

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2216 Session of  
1995

INTRODUCED BY GLADECK, PERZEL, BARLEY, PITTS, PHILLIPS, FARGO,  
E. Z. TAYLOR, CHADWICK, PICCOLA, LEH, MASLAND, MILLER,  
ARMSTRONG, CONTI, DEMPSEY, MARSICO, PETTIT, ROHRER, WAUGH,  
REINARD, FARMER, SAYLOR, TRUE, SATHER, HESS, MERRY, FLICK,  
STISH, FAIRCHILD, CLARK, ZIMMERMAN, STRITTMATTER, ADOLPH,  
GODSHALL, BAKER, TULLI, CORNELL, FICHTER, MCGILL, KING, BUNT,  
SHEEHAN, SCHRODER, CLYMER, ZUG, EGOLF, MAJOR, MAITLAND,  
SCHULER AND FLEAGLE, NOVEMBER 13, 1995

REFERRED TO COMMITTEE ON LABOR RELATIONS, NOVEMBER 13, 1995

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," further providing for definitions,  
8 for determining eligibility for compensation, for financial  
9 responsibility, for compensation schedules, and for wages;  
10 providing for reporting; further providing for notices;  
11 providing for verification of eligibility and for  
12 investigations; further providing for commutation of  
13 compensation, for exclusions, and for procedure; providing  
14 for informal conferences; further providing for processing  
15 claims, for commutation petitions, for modifications and  
16 reversals, for investigations, for evidence, for appeals, for  
17 costs and attorney fees, and for insurance policies;  
18 providing for settlements and for collective bargaining;  
19 further providing for ratings organizations and for rating  
20 procedures; providing for employer association groups;  
21 further providing for safety committees, for penalties, for  
22 prosecutions, and for collection of penalties; providing for  
23 limitation of actions; further providing for assessments; and  
24 providing for workers' compensation judges.

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

1       Section 1.   Section 104 of the act of June 2, 1915 (P.L.736,  
2 No.338), known as the Workers' Compensation Act, reenacted and  
3 amended July 2, 1939 (P.L.520, No.281), and amended June 21,  
4 1993 (P.L.190, No.44), is amended to read:

5       Section 104.   The term "employee," as used in this act is  
6 declared to be synonymous with servant, and includes--

7       All natural persons who perform services for another for a  
8 valuable consideration, exclusive of persons whose employment is  
9 casual in character and not in the regular course of the  
10 business of the employer, and exclusive of persons to whom  
11 articles or materials are given out to be made up, cleaned,  
12 washed, altered, ornamented, finished or repaired, or adapted  
13 for sale in the worker's own home, or on other premises, not  
14 under the control or management of the employer. Except as  
15 hereinafter provided in clause (c) of section 302 and sections  
16 305 and 321, every executive officer of a corporation elected or  
17 appointed in accordance with the charter and by-laws of the  
18 corporation, except elected officers of the Commonwealth or any  
19 of its political subdivisions, shall be an employee of the  
20 corporation. An executive officer of a for-profit corporation or  
21 an executive officer of a nonprofit corporation who serves  
22 voluntarily and without remuneration may, however, elect not to  
23 be an employee of the corporation for the purposes of this act.  
24 For purposes of this section, an executive officer of a for-  
25 profit corporation is an individual who has an ownership  
26 interest in the corporation, in the case of a Subchapter S  
27 corporation as defined by the act of March 4, 1971 (P.L.6,  
28 No.2), known as the "Tax Reform Code of 1971," or an ownership  
29 interest in the corporation of at least five per centum, in the  
30 case of a Subchapter C corporation as defined by the Tax Reform

1 Code of 1971.

2 Section 2. Section 109 of the act is amended by adding  
3 definitions to read:

4 Section 109. In addition to the definitions set forth in  
5 this article, the following words and phrases when used in this  
6 act shall have the meanings given to them in this section unless  
7 the context clearly indicates otherwise:

8 "Adjudication" shall have the meaning given in 2 Pa.C.S. §  
9 101 (relating to definitions).

10 \* \* \*

11 "Competent evidence" means evidence which is legally  
12 admissible in accordance with section 422. As applied to a  
13 technical or scientific opinion offered by an expert, the  
14 opinion must be based upon replicable and scientifically valid  
15 facts or data of a type reasonably relied upon by experts in the  
16 particular field in order to constitute competent evidence.

17 \* \* \*

18 "Substantial evidence" means such relevant evidence as a  
19 reasonable mind might accept to support a decision upon review  
20 of the record as a whole, taking into account both the evidence  
21 which supports, and detracts from, the decision.

22 "Sufficient, competent and substantial evidence" means the  
23 evidence which is sufficient evidence, competent evidence and  
24 substantial evidence.

25 "Sufficient evidence" means more than a scintilla of evidence  
26 but less than a preponderance of evidence.

27 \* \* \*

28 Section 3. Sections 204 and 305(a)(2) of the act, amended  
29 July 2, 1993 (P.L.190, No.44), are amended to read:

30 Section 204. (a) No agreement, composition, or release of

1 damages made before the date of any injury shall be valid or  
2 shall bar a claim for damages resulting therefrom; and any such  
3 agreement is declared to be against the public policy of this  
4 Commonwealth. The receipt of benefits from any association,  
5 society, or fund shall not bar the recovery of damages by action  
6 at law, nor the recovery of compensation under article three  
7 hereof; and any release executed in consideration of such  
8 benefits shall be void: Provided, however, That if the employe  
9 receives unemployment compensation benefits, such amount or  
10 amounts so received shall be credited as against the amount of  
11 the award made under the provisions of sections 108 and 306,  
12 except for benefits payable under section 306(c) or 307.

13 Benefits commonly characterized as "old age" benefits under the  
14 Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.),  
15 severance benefits paid by the employer or benefits from a  
16 pension plan to the extent funded by the employer which are  
17 received by an employe or to which an employe is entitled shall  
18 also be credited against the amount of the award made under  
19 sections 108 and 306, except for benefits payable under section  
20 306(c). The employe shall provide the employer or insurer with  
21 proper authorization to secure the amount to which the employe  
22 is entitled under the Social Security Act.

23 (b) For the exclusive purpose of determining eligibility for  
24 compensation under the act of December 5, 1936 (2nd Sp.Sess.,  
25 1937 P.L.2897, No.1), known as the "Unemployment Compensation  
26 Law," [weekly compensation paid to an employe under this act  
27 shall be deemed to be a credit week as that term is defined in  
28 the "Unemployment Compensation Law."] any employe who does not  
29 meet the monetary and credit week requirements under section  
30 401(a) of that act due to a work-related injury compensable

1 under this act may elect to have his base year consist of the  
2 four complete calendar quarters immediately preceding the date  
3 of the work-related injury.

4 (c) The employe is required to regularly report to the  
5 employer or insurer the receipt of unemployment compensation  
6 benefits, earned income or wages received in employment or self-  
7 employment, benefits commonly characterized as "old age"  
8 benefits under the Social Security Act, severance benefits and  
9 pension benefits, which post-date the compensable injury under  
10 this act, subject to the fraud provisions of Article XI.

11 (d) The department shall prepare the forms necessary for the  
12 enforcement of this section and issue rules and regulations as  
13 appropriate.

14 Section 305. (a) \* \* \*

15 (2) In securing the payment of benefits, the department  
16 shall require an employer wishing to self-insure its liability  
17 and a group of employers approved to pool their liabilities  
18 under Article VIII to establish sufficient security by posting a  
19 bond or other security, including letters of credit drawn on  
20 commercial banks with a Thomson Bank Watch rating of [B] B/C or  
21 better or a Thomson Bank Watch score of 2.5 or better for the  
22 bank or its holding company or with a CD rating of BBB or better  
23 by Standard and Poor's [or Baa 2 or better by Moody's]. This  
24 paragraph shall not apply to municipalities.

25 \* \* \*

26 Section 4. Section 306(a), (b) and (f.1) of the act, amended  
27 or added March 29, 1972 (P.L.159, No.61), December 5, 1974  
28 (P.L.782, No.263) and July 2, 1993 (P.L.190, No.44), are amended  
29 to read:

Section 306. The following schedule of compensation is hereby established:

(a) (1) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section [three hundred and nine] 309 beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than the maximum compensation payable as defined in section 105.2.

Nothing in this clause shall require payment of compensation after disability shall cease. If the benefit so calculated is less than fifty per centum of the Statewide average weekly wage, then the benefit payable shall be the lower of fifty per centum of the Statewide average weekly wage or ninety per centum of the worker's average weekly wage.

(2) Nothing in this act shall require payment of compensation for any period during which the employe is totally disabled and is employed or receiving wages or other earnings.

(a.1) Nothing in this act shall require payment of compensation under subsections (a) or (b) for any period during which the employe is incarcerated after a conviction or during which the employe is employed and receiving wages or other earnings equal to or greater than the employe's prior earnings.

(b) (1) For disability partial in character connected with and arising out of the compensable injury or disease (except the particular cases mentioned in clause (c)) sixty-six and two-thirds per centum of the difference between the wages of the injured employe, as defined in section three hundred and nine, and the earning power of the employe thereafter; but such compensation shall not be more than the maximum compensation payable. This compensation shall be paid during the period of

1 such partial disability except as provided in clause (e) of this  
2 section, but for not more than five hundred weeks. Should total  
3 disability be followed by partial disability, the period of five  
4 hundred weeks shall not be reduced by the number of weeks during  
5 which compensation was paid for total disability. The term  
6 "earning power," as used in this section, shall in no case be  
7 less than the weekly amount which the employe receives after the  
8 injury[, and in those cases in which the employe works fewer  
9 than five days per week for reasons not connected with or  
10 arising out of the disability resulting from the injury shall  
11 not be less than five times his actual daily wage as fixed by  
12 the day, hour, or by the output of the employe]; and in no  
13 instance shall an employe receiving compensation under this  
14 section receive more in compensation and wages combined [than a]  
15 as compared to the averaged earnings of fellow [employe]  
16 employes in employment similar to that in which the injured  
17 employe was engaged at the time of the injury.

