

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2192 Session of  
2005

INTRODUCED BY GEORGE, BELFANTI, DeWEESE, COHEN, BEBKO-JONES,  
BLACKWELL, CALTAGIRONE, CURRY, FABRIZIO, GOODMAN, GRUCELA,  
JAMES, PHILLIPS, SIPTROTH, SHANER, SOLOBAY, STABACK, SURRA,  
TANGRETTI, THOMAS, TIGUE, YOUNGBLOOD AND YUDICHAK,  
NOVEMBER 2, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, NOVEMBER 2, 2005

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as  
2 reenacted and amended, "An act defining the liability of an  
3 employer to pay damages for injuries received by an employe  
4 in the course of employment; establishing an elective  
5 schedule of compensation; providing procedure for the  
6 determination of liability and compensation thereunder; and  
7 prescribing penalties," providing for the Uninsured Employers  
8 Guaranty Fund.

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

11 Section 1. The act of June 2, 1915 (P.L.736, No.338), known  
12 as the Workers' Compensation Act, reenacted and amended June 21,  
13 1939 (P.L.520, No.281), is amended by adding an article to read:

14 ARTICLE XVI

15 UNINSURED EMPLOYERS GUARANTY FUND

16 Section 1601. Definitions.

17 The following words and phrases when used in this article  
18 shall have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

1 "Compensation." Benefits paid pursuant to sections 306 and  
2 307.

3 "Employer." Any employer as defined in section 303. The term  
4 does not include a person that qualifies as a self-insured  
5 employer under section 305.

6 "Fund." The Uninsured Employers Guaranty Fund established in  
7 section 1602.

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

13 "Secretary." The Secretary of Labor and Industry of the  
14 Commonwealth.  
15 Section 1602. Fund.

16 (a) Establishment.--

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

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

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

23 (1) Assessments made to employers and insurance  
24 carriers.

25 (2) Reimbursements or restitution.

26 (3) Surcharges under section 1607.

27 (4) Interest on money in the fund.

28 (c) Use.--The administrator shall establish and maintain the  
29 fund for the exclusive purpose of paying workers' compensation  
30 benefits to injured workers or their dependents for claims

1 arising from injuries or deaths sustained while in the course  
2 and scope of employment with employers that failed to carry  
3 workers' compensation insurance coverage at the time the  
4 injuries took place.

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

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

10 Section 1603. Claims.

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

14 (b) Time.--An injured worker must notify the fund within 21  
15 days after the worker knew that the employer was uninsured or  
16 received confirmation of noninsurance from the Rating Bureau or  
17 any other agency charged with providing notice that a claim  
18 against the fund is being made. No compensation shall be due  
19 until notice is given. Unless notice is given within 120 days of  
20 when the employee knew that the employer was uninsured or  
21 received notice of noninsurance from the Rating Bureau or any  
22 other agency charged with providing such notice, no compensation  
23 shall be allowed.

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

26 (d) Petitions.--No claim petition may be filed against the  
27 fund until at least 21 days after notice of the claim is made to  
28 the fund.

29 Section 1604. Claim petition.

30 If a claim for compensation is filed under this article and

1 the claim is not voluntarily accepted as compensable, the  
2 employee may file a claim petition naming both the employer and  
3 the fund as defendants. A responsive pleading filed by the fund  
4 to the claim petition shall serve as an answer on behalf of the  
5 uninsured employer. Failure of the uninsured employer to answer  
6 a claim petition shall not serve as an admission or otherwise  
7 bind the fund under section 416.

8 Section 1605. Department.

9 (a) Insurance inquiry.--Within ten days of notice of a  
10 claim, the fund shall demand from the employer proof of  
11 applicable insurance coverage. Within 14 days from the date of  
12 the fund's request, the employer must provide proof of  
13 insurance. If the employer does not provide proof, there shall  
14 be a rebuttable presumption of uninsurance; and the fund shall  
15 serve as the uninsured employer's insurer for purposes of the  
16 claim in question.

17 (b) Reimbursement.--The department shall, on behalf of the  
18 fund, exhaust all remedies at law against the uninsured employer  
19 in order to collect the amount of a voluntary payment or award,  
20 including voluntary payment or award itself and reimbursement of  
21 costs, interest, penalties, fees under section 440 and costs of  
22 the fund's attorney, which have been paid by the fund. The fund  
23 shall also be reimbursed for costs or attorney fees which are  
24 incurred in seeking reimbursement under this subsection. The  
25 department shall also report the violation of section 305 to the  
26 Office of Attorney General, for prosecution of the uninsured  
27 employer pursuant to section 305(b). Any restitution obtained  
28 shall be paid to the fund.

29 (c) Bankruptcy.--The department has the right to appear and  
30 represent the fund as a creditor in a bankruptcy proceeding

1 involving the uninsured employer.

2 (d) Liens.--If payments of any nature have been made by the  
3 fund on behalf of an uninsured employer, the fund shall file a  
4 certified proof of payment with the prothonotary of a court of  
5 common pleas; and the prothonotary shall enter the entire  
6 balance as a judgment against the employer. The judgment shall  
7 be a lien against property of the employer, and execution may  
8 issue on it. The fund has the right to update the amount of the  
9 lien as payments are made.

10 Section 1606. Other remedies.

11 Nothing contained in this article shall serve to abrogate the  
12 provisions of section 305(d) allowing the claimant or dependents  
13 to bring a direct suit for damages at law as provided by Article  
14 II. The fund shall be entitled to assert rights to subrogation  
15 under section 319 for recovery made from the employer or any  
16 other third party.

17 Section 1607. Surcharge.

18 For the purpose of establishing and maintaining this fund,  
19 the secretary shall impose on January 1 an annual surcharge upon  
20 each workers' compensation policyholder. Each insurer shall be  
21 liable for payment of the annual surcharge under this section.  
22 The annual surcharge shall apply to all workers' compensation  
23 policies written or renewed. The surcharge shall not apply to  
24 reinsurance.

25 Section 1608. Regulations.

26 The department may promulgate regulations for the  
27 administration and enforcement of this article.

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