

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1278 Session of
1998

INTRODUCED BY ARMSTRONG, BELAN, LAVALLE, MOWERY, WENGER,
TARTAGLIONE, KASUNIC, MADIGAN, THOMPSON, DELP AND JUBELIRER,
FEBRUARY 2, 1998

REFERRED TO LABOR AND INDUSTRY, FEBRUARY 2, 1998

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," providing for payments of benefits to
8 certain claimants who are not covered by the Self-Insurance
9 Guaranty Fund; establishing rights and obligations of the
10 Department of Labor and Industry relating to such payments;
11 providing for restriction on the amount of such benefits that
12 may be paid; and making an appropriation.

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

15 Section 1. The act of June 2, 1915 (P.L.736, No.338), known
16 as the Workers' Compensation Act, reenacted and amended June 21,
17 1939 (P.L.520, No.281), is amended by adding a section to read:

18 Section 451. (a) The term "defaulted self-insured
19 employer," when used in this article, shall mean an employer
20 exempted by the Department of Labor and Industry from the
21 requirement to insure its liability under section 305 of this
22 act or section 305 of the act of June 21, 1939 (P.L.566,

1 No.284), known as "The Pennsylvania Occupational Disease Act,"
2 for claims on injuries or exposures to the hazard of disease
3 which occurred prior to October 30, 1993, and which has failed
4 to pay that liability due to its financial inability or due to
5 it filing for bankruptcy or being declared bankrupt or
6 insolvent.

7 The term "fiscal year," when used in this article, shall mean
8 the fiscal year of the Commonwealth of Pennsylvania.

9 The term "preguaranty fund claimant," when used in this
10 article, shall mean an employe or a dependent of an employe of a
11 defaulted self-insured employer who is entitled to benefits
12 under this act or the act of June 21, 1939 (P.L.566, No.284),
13 known as "The Pennsylvania Occupational Disease Act," as the
14 result of an injury or exposure to hazard of disease which
15 occurred prior to October 30, 1993, the effective date for
16 coverage by the Self-Insurance Guaranty Fund.

17 The term "security," when used in this article, shall mean
18 surety bonds, cash, negotiable securities of the United States
19 or the Commonwealth or letters of credit posted by a defaulted
20 self-insured employer to guaranty the payment of its workers'
21 compensation liability.

22 The term "Self-Insurance Guaranty Fund," when used in this
23 article shall mean the special fund established in section 902.

24 The term "Workmen's Compensation Administration Fund," when
25 used in this article, shall mean the special fund established in
26 section 446.

27 (b) Moneys from investment income of the Workmen's
28 Compensation Administration Fund shall be used to pay benefits
29 under sections 306(a), (b), (c) and (f.1) and 307 for loss of
30 wages occurring or medical treatment provided after the

effective date of this section to a preguaranty fund claimant after the security posted by the defaulted self-insured employer liable for the benefits has been exhausted, Provided:

(1) That the benefits are payable under an award from a petition or a notice of compensation payable or agreement for compensation which was filed with the department prior to January 1, 1996;

(2) That such investment income of the Workmen's Compensation Administration Fund shall not be used to pay interest, penalties or attorney fees related to the payment of such benefits; and

(3) further Provided That such investment income of the Workmen's Compensation Administration Fund shall only pay benefits relating to medical treatment under section 306(f.1) which are not covered by other types of insurance or Federal, State or private benefit programs.

(c) When payments are made from investment income of the Workmen's Compensation Administration Fund under this section, the department assumes the rights and obligations of the defaulted self-insured employer under this act and "The Pennsylvania Occupational Disease Act" with regard to the payment of compensation. The department shall have the right to:

(1) Initiate and prosecute legal action against the defaulted self-insured employer to require the payment of compensation under this act or "The Pennsylvania Occupational Disease Act."

(2) Obtain, in any manner or by the use of any process or procedure, including, but not limited to, the commencement and prosecution of legal action, reimbursement from a defaulted self-insured employer and its successors, assigns and estate all

1 moneys paid from investment income of the Workmen's Compensation
2 Administration Fund to the preguaranty fund claimants,
3 including, but not limited to, reimbursement for all
4 compensation paid as well as reasonable administrative and legal
5 costs associated with such payment.

6 (d) Total payments made from investment income of the
7 Workmen's Compensation Administration Fund pursuant to this
8 section in any fiscal year shall not exceed the total investment
9 income earned by the Workmen's Compensation Administration Fund
10 in the prior fiscal year. After payments made from investment
11 income of the Workmen's Compensation Administration Fund in any
12 fiscal year equal the total investment income earned by the
13 Workmen's Compensation Administration Fund in the prior fiscal
14 year, benefits payments pursuant to this section shall resume
15 only for loss of wages occurring or medical treatment provided
16 after the beginning of the next fiscal year.

17 (e) If the department projects that total payments made from
18 investment income of the Workmen's Compensation Administration
19 Fund during a fiscal year pursuant to this section may exceed
20 the total investment income earned by the Workmen's Compensation
21 Administration Fund in the prior fiscal year, the secretary may
22 order the payment of benefits under sections 306(a), (b) and (c)
23 and 307 at a percentage of the full amounts payable under this
24 act. That percentage shall be uniformly applied to all benefits
25 under those sections paid during the fiscal year. The secretary
26 may adjust that percentage from time to time as is necessary
27 based on updated projections on payment of benefits.

28 (f) Payments from investment income of the Workmen's
29 Compensation Administration Fund for compensation payments under
30 this section shall not cause an increase to the amount assessed

1 against insurers and self-insurers under section 446(b).

2 (g) Moneys from investment income of the Workmen's
3 Compensation Administration Fund are hereby specifically
4 appropriated in such amounts as are necessary on a continuing
5 basis to the department for the purposes of this section. The
6 secretary shall have the power to dispense and disburse moneys
7 from investment income of the Workmen's Compensation
8 Administration Fund for compensation payments under this
9 section.

10 Section 2. This act shall take effect in 60 days.