18 (2) "Earning power" shall be determined irrespective of the  
19 actual availability of work the employe is capable of  
20 performing. Disability partial in character shall apply if the  
21 employe is able to perform his previous work, or can,  
22 considering the employe's residual productive skill, education  
23 and work experience, engage in any other kind of substantial  
24 gainful employment which exists in the usual employment area in  
25 which the employe lives within this Commonwealth, regardless of  
26 whether a specific job vacancy exists for him or whether he  
27 would be hired if he applied for work. If the employe does not  
28 live in this Commonwealth, then the usual employment area where  
29 the injury occurred shall apply. As used in this paragraph  
30 "substantial employment" means work activity that involves doing

1 significant and productive physical or mental activities,  
2 regardless whether it is done on a part-time basis or whether  
3 the claimant does less, gets paid less, or has less  
4 responsibility, than when the claimant worked before. As used in  
5 this paragraph, "gainful employment" is any work activity that  
6 is done for pay or profit, whether or not a profit is realized.

7 \* \* \*

8 (f.1) (1) (i) The employer shall provide payment in  
9 accordance with this section for reasonable surgical and medical  
10 services, services rendered by physicians or other health care  
11 providers, medicines and supplies, as and when needed. Provided  
12 an employer establishes a list of at least six designated health  
13 care providers, [no more than two of whom may be a coordinated  
14 care organization and] no fewer than three of whom shall be  
15 physicians, the employe shall be required to visit one of the  
16 physicians or other health care providers so designated and  
17 shall continue to visit the same or another designated physician  
18 or health care provider for a period of [thirty (30)] one  
19 hundred eighty (180) days from the date of the first visit:  
20 Provided, however, That the employer shall not include on the  
21 list a physician or other health care provider who is employed,  
22 owned or controlled by the employer or the employer's insurer  
23 unless employment, ownership or control is disclosed on the  
24 list. Should the employe not comply with the foregoing, the  
25 employer will be relieved from liability for the payment for the  
26 services rendered during such applicable period. It shall be the  
27 duty of the employer to provide a clearly written notification  
28 of the employe's rights and duties under this section to the  
29 employe. The employer shall further ensure that the employe has  
30 been informed and that he understands these rights and duties.



1 This duty shall be evidenced only by the employee's written  
2 acknowledgment of having been informed and having understood his  
3 rights and duties. Any failure of the employer to provide and  
4 evidence such notification shall relieve the employee from any  
5 notification duty owed, notwithstanding any provision of this  
6 act to the contrary, and the employer shall remain liable for  
7 all rendered treatment. Subsequent treatment may be provided by  
8 any health care provider of the employee's own choice. Any  
9 employee who, next following termination of the applicable  
10 period, is provided treatment from a nondesignated health care  
11 provider shall notify the employer within five (5) days of the  
12 first visit to said health care provider. Failure to so notify  
13 the employer will relieve the employer from liability for the  
14 payment for the services rendered prior to appropriate notice if  
15 such services are determined pursuant to paragraph (6) to have  
16 been unreasonable or unnecessary.

17 (ii) In addition to the above service, the employer shall  
18 provide payment for medicines and supplies, hospital treatment,  
19 services and supplies and orthopedic appliances, and prostheses  
20 in accordance with this section. Whenever an employee shall have  
21 suffered the loss of a limb, part of a limb, or an eye, the  
22 employer shall also provide for an artificial limb or eye or  
23 other prostheses of a type and kind recommended by the doctor  
24 attending such employee in connection with such injury and any  
25 replacements for an artificial limb or eye which the employee may  
26 require at any time thereafter, together with such continued  
27 medical care as may be prescribed by the doctor attending such  
28 employee in connection with such injury as well as such training  
29 as may be required in the proper use of such prostheses. The  
30 provisions of this section shall apply to injuries whether or

1 not loss of earning power occurs. If hospital confinement is  
2 required, the employee shall be entitled to semiprivate  
3 accommodations, but, if no such facilities are available,  
4 regardless of the patient's condition, the employer, not the  
5 patient, shall be liable for the additional costs for the  
6 facilities in a private room.

7 (iii) Nothing in this section shall prohibit an insurer or  
8 an employer from contracting with any individual, partnership,  
9 association or corporation to provide case management and  
10 coordination of services with regard to injured employees.

11 (2) Any provider who treats an injured employee shall be  
12 required to file periodic reports with the employer on a form  
13 prescribed by the department which shall include, where  
14 pertinent, history, diagnosis, treatment, prognosis and physical  
15 findings. The report shall be filed within ten (10) days of  
16 commencing treatment and at least once a month thereafter as  
17 long as treatment continues. The employer shall not be liable to  
18 pay for such treatment until a report has been filed.

19 (3) (i) For purposes of this clause, a provider shall not  
20 require, request or accept payment for the treatment,  
21 accommodations, products or services in excess of one hundred  
22 thirteen per centum of the prevailing charge at the seventy-  
23 fifth percentile; one hundred thirteen per centum of the  
24 applicable fee schedule, the recommended fee or the inflation  
25 index charge; one hundred thirteen per centum of the DRG payment  
26 plus pass-through costs and applicable cost or day outliers; or  
27 one hundred thirteen per centum of any other Medicare  
28 reimbursement mechanism, as determined by the Medicare carrier  
29 or intermediary, whichever pertains to the specialty service  
30 involved, determined to be applicable in this Commonwealth under

1 the Medicare program for comparable services rendered. If the  
2 commissioner determines that an allowance for a particular  
3 provider group or service under the Medicare program is not  
4 reasonable, it may adopt, by regulation, a new allowance. If the  
5 prevailing charge, fee schedule, recommended fee, inflation  
6 index charge, DRG payment or any other reimbursement has not  
7 been calculated under the Medicare program for a particular  
8 treatment, accommodation, product or service, the amount of the  
9 payment may not exceed eighty per centum of the charge most  
10 often made by providers of similar training, experience and  
11 licensure for a specific treatment, accommodation, product or  
12 service in the geographic area where the treatment,  
13 accommodation, product or service is provided.

14 (ii) Commencing on January 1, 1995, the maximum allowance  
15 for a health care service covered by subparagraph (i) shall be  
16 updated as of the first day of January of each year. The update,  
17 which shall be applied to all services performed after January 1  
18 of each year, shall be equal to the percentage change in the  
19 Statewide average weekly wage. Such updates shall be cumulative.

20 (iii) Notwithstanding any other provision of law, it is  
21 unlawful for a provider to refer a person for laboratory,  
22 physical therapy, rehabilitation, chiropractic, radiation  
23 oncology, psychometric, home infusion therapy or diagnostic  
24 imaging, goods or services pursuant to this section if the  
25 provider has a financial interest with the person or in the  
26 entity that receives the referral. It is unlawful for a provider  
27 to enter into an arrangement or scheme such as a cross-referral  
28 arrangement, which the provider knows or should know has a  
29 principal purpose of assuring referrals by the provider to a  
30 particular entity which, if the provider directly made referrals

1 to such entity, would be in violation of this section. No claim  
2 for payment shall be presented by an entity to any individual,  
3 third-party payer or other entity for a service furnished  
4 pursuant to a referral prohibited under this section.

5 (iv) The secretary shall retain the services of an  
6 independent consulting firm to perform an annual accessibility  
7 study of health care provided under this act. The study shall  
8 include information as to whether there is adequate access to  
9 quality health care and products for injured workers and a  
10 review of the information that is provided. If the secretary  
11 determines based on this study that as a result of the health  
12 care fee schedule there is not sufficient access to quality  
13 health care or products for persons suffering injuries covered  
14 by this act, the secretary may recommend to the commissioner the  
15 adoption of regulations providing for a new allowance.

16 (v) An allowance shall be reviewed for reasonableness  
17 whenever the commissioner determines that the use of the  
18 allowance would result in payments more than ten per centum  
19 lower than the average level of reimbursement the provider would  
20 receive from coordinated care insurers, including those entities  
21 subject to the act of December 29, 1972 (P.L.1701, No.364),  
22 known as the "Health Maintenance Organization Act," and those  
23 entities known as preferred provider organizations which are  
24 subject to section 630 of the Insurance Company Law of 1921 for  
25 like treatments, accommodations, products or services. In making  
26 this determination, the commissioner shall consider the extent  
27 to which allowances applicable to other providers under this  
28 section deviate from the reimbursement such providers would  
29 receive from coordinated care insurers. Any information received  
30 as a result of this subparagraph shall be confidential.

1       (vi) The reimbursement for prescription drugs and  
2 professional pharmaceutical services shall be limited to one  
3 hundred ten per centum of the average wholesale price of the  
4 product.

5       (vii) The applicable Medicare fee schedule shall include  
6 fees associated with all permissible procedure codes. If the  
7 Medicare fee schedule also includes a larger grouping of  
8 procedure codes and corresponding charges than are specifically  
9 reimbursed by Medicare, a provider may use these codes, and  
10 corresponding charges shall be paid by insurers or employers. If  
11 a Medicare code exists for application to a specific provider  
12 specialty, that code shall be used.

13       (viii) A provider shall not fragment or unbundle charges  
14 imposed for specific care except as consistent with Medicare.  
15 Changes to a provider's codes by an insurer shall be made only  
16 as consistent with Medicare and when the insurer has sufficient  
17 information to make the changes and following consultation with  
18 the provider.

19       (4) Nothing in this act shall prohibit the self-insured  
20 employer, employer or insurer from contracting with a  
21 coordinated care organization for reimbursement levels different  
22 from those identified above.

23       (5) The employer or insurer shall make payment and providers  
24 shall submit bills and records in accordance with the provisions  
25 of this section. All payments to providers for treatment  
26 provided pursuant to this act shall be made within thirty (30)  
27 days of receipt of such bills and records unless the employer or  
28 insurer disputes the reasonableness or necessity of the  
29 treatment provided pursuant to paragraph (6). A provider who has  
30 submitted the reports and bills required by this section and who

1 disputes the amount or timeliness of the payment from the  
2 employer or insurer shall file an application for fee review  
3 with the department no more than thirty (30) days following  
4 notification of a disputed treatment or ninety (90) days  
5 following the original billing date of treatment. Within thirty  
6 (30) days of the filing of such an application, the department  
7 shall render an administrative decision.

