

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1181 Session of 2001

INTRODUCED BY BARLEY, MARCH 27, 2001

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 13, 2001

AN ACT

1 ~~Making~~ <—  
 2 AMENDING THE ACT OF JUNE 2, 1915 (P.L.736, NO.338), ENTITLED, AS <—  
 3 REENACTED AND AMENDED, "AN ACT DEFINING THE LIABILITY OF AN  
 4 EMPLOYER TO PAY DAMAGES FOR INJURIES RECEIVED BY AN EMPLOYE  
 5 IN THE COURSE OF EMPLOYMENT; ESTABLISHING AN ELECTIVE  
 6 SCHEDULE OF COMPENSATION; PROVIDING PROCEDURE FOR THE  
 7 DETERMINATION OF LIABILITY AND COMPENSATION THEREUNDER; AND  
 8 PRESCRIBING PENALTIES," FURTHER PROVIDING FOR THE WORKMEN'S  
 9 COMPENSATION ADMINISTRATION FUND, FOR THE DEFINITION OF  
 10 "DEFAULTED SELF-INSURER" AND FOR THE PREFUND ACCOUNT; AND  
 11 MAKING appropriations from the Workmen's Compensation  
 12 Administration Fund. ~~to the Department of Labor and Industry <—~~  
 13 ~~and the Department of Community and Economic Development to~~  
 14 ~~provide for the expenses of administering the Workers'~~  
 15 ~~Compensation Act, The Pennsylvania Occupational Disease Act~~  
 16 ~~and the Office of Small Business Advocate for the fiscal year~~  
 17 ~~July 1, 2001, to June 30, 2002, and for the payment of bills~~  
 18 ~~incurred and remaining unpaid at the close of the fiscal year~~  
 19 ~~ending June 30, 2001.~~

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

22 SECTION 1. SECTION 446(A) OF THE ACT OF JUNE 2, 1915 <—  
 23 (P.L.736, NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT,  
 24 REENACTED AND AMENDED JUNE 21, 1939 (P.L.520, NO.281) AND ADDED  
 25 FEBRUARY 2, 1976 (P.L.2, NO.2), IS AMENDED TO READ:

1 SECTION 446. (A) THERE IS HEREBY CREATED A SPECIAL FUND IN  
2 THE STATE TREASURY, SEPARATE AND APART FROM ALL OTHER PUBLIC  
3 MONEYS OR FUNDS OF THIS COMMONWEALTH, TO BE KNOWN AS THE  
4 WORKMEN'S COMPENSATION ADMINISTRATION FUND. THE PURPOSE OF THIS  
5 FUND SHALL BE TO FINANCE THE PREFUND ACCOUNT ESTABLISHED IN  
6 SECTION 909(A) AND THE OPERATING AND ADMINISTRATIVE EXPENSES OF  
7 THE DEPARTMENT OF LABOR AND INDUSTRY, INCLUDING THE WORKMEN'S  
8 COMPENSATION APPEAL BOARD AND STAFF, BUT NOT THE STATE WORKMEN'S  
9 INSURANCE FUND, IN THE DIRECT ADMINISTRATION OF THE PENNSYLVANIA  
10 WORKMEN'S COMPENSATION ACT AND THE PENNSYLVANIA OCCUPATIONAL  
11 DISEASE ACT INCLUDING:

12 (1) WAGES AND SALARIES OF EMPLOYES FOR SERVICES PERFORMED IN  
13 THE ADMINISTRATION OF THESE ACTS;

14 (2) REASONABLE TRAVEL EXPENSES FOR EMPLOYES WHILE ENGAGED IN  
15 OFFICIAL BUSINESS; AND

16 (3) MONEYS EXPENDED FOR OFFICE RENTAL, EQUIPMENT RENTAL,  
17 SUPPLIES, EQUIPMENT, REPAIRS, SERVICES, POSTAGE, BOOKS, AND  
18 PERIODICALS.

19 \* \* \*

20 SECTION 2. THE DEFINITION OF "DEFAULTED SELF-INSURER" IN  
21 SECTION 901 OF THE ACT, AMENDED JUNE 22, 2000 (P.L.390, NO.53),  
22 IS AMENDED TO READ:

23 SECTION 901. THE FOLLOWING WORDS AND PHRASES WHEN USED IN  
24 THIS ARTICLE SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
25 SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

26 \* \* \*

27 "DEFAULTED SELF-INSURER" MEANS AN EMPLOYER, OTHER THAN THE  
28 COMMONWEALTH AND ITS POLITICAL SUBDIVISIONS, THAT IS EXEMPTED BY  
29 THE DEPARTMENT OF LABOR AND INDUSTRY FROM THE REQUIREMENT TO  
30 INSURE ITS LIABILITY UNDER THIS ACT OR UNDER SECTION 305 OF THE

1 ACT OF JUNE 21, 1939 (P.L.566, NO.284), KNOWN AS "THE  
2 PENNSYLVANIA OCCUPATIONAL DISEASE ACT," FOR CLAIMS ON INJURIES  
3 OR EXPOSURES TO THE HAZARD OF DISEASE WHICH OCCURRED PRIOR TO  
4 OCTOBER 30, 1993, AND WHICH HAS FAILED TO PAY THAT LIABILITY DUE  
5 TO ITS FINANCIAL INABILITY OR DUE TO ITS FILING FOR BANKRUPTCY  
6 OR BEING DECLARED BANKRUPT OR INSOLVENT.

