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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1195 Session of  
2013

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INTRODUCED BY GORDNER, ERICKSON, VULAKOVICH AND RAFFERTY,  
NOVEMBER 22, 2013

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REFERRED TO LABOR AND INDUSTRY, NOVEMBER 22, 2013

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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," in liability and compensation,  
8 further providing for injuries outside this Commonwealth; in  
9 the Uninsured Employers Guaranty Fund, further providing for  
10 definitions, for fund, for claims, for claim petition, for  
11 administration and for assessments and transfers; and  
12 providing for insolvency, for uninsured employer obligations  
13 and for administrative penalties and stop-work orders.

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

16 Section 1. Section 305.2(c) of the act of June 2, 1915  
17 (P.L.736, No.338), known as the Workers' Compensation Act,  
18 reenacted and amended June 21, 1939 (P.L.520, No.281) and added  
19 December 5, 1974 (P.L.782, No.263), is amended and the section  
20 is amended by adding a subsection to read:

21 Section 305.2. \* \* \*

22 (c) If an employe is entitled to the benefits of this act by  
23 reason of an injury sustained in this State in employment by an

1 employer who is domiciled in another state and who has not  
2 secured the payment of compensation as required by this act, the  
3 [employer or his carrier may file with the director a  
4 certificate, issued by] department may verify with the  
5 commission or agency of such other state having jurisdiction  
6 over [workmen's] workers' compensation claims[, certifying] that  
7 such employer has secured the payment of compensation under the  
8 [workmen's] workers' compensation law of such other state and  
9 that with respect to said injury such employe is entitled to the  
10 benefits provided under such law.

11 [In such event:

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

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

24 (3) The following shall apply:

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

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

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

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

25 (c.1) If an employe alleges an injury incurred with an  
26 employer that is domiciled in another state and that has not  
27 secured the payment of compensation as required by this act,  
28 such employe shall submit to the Uninsured Employers Guaranty  
29 Fund and to any workers' compensation judge hearing a petition  
30 against the fund, a decision, notice or ruling from such other

1 state or its licensees that the employe has sought and is not  
2 entitled to benefits in such other state. No compensation shall  
3 be payable from the Uninsured Employers Guaranty Fund until the  
4 employe submits such decision, notice or ruling.

5 \* \* \*

6 Section 2. Sections 1601, 1602, 1603, 1604 and 1605 of the  
7 act, added November 9, 2006 (P.L.1362, No.147), are amended to  
8 read:

9 Section 1601. Definitions.

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

13 "Compensation." Benefits paid pursuant to sections 306 and  
14 307.

15 "Employer." Any employer as defined in section 103. The term  
16 does not include a person that qualifies as a self-insured  
17 employer under section 305.

18 "Fund." The Uninsured Employers Guaranty Fund established in  
19 section 1602. The fund shall not be considered an insurer and  
20 shall not be subject to penalties, unreasonable contest fees,  
21 interest or any reporting and liability requirements under  
22 section 440.

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

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

30 Section 1602. Fund.

1 (a) Establishment.--

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

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

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

8 (1) Assessments provided for under section 1607.

9 (2) Reimbursements or restitution.

10 (3) Interest on money in the fund.

11 (4) Administrative penalties provided for under section  
12 1611.

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

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

25 (e) Status.--The fund shall have all of the same rights[,  
26 duties, responsibilities and obligations] as an insurer.  
27 Section 1603. Claims.

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

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

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

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

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

16 (d) Petitions.--

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

20 (2) A claim petition shall be filed within 120 days  
21 after notice of the claim is made to the fund. If the time  
22 requirement under this paragraph is not met, a claim petition  
23 shall not be allowed.

24 (e) List of providers.--

25 (1) The fund may establish lists of at least six  
26 designated health care providers that are accessible in each  
27 county in specialties relevant to the treatment of work  
28 injuries in this Commonwealth, as referenced in section  
29 306(f.1)(1).