8 (6) Except in those cases in which a [referee] workers'  
9 compensation judge asks for an opinion from peer review under  
10 section 420, disputes as to reasonableness or necessity of  
11 treatment by a health care provider shall be resolved in  
12 accordance with the following provisions:

13 (i) The reasonableness or necessity of all treatment  
14 provided by a health care provider under this act may be subject  
15 to prospective, concurrent or retrospective utilization review  
16 at the request of an employee, employer or insurer. The  
17 department shall authorize utilization review organizations to  
18 perform utilization review under this act. Organizations not  
19 authorized by the department may not engage in such utilization  
20 review.

21 (ii) The utilization review organization shall issue a  
22 written report of its findings and conclusions within thirty  
23 (30) days of a request. [If the provider, employer, employee or  
24 insurer disagrees with the finding of the utilization review  
25 organization, a request for reconsideration must be filed no  
26 later than thirty (30) days after receipt of the utilization  
27 review report. The request for reconsideration must be in  
28 writing.]

29 (iii) The employer or the insurer shall pay the cost of the  
30 [initial] utilization review. [The party which does not prevail

1 on reconsideration of an initial review shall bear the costs of  
2 such reconsideration.]

3 (iv) If the provider, employer, employee or insurer disagrees  
4 with the finding of the utilization review organization [on  
5 reconsideration], a petition for review by the department must  
6 be filed within thirty (30) days after receipt of the  
7 [reconsideration] report. The department shall assign the  
8 petition to a [referee] workers' compensation judge for a  
9 hearing.

10 (7) A provider shall not hold an employee liable for costs  
11 related to care or service rendered in connection with a  
12 compensable injury under this act. A provider shall not bill or  
13 otherwise attempt to recover from the employee the difference  
14 between the provider's charge and the amount paid by the  
15 employer or the insurer.

16 (8) If the employee shall refuse reasonable services of  
17 health care providers, surgical, medical and hospital services,  
18 treatment, medicines and supplies, he shall forfeit all rights  
19 to compensation for any injury or increase in his incapacity  
20 shown to have resulted from such refusal.

21 (9) The payment by an insurer or employer for any medical,  
22 surgical or hospital services or supplies after any statute of  
23 limitations provided for in this act shall have expired shall  
24 not act to reopen or revive the compensation rights for purposes  
25 of such limitations.

26 (10) If acute care is provided in an acute care facility to  
27 a patient with an immediately life threatening or urgent injury  
28 by a Level I or Level II trauma center accredited by the  
29 Pennsylvania Trauma Systems Foundation under the act of July 3,  
30 1985 (P.L.164, No.45), known as the "Emergency Medical Services

1 Act," or to a burn injury patient by a burn facility which meets  
2 all the service standards of the American Burn Association, or  
3 if basic or advanced life support services, as defined and  
4 licensed under the "Emergency Medical Services Act," are  
5 provided, the amount of payment shall be the usual and customary  
6 charge.

7 \* \* \*

8 Section 5. Section 309 of the act, amended March 29, 1972  
9 (P.L.159, No.61), is amended to read:

10 Section 309. Wherever in this article the term "wages" is  
11 used, it shall be construed to mean the average weekly wages of  
12 the employe, ascertained [in accordance with rules and  
13 regulations of the department] as follows:

14 (a) If at the time of the injury the wages are fixed by the  
15 week, the amount so fixed shall be the average weekly wage;

16 (b) If at the time of the injury the wages are fixed by the  
17 month, the average weekly wage shall be the monthly wage so  
18 fixed multiplied by twelve and divided by fifty-two;

19 (c) If at the time of the injury the wages are fixed by the  
20 year, the average weekly wage shall be the yearly wage so fixed  
21 divided by fifty-two;

22 [(d) If at the time of the injury the wages are fixed by the  
23 day, hour, or by the output of the employe, the average weekly  
24 wage shall be the wage most favorable to the employe, computed  
25 by dividing by thirteen the total wages of said employe earned  
26 in the employ of the employer in the first, second, third, or  
27 fourth period of thirteen consecutive calendar weeks in the  
28 fifty-two weeks immediately preceding the injury, or in case the  
29 employe receives wages, monthly or semi-monthly, by dividing by  
30 thirteen the total wages of said employe earned in the employ of



1 the employer in the first, second, third, or fourth period of  
2 three consecutive calendar months in the year immediately  
3 preceding the injury;

4 If the employee has been in the employ of employer less than  
5 thirteen calendar weeks (or three calendar months, if the  
6 employee receives wages monthly or semi-monthly) immediately  
7 preceding the injury, his average weekly wage shall be computed  
8 under the foregoing paragraph, taking "total wages" for such  
9 purpose to be the amount he would have earned had he been so  
10 employed by employer the full thirteen calendar weeks (or three  
11 calendar months) immediately preceding the injury and had  
12 worked, when work was available to other employees in a similar  
13 occupation, unless it be conclusively shown that by reason of  
14 exceptional causes such methods of computation does not  
15 ascertain fairly the "total wages" of employee so employed less  
16 than thirteen calendar weeks (or three calendar months);]

17 (d) If at the time of the injury the wages are fixed by any  
18 manner not enumerated in clause (a), (b) or (c), the average  
19 weekly wage shall be calculated by dividing by thirteen the  
20 total wages earned in the employ of the employer in each of the  
21 four consecutive periods of thirteen calendar weeks in the  
22 fifty-two weeks immediately preceding the injury and by  
23 averaging the total amounts earned during these four periods.

24 (d.1) If the employee has not been employed by the employer  
25 for four consecutive calendar quarters, the average weekly wage  
26 shall be calculated by dividing by thirteen the total wages  
27 earned in the employ of the employer for any completed period of  
28 thirteen calendar weeks immediately preceding the injury and by  
29 averaging the total amounts earned during such periods.

30 (d.2) If the employee has worked less than a complete

1 calendar quarter and does not have fixed weekly wages, the  
2 average weekly wage shall be the hourly wage rate multiplied by  
3 the number of hours the employe was expected to work per week  
4 under the terms of employment.

5 (e) [In occupations which are exclusively seasonal and  
6 therefore cannot be carried on throughout the year, the average  
7 weekly wage shall be taken to be one-fiftieth of the total wages  
8 which the employe has earned from all occupations during the  
9 twelve calendar months immediately preceding the injury, unless  
10 it be shown that during such year, by reason of exceptional  
11 causes, such method of computation does not ascertain fairly the  
12 earnings of the employe, in which case the period for  
13 calculation shall be extended so far as to give a basis for the  
14 fair ascertainment of his average weekly earnings.]

15 The terms "average weekly wage" and "total wages," as used in  
16 this section, shall include board and lodging received from the  
17 employer, [and in employments in which employes customarily  
18 receive not less than one-third of their remuneration in tips or  
19 gratuities not paid by the employer, gratuities shall be added  
20 to the wages received] and gratuities reported to the United  
21 States Internal Revenue Service by or for the employe for  
22 Federal income tax purposes, but such terms shall not include  
23 amounts deducted by the employer under the contract of hiring  
24 for labor furnished or paid for by the employer and necessary  
25 for the performance of such contract by the employe, nor shall  
26 such terms include deductions from wages due the employer for  
27 rent and supplies necessary for the employe's use in the  
28 performance of his labor[.], nor shall such terms include fringe  
29 benefits, including, but not limited to, employer payments for  
30 or contributions to a retirement, pension, health and welfare,

1 life insurance, social security or any other plan for the  
2 benefit of the employee or his dependents: Provided, however,  
3 That the amount of any bonus, incentive or vacation payment  
4 earned on an annual basis shall be excluded from the  
5 calculations under clauses (a) through (d.2). Such payments if  
6 any shall instead be divided by fifty-two and the amount shall  
7 be added to the average weekly wage otherwise calculated under  
8 clauses (a) through (d.2).

9       Where the employee is working under concurrent contracts with  
10 two or more employers, his wages from all such employers shall  
11 be considered as if earned from the employer liable for  
12 compensation: Provided, however, That the earnings from  
13 employments other than the employment in which the injury  
14 occurred shall not be taken at a higher rate than the hourly  
15 rate paid at the time of the injury.

16       [If under clauses (a), (b), (c), (d) and (e) of this section,  
17 the amount determined is less than if computed as follows, his  
18 computation shall apply, viz.: Divide the total wages earned by  
19 the employee during the last two completed calendar quarters with  
20 the same employer by the number of days he worked for such  
21 employer during such period multiplied by five.

22       (f) In no case shall an employee's average weekly wage be  
23 less than one-thirteenth of his highest calendar quarter wage  
24 amount in the first four of the last five completed calendar  
25 quarters immediately preceding the date of his injury, and  
26 compensation payments may be commenced on this basis unless  
27 other information obtained from the employee or employer  
28 establishes a higher weekly wage under this section.]

29       Section 6. The act is amended by adding a section to read:

30       Section 311.1 (a) If an employee files a claim petition, has

1 an award of compensation pending, is qualified for compensation  
2 or is receiving compensation, the employe shall report, in  
3 writing, the following:

4 (1) The nature and scope of any employment, including wages.

5 (2) Any wages or earnings received outside employment which  
6 will affect the receipt of compensation benefits.

7 (b) The report must be made within thirty (30) days of  
8 securing employment and must indicate what the wage will be if  
9 known; or the report must be made within thirty (30) days of  
10 receiving any wages or earnings outside of employment which will  
11 affect the receipt of compensation.

12 Section 7. Section 312 of the act, amended February 28, 1956  
13 (1955 P.L.1120, No.356), is amended to read:

14 Section 312. The notice referred to in section [three  
15 hundred and eleven] 311 shall inform the employer that a certain  
16 employe received an injury, described in ordinary language, in  
17 the course of his employment on or about a specified time, at or  
18 near a place specified.