7 \* \* \*

8 SECTION 3. SECTION 909 OF THE ACT, ADDED JUNE 22, 2000  
9 (P.L.390, NO.53), IS AMENDED TO READ:

10 SECTION 909. (A) THERE IS ESTABLISHED IN THE SELF-INSURANCE  
11 GUARANTY FUND A RESTRICTED ACCOUNT KNOWN AS THE PREFUND ACCOUNT.  
12 [THE DEPARTMENT SHALL ANNUALLY TRANSFER UP TO ONE MILLION SIX  
13 HUNDRED THOUSAND DOLLARS (\$1,600,000) OF ACCUMULATED INTEREST IN  
14 THE WORKMEN'S COMPENSATION ADMINISTRATION FUND TO THE ACCOUNT.]  
15 THE DEPARTMENT SHALL ANNUALLY TRANSFER FROM THE WORKMEN'S  
16 COMPENSATION ADMINISTRATION FUND TO THE ACCOUNT AN AMOUNT UP TO  
17 THREE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$3,800,000), BUT  
18 NOT EXCEEDING THE SUM OF ALL CLAIMS FOR BENEFITS PAYABLE UNDER  
19 SUBSECTION (C).

20 [(B) ACCUMULATED INTEREST IN THE WORKMEN'S COMPENSATION  
21 ADMINISTRATION FUND IS SPECIFICALLY APPROPRIATED TO THE  
22 DEPARTMENT ON A CONTINUING BASIS IN SUCH AMOUNTS AS ARE  
23 NECESSARY FOR THE PURPOSE OF THIS SECTION. THE SECRETARY SHALL  
24 HAVE THE POWER TO DISPENSE AND DISBURSE ACCUMULATED INTEREST IN  
25 THE WORKMEN'S COMPENSATION ADMINISTRATION FUND UNDER THIS  
26 SECTION.]

27 (C) TRANSFERS TO THE ACCOUNT PURSUANT TO SUBSECTION (A)  
28 SHALL BE USED TO PAY CLAIMS FOR LOSS OF WAGES OCCURRING OR  
29 MEDICAL TREATMENT PROVIDED AFTER THE EFFECTIVE DATE OF THIS  
30 SECTION UNDER SECTIONS 306(A), (B), (C) AND (F.1) AND 307 OF

1 THIS ACT OR UNDER SECTIONS 306(A), (B) AND (C) AND 307 OF THE  
2 ACT OF JUNE 21, 1939 (P.L.566, NO.284), KNOWN AS "THE  
3 PENNSYLVANIA OCCUPATIONAL DISEASE ACT," TO A PREFUND CLAIMANT  
4 UPON EXHAUSTION OF THE SECURITY POSTED BY THE LIABLE DEFAULTED  
5 SELF-INSURER: PROVIDED, THAT:

6 (1) THE BENEFITS ARE PAYABLE UNDER A NOTICE OF COMPENSATION  
7 PAYABLE, AN AGREEMENT FOR COMPENSATION OR A PETITION FOR  
8 COMPENSATION AND THE PETITION, NOTICE OR AGREEMENT WAS FILED  
9 WITH THE DEPARTMENT BEFORE JANUARY 1, 1997;

10 (2) PAYMENTS FROM THE ACCOUNT ARE NOT USED TO PAY INTEREST,  
11 PENALTIES OR ATTORNEY FEES RELATED TO THE PAYMENT OF BENEFITS;

12 (3) PAYMENTS FROM THE ACCOUNT ARE USED TO PAY CLAIMS FOR  
13 BENEFITS RELATING TO MEDICAL TREATMENT UNDER SECTION 306(F.1) OF  
14 THIS ACT THAT ARE NOT COVERED OR NOT PAID FOR, IN WHOLE OR IN  
15 PART, BY OTHER TYPES OF INSURANCE OR FEDERAL, STATE OR PRIVATE  
16 BENEFIT PROGRAMS;

17 (4) THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE PAYMENT  
18 OF CLAIMS FOR BENEFITS WHEN TRANSFERS TO THE ACCOUNT PURSUANT TO  
19 SUBSECTION (A) ARE INSUFFICIENT TO SATISFY CLAIMS FOR BENEFITS  
20 BY PREFUND CLAIMANTS EXCEPT TO THE EXTENT REQUIRED BY SUBSECTION  
21 (E)(1); AND

22 (5) THE RECEIPT OF BENEFITS UNDER THIS SECTION IS SUBJECT TO  
23 THE LAW IN EFFECT AS OF THE EFFECTIVE DATE OF THIS SECTION AND  
24 NOT THE DATE OF AN AWARD FROM A PETITION, A NOTICE OF  
25 COMPENSATION PAYABLE OR AN AGREEMENT FOR COMPENSATION.

