

(a) Certification.--

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

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

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

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

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

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

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

(A) the date the employer complies; or

(B) 30 days from service under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

(f) Appeal.--

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

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

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

(g) Noncompliance.--

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

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

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

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

Venue for an action under this subparagraph lies in either:

(A) the Twelfth Judicial District; or
(B) the judicial district where the violation occurred.

Section 4. Applicability is as follows:

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

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

(i) The amendment of section 305.2(c) of the act.
(ii) The amendment of section 1601 of the act.

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

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

Section 5. This act shall take effect immediately.