19 Section 8. Section 313 of the act, amended March 29, 1972  
20 (P.L.159, No.61), is amended to read:

21 Section 313. (a) The notice referred to in sections [three  
22 hundred and eleven and three hundred and twelve] 311 and 312 may  
23 be given to the immediate or other superior of the employe, to  
24 the employer, or any agent of the employer regularly employed at  
25 the place of employment of the injured employe. Knowledge of the  
26 occurrence of the injury on the part of any such agents shall be  
27 the knowledge of the employer.

28 (b) The notice referred to in sections 311 and 311.1 shall  
29 be given to the insurer. The notice shall also include the  
30 employer's name, address and the date employment was secured.

1 The notice shall also include the name and address of the source  
2 of the wages or earnings and the date the wages or earnings were  
3 received.

4 Section 9. The act is amended by adding sections to read:

5 Section 313.1. (a) An employe is required to participate in  
6 verification of eligibility. Six months after the date of  
7 notification of having qualified for compensation and at six-  
8 month intervals thereafter while receiving compensation, an  
9 insurer shall submit a verification form to the employe either  
10 by mail or in person. The form shall request verification by the  
11 claimant that the claimant's status to continue to receive  
12 compensation benefits has not changed and a notation of any  
13 changes the claimant is aware of at the time of the  
14 verification, including employment, earnings or change in  
15 physical condition. Such verification shall not require any  
16 evaluation by a third party; however, it shall include a  
17 certification and signature by the claimant that the statement  
18 is true and correct and that the claimant is aware of the  
19 penalties provided by law for making false statements for the  
20 purpose of obtaining compensation. The employer, upon request,  
21 shall be entitled to receive a copy of the verification.

22 (b) Failure to return the completed verification form to the  
23 insurer shall cause compensation to be suspended until the form  
24 is submitted.

25 Section 314.1. An injured employe has a duty to cooperate in  
26 an investigation of employment, wages or earnings. If an employe  
27 files a claim petition, has an award of compensation pending, is  
28 qualified for compensation or is receiving compensation, the  
29 employe shall cooperate with the insurer in investigating the  
30 employe's employment, receipt of wages or earnings.

1       Section 10. Section 316 of the act, amended February 28,  
2       1956 (1955 P.L.1120, No.356), is amended to read:

3       Section 316. The compensation contemplated by this article  
4       may at any time be commuted by the board, at its then value when  
5       discounted at five per centum interest, with annual rests, upon  
6       application of either party, with due notice to the other, if it  
7       appear that such commutation will be for the best interest of  
8       the employe or the dependents of the deceased employe, and that  
9       it will avoid undue expense or undue hardship to either party,  
10      or that such employe or dependent has removed or is about to  
11      remove from the United States, or that the employer has sold or  
12      otherwise disposed of the whole or the greater part of his  
13      business or assets: Provided, however, That unless the employer  
14      agrees to make such commutation, the board may require the  
15      employe or the dependents of the deceased employe to furnish  
16      proper indemnity safeguarding the employer's rights. Nothing in  
17      this section shall prohibit, restrict or impair the right of the  
18      parties to enter into a compromise and release by stipulation in  
19      accord with section 449.

20      Section 11. Section 321 of the act, amended July 2, 1993  
21      (P.L.190, No.44), is amended to read:

22      Section 321. Nothing contained in this act shall apply to or  
23      in any way affect:

24      (1) Any person who at the time of injury is engaged in  
25      domestic service: Provided, however, That in cases where the  
26      employer of any such person shall have, prior to such injury, by  
27      application to the department and approved by the department,  
28      elected to come within the provisions of the act, such exemption  
29      shall not apply.

30      (2) Any person who is a licensed real estate salesperson or

1 an associate real estate broker affiliated with a licensed real  
2 estate broker, under a written agreement, remunerated on a  
3 commission-only basis and who qualifies as an independent  
4 contractor for State tax purposes [under the act of March 4,  
5 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971." ] or  
6 for Federal tax purposes under the Internal Revenue Code of 1986  
7 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

8 Section 12. Section 402 of the act, amended February 8, 1972  
9 (P.L.25, No.12), is amended to read:

10 Section 402. All proceedings before any [referee] workers'  
11 compensation judge, except those for which an informal  
12 conference has been applied for as provided by section 402.1,  
13 shall be instituted by claim petition or other petition as the  
14 case may be or on the department's own motion, and all appeals  
15 to the board, shall be instituted by appeal addressed to the  
16 board. All claim petitions, requests for informal conferences  
17 and other petitions and appeals shall be in writing and in the  
18 form prescribed by the department.

19 Section 13. The act is amended by adding a section to read:

20 Section 402.1. (a) In any action for which a petition has  
21 been filed under this act any party may file a notice of request  
22 with the department for an informal conference pursuant to this  
23 act. The department shall assign the matter to a workers'  
24 compensation judge for an informal conference. Unless the  
25 parties jointly agree to a time extension, all proceedings  
26 within an informal conference shall be completed within thirty-  
27 five (35) days of the filing of the request for informal  
28 conference. Joint agreement to a time extension shall stay the  
29 adjudication proceedings for the time agreed upon.

30 (b) At any informal conference held pursuant to this

1 section:

2 (i) the workers' compensation judge may accept the  
3 statements of both parties, together with any medical reports,  
4 witnesses' statements or other documents which the parties would  
5 like to present;

6 (ii) all communications, verbal or written, from the parties  
7 to the workers' compensation judge and any information and  
8 evidence presented to the workers' compensation judge during the  
9 informal conference proceedings are confidential and shall not  
10 be a part of the record of testimony; and

11 (iii) each party may be represented, but the employer may  
12 only be represented by an attorney at the informal conference if  
13 the employe is also represented by an attorney at the informal  
14 conference.

15 (c) The workers' compensation judge shall attempt to resolve  
16 the issues in dispute between the parties, but in no event shall  
17 any recommendations or findings made by the workers'  
18 compensation judge be binding upon the parties unless accepted  
19 in writing by both parties. If the parties come to agreement,  
20 the workers' compensation judge shall reduce such agreement to  
21 writing, which shall be signed by all parties and filed with the  
22 department.

23 (d) In the event that the parties cannot resolve their  
24 dispute, the workers' compensation judge will proceed with the  
25 adjudication of the petition.

26 (e) The information provided at the informal conference does  
27 not constitute established evidence for any subsequent  
28 proceeding on the petition.

29 (f) No workers' compensation judge who participates in an  
30 informal conference conducted pursuant to this section shall be



1 compelled or permitted to testify about any matter discussed or  
2 revealed during such proceedings in any other proceeding  
3 pursuant to this act, except matters involving fraud.

4 Section 14. Section 406.1(d) of the act, amended July 2,  
5 1993 (P.L.190, No.44), is amended to read:

6 Section 406.1. \* \* \*

7 (d) (1) In any instance where an employer is uncertain  
8 whether a claim is compensable under this act or is uncertain of  
9 the extent of its liability under this act, the employer may  
10 initiate compensation payments without prejudice and without  
11 admitting liability pursuant to a notice of temporary  
12 compensation payable as prescribed by the department.

13 (2) The notice of temporary compensation payable shall be  
14 sent to the claimant and a copy filed with the department and  
15 shall notify the claimant that the payment of temporary  
16 compensation is not an admission of liability of the employer  
17 with respect to the injury which is the subject of the notice of  
18 temporary compensation payable. The department shall, upon  
19 receipt of a notice of temporary compensation payable, send a  
20 notice to the claimant informing the claimant that:

21 (i) the payment of temporary compensation and the claimant's  
22 acceptance of that compensation does not mean the claimant's  
23 employer is accepting responsibility for the injury or that a  
24 compensation claim has been filed or commenced;

25 (ii) the payment of temporary compensation entitles the  
26 claimant to a maximum of [six weeks] one (1) year of  
27 compensation; and

28 (iii) the claimant may need to file a claim petition in a  
29 timely fashion under section 315, enter into an agreement with  
30 his employer or receive a notice of compensation payable from

1 his employer to ensure continuation of compensation payments.

2 (3) Payments of temporary compensation shall commence and  
3 the notice of temporary compensation payable shall be sent  
4 within the time set forth in subsection (a).

5 (4) Payments of temporary compensation may continue until  
6 such time as the employer decides to controvert the claim [or  
7 six (6) weeks from the date the employer has notice or knowledge  
8 of the employee's disability, whichever shall first occur].

9 (5) (i) If the employer ceases making payments pursuant to  
10 a notice of temporary compensation payable, a notice in the form  
11 prescribed by the department shall be sent to the claimant and a  
12 copy filed with the department, but in no event shall this  
13 notice be sent or filed later than five (5) days after the last  
14 payment.

15 (ii) This notice shall advise the claimant, that if the  
16 employer is ceasing payment of temporary compensation, that the  
17 payment of temporary compensation was not an admission of  
18 liability of the employer with respect to the injury subject to  
19 the notice of temporary compensation payable, and the employee  
20 must file a claim to establish the liability of the employer.

21 (iii) If the employer ceases making payments pursuant to a  
22 notice of temporary compensation payable, after complying with  
23 this clause, the employer and employee retain all the rights,  
24 defenses and obligations with regard to the claim subject to the  
25 notice of temporary compensation payable, and the payment of  
26 temporary compensation may not be used to support a claim for  
27 compensation.

28 (iv) Payment of temporary compensation shall be considered  
29 compensation for purposes of tolling the statute of limitations  
30 under section 315.

1 (6) If the employer does not file a notice under paragraph  
2 (5) within the [six-week] one-year period during which temporary  
3 compensation is paid or payable, the employer shall be deemed to  
4 have admitted liability and the notice of temporary compensation  
5 payable shall be converted to a notice of compensation payable.