26 (D) WHEN PAYMENTS ARE MADE FROM THE ACCOUNT ON BEHALF OF A  
27 DEFAULTED SELF-INSURER, THE DEPARTMENT ASSUMES THE RIGHTS AND  
28 OBLIGATIONS OF THE DEFAULTED SELF-INSURER UNDER THIS ACT AND  
29 "THE PENNSYLVANIA OCCUPATIONAL DISEASE ACT" WITH REGARD TO THE  
30 PAYMENT OF CLAIMS. THE DEPARTMENT SHALL HAVE THE RIGHT TO:

1 (1) INITIATE AND PROSECUTE LEGAL ACTION AGAINST THE  
2 DEFAULTED SELF-INSURER TO REQUIRE THE PAYMENT OF BENEFITS UNDER  
3 THIS ACT OR "THE PENNSYLVANIA OCCUPATIONAL DISEASE ACT."

4 (2) OBTAIN, IN ANY MANNER OR BY USE OF ANY PROCESS OR  
5 PROCEDURE, INCLUDING THE COMMENCEMENT AND PROSECUTION OF LEGAL  
6 ACTION, REIMBURSEMENT FROM A DEFAULTED SELF-INSURER AND ITS  
7 SUCCESSOR, ASSIGNS AND ESTATE OF ALL PAYMENTS FROM THE ACCOUNT  
8 TO ITS PREFUND CLAIMANTS, INCLUDING REIMBURSEMENT OF ALL CLAIMS  
9 FOR BENEFITS PAID AS WELL AS REASONABLE ADMINISTRATIVE AND LEGAL  
10 COSTS ASSOCIATED WITH THE PAYMENT.

11 (E) THE FOLLOWING SHALL APPLY:

12 (1) IF THE DEPARTMENT PROJECTS THAT THE AGGREGATE PAYMENTS  
13 TO PREFUND CLAIMANTS PURSUANT TO THIS SECTION DURING ANY ONE  
14 FISCAL YEAR MAY EXCEED THE TRANSFER TO THE ACCOUNT FOR THAT  
15 YEAR, THE SECRETARY SHALL ORDER THE PAYMENT OF BENEFITS UNDER  
16 SECTIONS 306(A), (B) AND (C) AND 307 AT A PERCENTAGE OF THE FULL  
17 AMOUNTS PAYABLE UNDER THIS ACT AND "THE PENNSYLVANIA  
18 OCCUPATIONAL DISEASE ACT." THE PERCENTAGE SHALL BE UNIFORMLY  
19 APPLIED TO ALL BENEFITS UNDER THOSE SECTIONS PAID DURING THAT  
20 FISCAL YEAR. THE SECRETARY SHALL ADJUST THAT PERCENTAGE FROM  
21 TIME TO TIME AS IS NECESSARY BASED ON UPDATED PROJECTIONS ON  
22 PAYMENT OF BENEFITS.

23 (2) TO TAKE ACTION UNDER PARAGRAPH (1), THE DEPARTMENT MUST  
24 PROVIDE A MINIMUM OF SIXTY (60) DAYS' NOTICE TO THE GENERAL  
25 ASSEMBLY OF THE IMPENDING ACTION. THE NOTICE MUST BE IN THE FORM  
26 OF A WRITTEN REPORT OF THE PENDING FUNDING SHORTFALL TO THE  
27 CHAIRPERSONS AND THE MINORITY CHAIRPERSONS OF THE APPROPRIATIONS  
28 COMMITTEE AND THE LABOR AND INDUSTRY COMMITTEE OF THE SENATE AND  
29 THE CHAIRPERSONS AND THE MINORITY CHAIRPERSONS OF THE  
30 APPROPRIATIONS COMMITTEE AND THE LABOR RELATIONS COMMITTEE OF

1 THE HOUSE OF REPRESENTATIVES. THE GENERAL ASSEMBLY MAY  
2 APPROPRIATE SUFFICIENT FUNDS TO THE ACCOUNT TO CONTINUE FULL  
3 PAYMENT OF BENEFITS TO PREFUND CLAIMANTS FOR THAT FISCAL YEAR.