6 Section 15. Section 412 of the act, amended February 8, 1972  
7 (P.L.25, No.12), is amended to read:

8 Section 412. If any party shall desire the commutation of  
9 future installments of compensation, he shall present a petition  
10 therefor to the department to be heard and determined by a  
11 [referee] workers' compensation judge: Provided, That where  
12 there are no more than [twenty-five] fifty-two weeks of  
13 compensation to be commuted, the insurer or self-insurer may  
14 commute such future installments without discount upon  
15 furnishing the employe written notice of the commutation on a  
16 form prescribed by the department, a copy of which shall be  
17 filed immediately with the department. Nothing in this section  
18 shall prohibit, restrict or impair the right of the parties to  
19 enter into a compromise and release by stipulation in accord  
20 with section 449.

21 Section 16. Section 413 of the act, amended March 29, 1972  
22 (P.L.159, No.61), April 4, 1974 (P.L.239, No.56), December 5,  
23 1974 (P.L.782, No.263) and July 1, 1978 (P.L.692, No.119), is  
24 amended to read:

25 Section 413. (a) A [referee of the department] workers'  
26 compensation judge may, at any time, review and modify or set  
27 aside a notice of compensation payable and an original or  
28 supplemental agreement or upon petition filed by either party  
29 with the department, or in the course of the proceedings under  
30 any petition pending before such [referee] workers' compensation

1 judge, if it be proved that such notice of compensation payable  
2 or agreement was in any material respect incorrect.

3 A [referee] workers' compensation judge designated by the  
4 department may, at any time, modify, reinstate, suspend, or  
5 terminate a notice of compensation payable, an original or  
6 supplemental agreement or an award of the department or its  
7 [referee] workers' compensation judge, upon petition filed by  
8 either party with the department, upon proof that the disability  
9 of an injured employe has increased, decreased, recurred, or has  
10 temporarily or finally ceased, or that the status of any  
11 dependent has changed. Such modification, reinstatement,  
12 suspension, or termination shall be made as of the date upon  
13 which it is shown that the disability of the injured employe has  
14 increased, decreased, recurred, or has temporarily or finally  
15 ceased, or upon which it is shown that the status of any  
16 dependent has changed: Provided, That, except in the case of eye  
17 injuries, no notice of compensation payable, agreement or award  
18 shall be reviewed, or modified, or reinstated, unless a petition  
19 is filed with the department within three years after the date  
20 of the most recent payment of compensation made prior to the  
21 filing of such petition. Where, however, a person is receiving  
22 benefits pursuant to the act of June 28, 1935 (P.L.477, No.193),  
23 referred to as the Heart and Lung Act, the two-year period in  
24 which a petition to review, modify, or reinstate a notice of  
25 compensation, agreement or award must be filed, shall not begin  
26 to run until the expiration of the receipt of benefits pursuant  
27 to the Heart and Lung Act: And provided further, That any  
28 payment made under an established plan or policy of insurance  
29 for the payment of benefits on account of nonoccupational  
30 illness or injury and which payment is identified as not being

1 workmen's compensation shall not be considered to be payment in  
2 lieu of workmen's compensation, and such payment shall not toll  
3 the running of the Statute of Limitations: And provided further,  
4 That where compensation has been suspended because the employe's  
5 earnings are equal to or in excess of his wages prior to the  
6 injury that payments under the agreement or award may be resumed  
7 at any time during the period for which compensation for partial  
8 disability is payable, unless it be shown that the loss in  
9 earnings does not result from the disability due to the injury.

10 The [referee] workers' compensation judge to whom any such  
11 petition has been assigned may subpoena witnesses, hear  
12 evidence, make findings of fact, and award or disallow  
13 compensation, in the same manner and with the same effect and  
14 subject to the same right of appeal, as if such petition were an  
15 original claim petition.

16 (a.1) The filing of a petition to terminate or modify a  
17 notice of compensation payable or a compensation agreement or  
18 award as provided in this section shall [operate as a  
19 supersedeas, and shall suspend the payment of compensation fixed  
20 in the agreement or by the award in whole or to such extent as  
21 the facts alleged in the petition would, if proved, require only  
22 when such petition alleges that the employe has returned to work  
23 at his prior or increased earnings or where the petition alleges  
24 that the employe has fully recovered and is accompanied by an  
25 affidavit of a physician on a form prescribed by the department  
26 to that effect which is based upon an examination made within  
27 fifteen days of the filing of the petition.] automatically  
28 operate as a request for a supersedeas to suspend the payment of  
29 compensation fixed in the agreement or the award where the  
30 petition alleges that the employe has fully recovered and is

1 accompanied by an affidavit of a physician on a form prescribed  
2 by the department to that effect, which is based upon an  
3 examination made within fifteen days of the filing of the  
4 petition. A special supersedeas hearing before a workers'  
5 compensation judge shall be held within fourteen days of the  
6 filing of such petition. All parties to the special supersedeas  
7 hearing shall have the right to submit, and the workers'  
8 compensation judge may consider testimony of any party or  
9 witness; the record of any physician; the records of any  
10 physician, hospital, clinic or similar entity; the written  
11 statements or reports of any other person expected to be called  
12 by any party at the hearing of the case; and any other relevant  
13 materials. The workers' compensation judge shall rule on the  
14 request for supersedeas within seven days of the hearing and  
15 shall approve the request if prima facia proof of a change in  
16 the medical status or of any other fact which would serve to  
17 modify or terminate payment of compensation is submitted at the  
18 hearing. The workers' compensation judge's decision shall not be  
19 appealable. The determination of full recovery with respect to  
20 either the petition to terminate or modify or the request for  
21 supersedeas shall be made without consideration of whether a  
22 specific job vacancy exists for the employe for work which the  
23 employe is capable of performing or whether the employe would be  
24 hired if the employe applied for work which the employe is  
25 capable of performing.

26 (a.2) In any other case, a petition to terminate or modify  
27 a compensation agreement or other payment arrangement or award  
28 as provided in this section shall not automatically operate as a  
29 supersedeas but may be designated as a request for a  
30 supersedeas, which may then be granted at the discretion of the

1 [referee] workers' compensation judge hearing the case. A  
2 supersedeas shall serve to suspend the payment of compensation  
3 in whole or to such extent as the facts alleged in the petition  
4 would, if proved, require. The [referee] workers' compensation  
5 judge hearing the case shall rule on the request for a  
6 supersedeas as soon as possible and may approve the request if  
7 proof of a change in medical status, or proof of any other fact  
8 which would serve to modify or terminate payment of compensation  
9 is submitted with the petition. The [referee] workers'  
10 compensation judge hearing the case may consider any other fact  
11 which he deems to be relevant when making the decision on the  
12 supersedeas request and the decision shall not be appealable.

13 (b) Any insurer who suspends, terminates or decreases  
14 payments of compensation without submitting an agreement or  
15 supplemental agreement therefor as provided in section 408, or a  
16 final receipt as provided in section 434, or without filing a  
17 petition and either alleging that the employe has returned to  
18 work at his prior or increased earnings or where the petition  
19 alleges that the employe has fully recovered and is accompanied  
20 by an affidavit of a physician on a form prescribed by the  
21 department to that effect which is based upon an examination  
22 made within fifteen days of the filing of the petition or having  
23 requested and been granted a supersedeas as provided in this  
24 section, shall be subject to penalty as provided in section 435.

25 (c) Notwithstanding any provision of this act, an employer  
26 may suspend the compensation during the time the employe has  
27 returned to work at his prior or increased earnings [if the  
28 employer files a petition to terminate or modify a notice of  
29 compensation payable or a compensation agreement or award within  
30 fifteen days of the return to work.] upon written notification

1 by the employer to the employee that compensation has been  
2 suspended because the employee has returned to work at prior or  
3 increased earnings. The employee may file a petition for  
4 reinstatement for any contested period of time.

5 Section 17. Sections 420 and 422 of the act, amended July 2,  
6 1993 (P.L.190, No.44), are amended to read:

7 Section 420. (a) The board, the department or a referee, if  
8 it or he deem it necessary, may, of its or his own motion or  
9 upon request of a party, either before, during, or after any  
10 hearing, make or cause to be made an investigation of the facts  
11 set forth in the petition or answer or facts pertinent in any  
12 injury under this act. The board, department or referee may  
13 appoint one or more impartial physicians or surgeons to examine  
14 the injuries of the plaintiff and report thereon, or may employ  
15 the services of such other experts as shall appear necessary to  
16 ascertain the facts. The referee when necessary or appropriate  
17 or upon request of a party in order to rule on requests for  
18 review filed under section 306(f.1), or under other provisions  
19 of this act, may ask for an opinion from peer review about the  
20 necessity or frequency of treatment under section 306(f.1). The  
21 peer review report or the peer report of any physician, surgeon,  
22 or expert appointed by the department or by a referee, including  
23 the report of a peer review organization, shall be filed with  
24 the board or referee, as the case may be, and shall be a part of  
25 the record and open to inspection as such. The referee shall  
26 consider the report as evidence but shall not be bound by such  
27 report.

28 (b) The board or referee, as the case may be, shall fix the  
29 compensation of such physicians, surgeons, and experts, and  
30 other peer review organizations which, when so fixed, shall be



1 paid out of the Workmen's Compensation Administration Fund.

2 Section 422. (a) Neither the board nor any of its members  
3 nor any [referee] workers' compensation judge shall be bound by  
4 the common law or statutory rules of evidence in conducting any  
5 hearing or investigation, but all findings of fact shall be  
6 based upon [sufficient competent] sufficient, competent and  
7 substantial evidence to justify same. All parties to an  
8 adjudicatory proceeding are entitled to a reasoned decision  
9 containing findings of fact and conclusions of law based upon  
10 the evidence as a whole which clearly and concisely states and  
11 explains the rationale for the decisions so that all can  
12 determine why and how a particular result was reached. The  
13 adjudicator shall specify the evidence upon which the  
14 adjudicator relies and state the reasons for accepting it in  
15 conformity with this section. When faced with conflicting  
16 evidence, the adjudicator must adequately explain the reasons  
17 for rejecting or discrediting competent evidence. Uncontroverted  
18 evidence may not be rejected for no reason or for an irrational  
19 reason; the adjudicator must identify that evidence and explain  
20 adequately the reasons for its rejection. The adjudication shall  
21 provide the basis for meaningful appellate review.

22 (b) If any party or witness resides outside of the  
23 Commonwealth, or through illness or other cause is unable to  
24 testify before the board or a [referee] workers' compensation  
25 judge, his or her testimony or deposition may be taken, within  
26 or without this Commonwealth, in such manner and in such form as  
27 the department may, by special order or general rule, prescribe.  
28 The records kept by a hospital of the medical or surgical  
29 treatment given to an employee in such hospital shall be  
30 admissible as evidence of the medical and surgical matters

1 stated therein.

2 (c) Where any claim for compensation at issue before a  
3 [referee involves fifty-two weeks or less of disability]  
4 workers' compensation judge, either the employe or the employer  
5 may submit a certificate by any qualified physician as to the  
6 history, examination, treatment, diagnosis and cause of the  
7 condition, and sworn reports by other witnesses as to any other  
8 facts and such statements shall be admissible as evidence of  
9 medical and surgical or other matters therein stated and  
10 findings of fact may be based upon such certificates or such  
11 reports[.]: Provided, That any party shall be allowed the  
12 opportunity to take a deposition for purposes of cross-  
13 examination, upon the tendering to the party offering the  
14 report, reasonable expenses, including the fee for such  
15 deposition: And provided further, That the use of a deposition  
16 shall not preclude introduction of a medical report. Should a  
17 dispute arise as to the reasonableness of the amounts demanded  
18 or tendered, the workers' compensation judge hearing the  
19 petition shall issue an order relating to the assessment of  
20 costs.

21 (d) Where an employer shall have furnished surgical and  
22 medical services or hospitalization in accordance with the  
23 provisions of section 306(f.1), or where the employe has himself  
24 procured them, the employer or employe shall, upon request, in  
25 any pending proceeding, be furnished with, or have made  
26 available, a true and complete record of the medical and  
27 surgical services and hospital treatment, including X rays,  
28 laboratory tests, and all other medical and surgical data in the  
29 possession or under the control of the party requested to  
30 furnish or make available such data.

1 (e) The department may adopt rules and regulations governing  
2 the conduct of all hearings held pursuant to any provisions of  
3 this act, and hearings shall be conducted in accordance  
4 therewith, and in such manner as best to ascertain the  
5 substantial rights of the parties.

6 Section 18. Section 423 of the act, amended March 29, 1972  
7 (P.L.159, No.61), is amended to read:

8 Section 423. (a) Any party in interest may, within twenty  
9 days after notice of a [referee's award or disallowance of  
10 compensation] workers' compensation judge's adjudication shall  
11 have been served upon him, take an appeal to the board on the  
12 ground: (1) that the [award or disallowance of compensation]  
13 adjudication is not in conformity with the terms of this act, or  
14 that the [referee] workers' compensation judge committed any  
15 other error of law; (2) that the findings of fact and [award or  
16 disallowance of compensation] adjudication was unwarranted by  
17 sufficient, competent and substantial evidence or was procured  
18 by fraud, coercion, or other improper conduct of any party in  
19 interest. The board may, upon cause shown, extend the time  
20 provided in this article for taking such appeal or for the  
21 filing of an answer or other pleading.

22 (b) In any such appeal the board may disregard the findings  
23 of fact of the [referee] workers' compensation judge if not  
24 supported by [competent] sufficient, competent and substantial  
25 evidence and if it deem proper may hear other evidence, and may  
26 substitute for the findings of the [referee] workers'  
27 compensation judge such findings of fact as the sufficient,  
28 competent and substantial evidence taken before the [referee]  
29 workers' compensation judge and the board, as hereinbefore  
30 provided, may, in the judgment of the board, require, and may

1 make such [disallowance or award of compensation or other order]  
2 adjudication as the facts so [founded] found by it may require.

3 Section 19. Section 440 of the act, amended July 2, 1993  
4 (P.L.190, No.44), is amended to read:

5 Section 440. (a) In any contested case where the insurer  
6 has contested liability in whole or in part, including contested  
7 cases involving petitions to terminate, reinstate, increase,  
8 reduce or otherwise modify compensation awards, agreements or  
9 other payment arrangements or to set aside final receipts, the  
10 employe or his dependent, as the case may be, in whose favor the  
11 matter at issue has been finally determined in whole or in part  
12 shall be awarded, in addition to the award for compensation, a  
13 reasonable sum for costs incurred for attorney's fee, witnesses,  
14 necessary medical examination, and the value of unreimbursed  
15 lost time to attend the proceedings: Provided, That cost for  
16 attorney fees may be excluded when a reasonable basis for the  
17 contest has been established by the employer or the insurer.

18 (b) If counsel fees are awarded and assessed against the  
19 insurer or employer, then the [referee] workers' compensation  
20 judge must make a finding as to the amount and the length of  
21 time for which such counsel fee is payable based upon the  
22 complexity of the factual and legal issues involved, the skill  
23 required, the duration of the proceedings and the time and  
24 effort required and actually expended. If the insurer has paid  
25 or tendered payment of compensation and the controversy relates  
26 to the amount of compensation due, costs for attorney's fee  
27 shall be based only on the difference between the final award of  
28 compensation and the compensation paid or tendered by the  
29 insurer.

30 Section 20. Section 442 of the act, amended March 29, 1972

1 (P.L.159, No.61), is amended to read:

2 Section 442. All counsel fees, agreed upon by claimant and  
3 his attorneys, for services performed in matters before any  
4 [referee] workers' compensation judge or the board, whether or  
5 not allowed as part of a judgment, shall be approved by the  
6 [referee] workers' compensation judge or board as the case may  
7 be, providing the counsel fees do not exceed twenty per centum  
8 of the amount awarded. The official conducting any hearing, upon  
9 cause shown, may allow a reasonable attorney fee exceeding  
10 twenty per centum of the amount awarded at the discretion of the  
11 hearing official.

12 In cases where the efforts of [claimants'] claimant's counsel  
13 produce a result favorable to the claimant but where no  
14 immediate award of compensation is made such as in cases of  
15 termination or suspension the hearing official shall allow or  
16 award reasonable counsel fees, as agreed upon by claimant and  
17 his attorneys, without regard to any per centum.

18 Section 21. Section 448 of the act, added July 2, 1993,  
19 (P.L.190, No.44), is amended to read:

20 Section 448. (a) An insurer issuing a workers' compensation  
21 and employers' liability insurance policy shall offer, upon  
22 request, as part of the policy or by endorsement, deductibles  
23 optional to the policyholder for benefits payable under the  
24 policy, subject to approval by the commissioner and subject to  
25 underwriting by the insurer consistent with the principles in  
26 subsection (b). The commissioner shall promulgate at least three  
27 (3) plans with varying deductible options, the least amount of  
28 which shall be no less than one thousand dollars (\$1,000) nor  
29 more than two thousand five hundred dollars (\$2,500). The  
30 commissioner's authority to promulgate any such plans shall not

1 preclude an insurer from negotiating a deductible in excess of  
2 the largest deductible plan herein authorized, subject to  
3 approval by the commissioner and subject to underwriting by the  
4 insurer consistent with the principles in subsection (b).

5 (b) The following standards shall govern the commissioner's  
6 promulgation and an insurer's offer of deductible plans:

7 (1) Claimants' rights are properly protected and claimants'  
8 benefits are paid without regard to any such deductible.

9 (2) Appropriate premium reductions reflect the type and  
10 level of any deductible approved by the commissioner and  
11 selected by the policyholder.

12 (3) Premium reductions for deductibles are determined before  
13 application of any experience modification, premium surcharge or  
14 premium discount.

15 (4) Recognition is given to policyholder characteristics,  
16 including size, financial capabilities, nature of activities and  
17 number of employees.

18 (5) If the policyholder selects a deductible, the  
19 policyholder is liable to the insurer for the deductible amount  
20 in regard to benefits paid for compensable claims.

21 (6) The insurer pays all of the deductible amount applicable  
22 to a compensable claim to the person or provider entitled to  
23 benefits and then seeks reimbursement from the policyholder for  
24 the applicable deductible amount.

25 (7) Failure to reimburse deductible amounts by the  
26 policyholder to the insurer is treated under the policy in the  
27 same manner as nonpayment of premiums.

28 (c) An insurer issuing a workers' compensation and  
29 employers' liability insurance policy may offer, upon request,  
30 an endorsement for deductible or retrospective rating plans for

groups of five (5) or more employers, subject to approval by the commissioner and subject to underwriting by the insurer consistent with the principles in subsection (b).

(d) The following standards shall govern the commissioner's promulgation or an insurer's offer of a group deductible or retrospective plan endorsement:

(1) Individual workers' compensation and employers' liability insurance policies will be issued for each member of the group.

(2) Each member will be held jointly and severally liable for the payment of premiums or deductible amounts with regard to benefits paid for compensable claims of the group as a whole.

Section 22. The act is amended by adding sections to read:

Section 449. (a) Nothing in this act shall impair the right of the parties interested to compromise and release, subject to the provisions herein contained, any and all liability which is claimed to exist under this act on account of injury or death.

(b) Upon or after filing a termination, suspension or modification petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. The workers' compensation judge shall consider the petition and the proposed agreement in open hearing and shall render a decision. Hearings on the issue of a compromise and release shall be expedited by the department, and the decision shall be issued within thirty days.

(c) Every compromise and release by stipulation shall be in writing and duly executed, and the signature of the employee, widow or widower or dependent shall be attested by two witnesses or acknowledged before a notary public. The document shall

1 specify:

2 (1) the date of the injury or occupational disease;

3 (2) the average weekly wage of the employe as calculated  
4 under section 309;

5 (3) the nature of disability, whether total or partial;

6 (4) the weekly compensation rate paid or payable;

7 (5) the amount paid, or due and unpaid, to the employe or  
8 dependent up to the date of the stipulation or agreement or  
9 death, and the amount of the payment of disability benefits then  
10 or thereafter to be made;

11 (6) the length of time such payment of benefits is to  
12 continue;

13 (7) in the event of a lien for subrogation under section  
14 319, the total amount of compensation paid or payable which  
15 should be allowed to the employer or insurer; and

16 (8) in the case of death:

17 (i) the date of death;

18 (ii) the name of the widow or widower;

19 (iii) the names and ages of all children;

20 (iv) the names of all other dependents; and

21 (v) the amount paid or to be paid under section 307 and to  
22 whom payment is to be made.