4 (F) A PREFUND CLAIMANT SHALL WITHIN THREE YEARS OF THE  
5 EFFECTIVE DATE OF THIS SECTION OR WITHIN THREE YEARS OF LAST  
6 RECEIVING BENEFITS FROM A DEFAULTED SELF-INSURER OR ITS  
7 SECURITY, WHICHEVER OCCURS LATER, FORWARD TO THE DEPARTMENT AN  
8 APPLICATION FOR BENEFITS THAT INCLUDES ALL OF THE FOLLOWING:

9 (1) NAME OF THE PREFUND CLAIMANT.

10 (2) THE PREFUND CLAIMANT'S SOCIAL SECURITY NUMBER.

11 (3) THE DEPARTMENT CLAIM NUMBER OF THE CLAIM FOR WHICH  
12 BENEFITS ARE REQUESTED, IF KNOWN.

13 (4) THE PREFUND CLAIMANT'S DATE OF BIRTH.

14 (5) THE DATE OF INJURY GIVING RISE TO THE CLAIM.

15 (6) THE NAME OF THE EMPLOYER AT THE TIME OF INJURY.

16 (7) IF KNOWN, THE DATE OF RECEIPT OF THE LAST PAYMENT FROM  
17 THE DEFAULTED SELF-INSURER OR ITS SECURITY.

18 (8) THE AMOUNT OF CURRENT WAGES FROM CURRENT EMPLOYMENT OR  
19 SELF-EMPLOYMENT.

20 (9) A SIGNATURE CERTIFYING THAT THE REQUEST FOR BENEFITS IS  
21 TRUE AND CORRECT AND THAT THE PREFUND CLAIMANT IS AWARE OF THE  
22 PENALTIES PROVIDED BY LAW FOR MAKING FALSE STATEMENTS FOR THE  
23 PURPOSE OF OBTAINING BENEFITS.

24 (10) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT THAT  
25 IS RELEVANT IN DETERMINING THE ENTITLEMENT TO OR AMOUNT OF  
26 BENEFITS.

27 (G) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE  
28 THE DEPARTMENT TO MAKE WAGE LOSS PAYMENTS TO AN INDIVIDUAL WHO  
29 IS CURRENTLY RECEIVING WAGES EQUAL TO OR IN EXCESS OF THE  
30 BENEFIT THEY WOULD RECEIVE UNDER THIS SECTION. NOTHING IN THIS

1 SECTION SHALL BE CONSTRUED TO REQUIRE THE DEPARTMENT TO MAKE A  
2 WAGE LOSS PAYMENT THAT WOULD RESULT IN AN INDIVIDUAL RECEIVING  
3 MORE IN WAGES AND COMPENSATION COMBINED THAN HIS PRE-INJURY  
4 WAGE.

5 (H) APPLICATIONS AND OTHER INFORMATION SUBMITTED TO THE  
6 DEPARTMENT UNDER THIS SECTION AND SECTION 305 SHALL NOT BE  
7 PUBLIC RECORDS FOR PURPOSES OF THE ACT OF JUNE 21, 1957  
8 (P.L.390, NO.212), REFERRED TO AS THE RIGHT-TO-KNOW LAW, AND  
9 SHALL NOT BE SUBJECT TO PUBLIC DISCLOSURE.

10 ~~Section 1. The sum of \$51,635,000~~ SECTION 4. THE SUM OF <—  
11 \$55,435,000, or as much thereof as may be necessary, is hereby  
12 appropriated from the Workmen's Compensation Administration Fund  
13 to the Department of Labor and Industry for the payment of all  
14 salaries, wages and other compensation and travel expenses; FOR <—  
15 TRANSFER TO THE PREFUND ACCOUNT; for contractual services and  
16 other expenses necessary for the administration of the act of  
17 June 2, 1915 (P.L.736, No.338), known as the Workers'  
18 Compensation Act, and the act of June 21, 1939 (P.L.566,  
19 No.284), known as The Pennsylvania Occupational Disease Act, for  
20 the fiscal year beginning July 1, 2001; and for the payment of <—  
21 bills incurred and remaining unpaid at the close of the fiscal  
22 year ending June 30, 2001.

23 Section 2 5. The sum of \$179,000 is hereby appropriated from <—  
24 the restricted revenue account within the Workmen's Compensation  
25 Administration Fund to the Office of Small Business Advocate in  
26 the Department of Community and Economic Development as provided  
27 in the act of June 2, 1915 (P.L.736, No.338), known as the  
28 Workers' Compensation Act, for the operation of that office for  
29 the fiscal year July 1, 2001, to June 30, 2002.

30 Section 3 6. This act shall take effect July 1, 2001, or <—

1 immediately, whichever is later.