23 (d) The department shall prepare a form to be utilized by  
24 the parties for a compromise and release of any and all  
25 liability under this act in accordance with the stipulation  
26 requirements of this section, and it shall issue such rules and  
27 regulations necessary for it and the board to enforce the  
28 procedure allowed by this section. No compromise and release  
29 shall be considered for approval unless a vocational  
30 rehabilitation evaluation of the claimant is completed and filed



1 with the compromise and release and made a part of the record:  
2 Provided, however, That this requirement may be waived by mutual  
3 agreement of the parties, or by a determination of a workers'  
4 compensation judge as inappropriate or unnecessary. The  
5 vocational rehabilitation evaluation shall be completed by the  
6 Office of Vocational Rehabilitation of the department on a fee-  
7 for-service basis: Provided, however, That the parties may, by  
8 mutual agreement, obtain the evaluation from an approved  
9 vocational rehabilitation provider. Nothing in this subsection  
10 shall serve to impose an obligation of liability or  
11 responsibility regarding vocational rehabilitation on either  
12 party, or to require the implementation of vocational  
13 rehabilitation.

14 Section 450. (a) Any employer and the recognized or  
15 certified and exclusive representative of its employe may agree  
16 by collective bargaining to establish certain binding  
17 obligations and procedures relating to workers' compensation:  
18 Provided, however, That the scope of the agreement shall be  
19 limited to:

20 (1) benefits supplemental to those provided in section  
21 306(a), (b), (c) and section 307;

22 (2) an alternative dispute resolution system which may  
23 include, but is not limited to, arbitration, mediation and  
24 conciliation;

25 (3) the use of a limited list of providers for medical  
26 treatment for any period of time agreed upon by the parties;

27 (4) the use of a limited list of impartial physicians;

28 (5) the creation of a light duty, modified job or return to  
29 work program;

30 (6) the adoption of twenty-four-hour medical coverage; and

1     (7) the establishment of safety committees; and

2     (8) a vocational rehabilitation or retraining program.

3     (b) Nothing contained in this section shall in any manner  
4 affect the rights of an employer or its employees in the event  
5 that the parties to a collective bargaining agreement refuse or  
6 fail to reach agreement concerning the matters referred to  
7 herein.

8     (c) Nothing in this section shall allow any agreement that  
9 diminishes an employee's entitlement to benefits as otherwise set  
10 forth in this section. Any agreement in violation of this  
11 provision shall be null and void.

12     (d) (1) Determinations rendered as a result of an  
13 alternative dispute resolution procedure shall remain in force  
14 during a period in which the employer and a recognized or  
15 certified exclusive collective bargaining representative are  
16 renegotiating a collective bargaining agreement.

17     (2) Upon the expiration of an agreement which contains a  
18 provision for an alternative dispute resolution procedure for  
19 workers' compensation claims, the resolution of claims relating  
20 to injuries sustained as a result of a work-related accident or  
21 occupational disease may, if the agreement so provides, be  
22 subject to the terms and conditions set forth in the expired  
23 agreement until the employer and a recognized or certified  
24 exclusive bargaining representative.

25     (3) Upon the termination of an agreement which is not  
26 subject to renegotiation and upon severance of the employment  
27 relationship, the employer and employees shall become fully  
28 subject to the provisions of this act to the same extent that  
29 they were prior to the implementation of the agreement.

30     Section 23. Section 707 of the act is amended by adding a

1 subsection to read:

2 Section 707. \* \* \*

3 (g) The commissioner shall promulgate a plan by which all  
4 insurers writing workers' compensation insurance in this  
5 Commonwealth shall grant premium discounts or assess premium  
6 surcharges to employers who do not qualify for the uniform  
7 experience rating plan in accordance with the following:

8 (1) An employer who has not experienced a compensable  
9 employee lost-time injury during the most recent one-year period  
10 for which statistics are available shall receive a discount of  
11 ten per centum on the amount of the workers' compensation  
12 insurance premium.

13 (2) An employer who has not experienced a compensable  
14 employee lost-time injury during the most recent two-year period  
15 for which statistics are available shall receive a discount of  
16 fifteen per centum on the amount of the workers' compensation  
17 insurance premium.

18 (3) An employer who has experienced one compensable employee  
19 lost-time injury during the most recent one-year period for  
20 which statistics are available is not eligible for a discount on  
21 the amount of the workers' compensation insurance premium.

22 (4) An employer who has experienced two or more compensable  
23 employee lost-time injuries during the most recent one-year  
24 period for which statistics are available shall be assessed a  
25 surcharge of ten per centum on the amount of the workers'  
26 compensation insurance premium.

27 (5) The premium discounts or premium surcharges established  
28 under this section shall be made on an annual basis but shall  
29 not be cumulative: Provided, however, That an employer is  
30 entitled to receive the premium discount provided by this

1 section in addition to any other reductions or deviations in the  
2 insurance premiums paid by all other nonexperienced-rated  
3 employers in the same classification. For any annual workers'  
4 compensation premium, an employer shall not receive a premium  
5 discount of more than fifteen per centum and shall not be  
6 required to pay a surcharge of more than ten per centum.

7 Section 24. Sections 717(a) and 802(b)(11) of the act, added  
8 July 2, 1993 (P.L.190, No.44), are amended to read:

9 Section 717. (a) Each rating organization and every insurer  
10 to which this article applies which makes its own rates shall  
11 provide within this Commonwealth reasonable means whereby any  
12 person aggrieved by the application of its rating system may be  
13 heard in person or by the person's authorized representative on  
14 the person's written request to review the manner in which such  
15 rating system has been applied in connection with the insurance  
16 afforded the aggrieved person. For the purposes of this section,  
17 "reasonable means" shall include at least the following:

18 (1) A committee to hear the appeals of aggrieved persons  
19 which is comprised of an equal number of representatives of  
20 employers and insurers.

21 (2) If travel is required for the aggrieved person to be  
22 heard in person, reimbursement to the aggrieved person for  
23 reasonable travel expenses.

24 Section 802. \* \* \*

25 (b) A group of homogeneous employers may be approved by the  
26 department to act as a fund if the proposed group:

27 \* \* \*

28 (11) Provides security in a form and amount prescribed by  
29 the department. This paragraph shall not apply to pools created  
30 by and exclusively for political subdivisions.

1       \* \* \*

2       Section 25. The act is amended by adding a section to read:

3       Section 819. If an association of employers establishes more  
4 than one group under this article, the association may organize  
5 a single board of trustees to oversee the operations of the  
6 several groups: Provided, however, That each of the several  
7 groups shall be equally represented on the board.

8       Section 26. Sections 1002, 1102, 1109 and 1111 of the act,  
9 added July 2, 1993 (P.L.190, No.44), are amended to read:

10      Section 1002. (a) An insured employer may make application  
11 to the department for the certification of any established  
12 safety committee operative within its workplace developed for  
13 the purpose of hazard detection and accident prevention. The  
14 department shall develop such certification criteria.

15      (b) Upon the renewal of the employer's workers' compensation  
16 policy next following receipt of department certification and  
17 annually thereafter, the employer shall receive a five per  
18 centum discount in the rate or rates applicable to the policy  
19 [for a period of one year].

20      Section 1102. A person, including, but not limited to, the  
21 employer, the employe, the health care provider, the attorney,  
22 the insurer, the State Workmen's Insurance Fund and self-  
23 insureds, commits an offense if the person does any of the  
24 following:

25      (1) Knowingly and with the intent to defraud a State or  
26 local government agency files, presents or causes to be filed  
27 with or presented to the government agency a document that  
28 contains false, incomplete or misleading information concerning  
29 any fact or thing material to the agency's determination in  
30 approving or disapproving a workers' compensation insurance rate

1 filing, a workers' compensation transaction or other workers'  
2 compensation insurance action which is required or filed in  
3 response to an agency's request.

4 (2) Knowingly and with intent to defraud any insurer  
5 presents or causes to be presented to any insurer any statement  
6 forming a part of or in support of a workers' compensation  
7 insurance claim that contains any false, incomplete or  
8 misleading information concerning any fact or thing material to  
9 the workers' compensation insurance claim.

10 (3) Knowingly and with the intent to defraud any insurer  
11 assists, abets, solicits or conspires with another to prepare or  
12 make any statement that is intended to be presented to any  
13 insurer in connection with or in support of a workers'  
14 compensation insurance claim that contains any false, incomplete  
15 or misleading information concerning any fact or thing material  
16 to the workers' compensation insurance claim.

17 (4) Engages in unlicensed agent or broker activity as  
18 defined by the act of May 17, 1921 (P.L.789, No.285), known as  
19 "The Insurance Department Act of 1921," knowingly and with the  
20 intent to defraud an insurer or the public.

21 (5) Knowingly benefits, directly or indirectly, from the  
22 proceeds derived from a violation of this section due to the  
23 assistance, conspiracy or urging of any person.

24 (6) Is the owner, administrator or employe of any health  
25 care facility and knowingly allows the use of such facility by  
26 any person in furtherance of a scheme or conspiracy to violate  
27 any of the provisions of this section.

28 (7) Knowingly and with the intent to defraud assists, abets,  
29 solicits or conspires with any person who engages in an unlawful  
30 act under this section.

1 (8) Makes or causes to be made any knowingly false or  
2 fraudulent statement with regard to entitlement to benefits with  
3 the intent to discourage an injured worker from claiming  
4 benefits or pursuing a claim.

5 (9) Knowingly and with the intent to defraud makes any false  
6 statement for the purpose of avoiding or diminishing the amount  
7 of the payment in premiums to an insurer or self-insurance fund.

8 (10) Fails to make the report required under section 311.1.

9 (11) Qualifies to receive or receives total disability  
10 benefits under this act while employed or receiving wages or  
11 earnings.

12 Section 1109. (a) The district attorneys of the several  
13 counties shall have authority to investigate and to institute  
14 criminal proceedings for any violation of this article.

15 (b) In addition to the authority conferred upon the Attorney  
16 General by the act of October 15, 1980 (P.L.950, No.164), known  
17 as the "Commonwealth Attorneys Act," the Attorney General shall  
18 have the authority to investigate and to institute criminal  
19 proceedings for any violation of this section or any series of  
20 such violations involving more than one county of this  
21 Commonwealth or involving any county of this Commonwealth and  
22 another state. No person charged with a violation of this  
23 article by the Attorney General shall have standing to challenge  
24 the authority of the Attorney General to investigate or  
25 prosecute the case, and, if any such challenge is made, the  
26 challenge shall be dismissed and no relief shall be available in  
27 the courts of the Commonwealth to the person making the  
28 challenge.

29 (c) Nothing in this act shall prevent prosecution under 18  
30 Pa.C.S. § 4117 (relating to insurance fraud) or any other

1 provision of law.

2       Section 1111. (a) A person found by a court of competent  
3 jurisdiction, pursuant to a claim initiated by a prosecuting  
4 authority, to have violated any provision of section 1102 shall  
5 be subject to civil penalties of not more than five thousand  
6 dollars (\$5,000) for the first violation, ten thousand dollars  
7 (\$10,000) for the second violation and fifteen thousand dollars  
8 (\$15,000) for each subsequent violation. The penalty shall be  
9 paid to the prosecuting authority to be used to defray the  
10 operating expenses of investigating and prosecuting violations  
11 of this article. The court may also award court costs and  
12 reasonable attorney fees to the prosecuting authority.

13       (b) If a prosecuting authority has probably cause to believe  
14 that a person has violated this section, nothing in this  
15 subsection shall be construed to prohibit the prosecuting  
16 authority and the person from entering into a written agreement  
17 in which that person does not admit or deny the charges but  
18 consents to payment of the civil penalty. A consent agreement  
19 may not be used in a subsequent civil or criminal proceeding,  
20 but notification thereof shall be made to the licensing  
21 authority if the person is licensed by a licensing authority of  
22 the Commonwealth so that the licensing authority may take  
23 appropriate administrative action.

24       (c) All fines and penalties imposed following a conviction  
25 for a violation of this article shall be collected in the manner  
26 provided by law and shall be paid in the following manner:

27       (1) If the prosecutor is a district attorney, the fines and  
28 penalties shall be paid into the operating fund of the county in  
29 which the district attorney is elected.

30       (2) If the prosecutor is the Attorney General, the fines and



1 penalties shall be paid into the State Treasury.

2 Section 27. The act is amended by adding a section to read:

3 Section 1112. A prosecution for an offense under this act  
4 must be commenced within five years after commission of the  
5 offense.

6 Section 28. Section 1303 of the act, added July 2, 1993  
7 (P.L.190, No.44), is amended to read:

8 Section 1303. (a) In addition to any other assessment  
9 authorized by section 446, an additional annual assessment shall  
10 be made on insurers, including the State Workmen's Insurance  
11 Fund but not including self-insureds, as a percentage of the  
12 total compensation paid for the purpose of funding the  
13 operations of the Office of Small Business Advocate pursuant to  
14 this act. Assessments under this section shall be made by the  
15 department and deposited into the Workmen's Compensation  
16 Administration Fund in a restricted account to be used by the  
17 Office of Small Business Advocate. The total amount assessed  
18 shall be the amount of the budget approved annually by the  
19 General Assembly for the operations of the Office of Small  
20 Business Advocate pursuant to this act.

21 (b) The total moneys assessed under the act of December 28,  
22 1994 (P.L.1414, No.166), known as the Insurance Fraud Prevention  
23 Act, shall be permitted to be utilized by the Section of  
24 Insurance Fraud, within the Office of Attorney General, for  
25 prosecution and investigation of crimes arising under section  
26 1102 and 18 Pa.C.S. § 4117 (relating to insurance fraud), as  
27 well as other grants by the Insurance Fraud Prevention  
28 Authority.

29 Section 29. The act is amended by adding an article to read:

30 ARTICLE XIV.

1                    WORKERS' COMPENSATION JUDGES

2        Section 1401. (a) There is created within the department an  
3 office to be known as the Office of Adjudication.

4        (b) The secretary shall appoint as many qualified and  
5 competent workers' compensation judges as necessary to conduct  
6 matters under this act. If the department is occasionally and  
7 temporarily understaffed of workers' compensation judges, the  
8 secretary may appoint qualified and competent individuals who  
9 meet the minimum standards established by this article to serve  
10 temporarily as workers' compensation judges, who shall serve at  
11 the pleasure of the secretary and shall receive compensation as  
12 the secretary may establish.

13       (c) The secretary shall set normal working hours for  
14 workers' compensation judges. During those hours, workers'  
15 compensation judges shall devote full time to their official  
16 duties and shall perform no work inconsistent with their duties  
17 as workers' compensation judges. Workers' compensation judges  
18 shall not engage in any unapproved activities during normal  
19 working hours.

20       (d) Workers' compensation judges shall be afforded  
21 employment security as provided by the act of August 5, 1941  
22 (P.L.752, No.286), known as the "Civil Service Act."

23       (e) Compensation for workers' compensation judges shall be  
24 established by the Executive Board.

25       (f) The secretary may adopt rules to establish standards and  
26 procedures for the evaluation, training, promotion and  
27 discipline of workers' compensation judges.

28       Section 1402. (a) The secretary shall appoint an  
29 adjudication director, who shall meet the qualifications under  
30 section 1403, serve at the pleasure of the secretary and report

1 directly to the secretary or a designee. The position of  
2 adjudication director shall be part of the unclassified service,  
3 as provided for by the act of August 5, 1941 (P.L.752, No.286),  
4 known as the "Civil Service Act."

5 (b) The adjudication director shall be responsible for  
6 assigning a workers' compensation judge to every matter which  
7 may require the utilization of a workers' compensation judge.  
8 The adjudication director shall also have other responsibilities  
9 as the secretary may prescribe.

10 (c) The adjudication director shall receive remuneration  
11 above that of any other workers' compensation judge.

12 Section 1403. Workers' compensation judges shall be  
13 management level employes and must meet the following minimum  
14 requirements:

15 (1) Be an attorney in good standing before the Supreme  
16 Court.

17 (2) Have five years of workers' compensation practice before  
18 administrative agencies, or equivalent experience.

19 (3) Conform to other requirements as established by the  
20 secretary.

21 Section 1404. (a) A workers' compensation judge shall  
22 conform to the following code of ethics:

23 (1) Avoid impropriety and the appearance of impropriety in  
24 all activities.

25 (2) Perform duties impartially and diligently.

26 (3) Avoid ex parte communications in any contested, on-the-  
27 record matter pending before the department.

28 (4) Abstain from expressing publicly, except in  
29 administrative disposition or adjudication, personal views on  
30 the merits of a matter pending before the department and require

similar abstention on the part of department personnel subject to the workers' compensation judge's direction and control.

(5) Require staff and personnel subject to the workers' compensation judge's direction and control to observe the standards of fidelity and diligence that apply to a workers' compensation judge.

(6) Initiate appropriate disciplinary measures against department personnel subject to the workers' compensation judge's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. A workers' compensation judge may speak, write or lecture; and reimbursed expenses, honorariums, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the secretary and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the workers' compensation judge.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes: Provided, however, That a workers' compensation judge may be an officer, a director or a trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. A workers' compensation judge may hold and manage investments which are not

1 incompatible with the duties of office.

2 (12) Conform to additional requirements as the secretary may  
3 prescribe.

4 (13) Uphold the integrity and independence of the workers'  
5 compensation system.

6 (b) Any workers' compensation judge who violates the  
7 provisions of subsection (a) shall be removed from office in  
8 accordance with the provisions of the act of August 5, 1941  
9 (P.L.752, No.286), known as the "Civil Service Act."

10 Section 1405. The secretary shall determine the appropriate  
11 staff, facilities and administrative support so that the duties  
12 of workers' compensation judges may be performed.

13 Section 1406. Individuals who are currently serving as  
14 workmen's compensation judges shall be reappointed as workers'  
15 compensation judges if they meet the minimum requirements set  
16 forth in this article. The secretary may waive certain minimum  
17 requirements for reappointment as a workers' compensation judge  
18 on the basis of demonstrated competency and performance for an  
19 individual who has served in the capacity of workers'  
20 compensation judge or referee for at least three years  
21 immediately prior to the enactment of this article.

22 Section 30. For the purpose of initial filing only,  
23 notwithstanding any other provisions of this act, the following  
24 provision shall apply:

25 (1) Each rating organization shall file, within 60 days  
26 after the effective date of this act, a loss cost filing  
27 pursuant to section 709(c) of Article VII of the act for new and  
28 renewal policies for workers' compensation to be effective 150  
29 days after the effective date of this act. Such filing shall be  
30 subject to approval or disapproval by the Insurance Commissioner

1 pursuant to Article VII of the act, but such approval or  
2 disapproval shall be made not later than 60 calendar days after  
3 first receipt of the loss cost filing.

4 (2) In the absence of an order approving or disapproving the  
5 loss cost filing within 60 calendar days of its receipt, the  
6 filing shall be deemed to meet all the requirements of this act.

7 Section 31. In a provision of the act not affected by this  
8 act, a reference to the word "referee" shall be deemed a  
9 reference to the phrase "workers' compensation judge."

10 Section 32. The provisions of this act are severable. If any  
11 provision of this act or its application to any person or  
12 circumstance is held invalid, the invalidity shall not affect  
13 other provisions or applications of this act which can be given  
14 effect without the invalid provision or application.

15 Section 33. This act shall take effect in 60 days.