30 (2) If the fund establishes a list under paragraph (1),

1 the fund shall be responsible only to reimburse expenses of  
2 medical treatments, services and accommodations rendered by  
3 the physicians or other health care providers that are  
4 designated on the list for the period set forth in section  
5 306(f.1)(1) from the date of the employee's notice to the  
6 fund under subsection (b).

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

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

10 (ii) notify the employee of the requirements of this  
11 subsection.

12 (4) If the employee receives medical treatments,  
13 services or accommodations from a health care provider that  
14 is not designated on the list, the fund shall be relieved of  
15 liability for the payment of medical treatments, services or  
16 accommodations rendered during the period set forth in  
17 section 306(f.1)(1) from the date of the employee's notice to  
18 the fund under subsection (b).

19 Section 1604. Claim petition.

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

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

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

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

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

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

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

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

11 Section 1605. Department.

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

18       (b) Reimbursement.--The department shall, on behalf of the  
19 fund, exhaust all remedies at law against the uninsured employer  
20 in order to collect the amount of a voluntary payment or award,  
21 including voluntary payment or award itself and reimbursement of  
22 costs, interest, penalties, fees under section 440 and costs of  
23 the fund's attorney, which have been paid by the fund. The fund  
24 shall also be reimbursed for costs or attorney fees which are  
25 incurred in seeking reimbursement under this subsection. The  
26 department is authorized to investigate violations of section  
27 305 for prosecution of the uninsured employer pursuant to  
28 section 305(b) and shall pursue such prosecutions through  
29 coordination with the appropriate prosecuting authority. [Any  
30 restitution obtained shall be paid to the fund.] The fund shall



1 be entitled to restitution of all payments made under this  
2 article as the result of any injury to an employee of an  
3 uninsured employer. Restitution to the fund under section 305  
4 shall not be limited to the amount specified in the award of  
5 compensation and shall include the amount of any voluntary  
6 payment or award and reimbursement of the fund's costs and the  
7 fees of the fund's attorney.

8 (c) Bankruptcy.--The department has the right to appear and  
9 represent the fund as a creditor in a bankruptcy proceeding  
10 involving the uninsured employer.

11 (d) Liens.--If payments of any nature have been made by the  
12 fund on behalf of an uninsured employer, the fund shall file a  
13 certified proof of payment with the prothonotary of a court of  
14 common pleas, and the prothonotary shall enter the entire  
15 balance as a judgment against the employer. The judgment shall  
16 be a statutory lien against property of the employer in the  
17 manner set forth in section 308.1 of the act of December 5, 1936  
18 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment  
19 Compensation Law, and execution may issue on it. The fund has  
20 the right to update the amount of the lien as payments are made.

21 Section 2.1. Section 1607 of the act is amended by adding a  
22 subsection to read:

23 Section 1607. Assessments and transfers.

24 \* \* \*

25 (c) For the purposes of further maintaining the fund, the  
26 sum of \$4,000,000 is hereby transferred to the fund from the  
27 Administration Fund established under section 446.

28 Section 3. The act is amended by adding sections to read:  
29 Section 1609. Insolvency.

30 (a) Limitation of liability.--The liability of the fund is

1 limited to the assets in the fund. Neither the fund nor the  
2 Commonwealth may be required to incur any debt under this  
3 article.

4 (b) Limited payments.--

5 (1) If the department projects that the aggregate  
6 payments to or on behalf of employees under this article  
7 during a fiscal year may exceed the projected assets of the  
8 fund for that year, the secretary shall order the payment of  
9 compensation under this article at a percentage of the full  
10 amounts payable under this act. The secretary shall adjust  
11 that percentage as necessary, based on updated projections.

12 (2) The department shall make payments it considers  
13 appropriate as funds become available.

14 (3) To take action under paragraph (1), the department  
15 shall provide a minimum of 60 days' notice to the General  
16 Assembly of the impending action. The notice shall be in the  
17 form of a written report of the pending funding shortfall to  
18 the chairman and minority chairman of the Appropriations  
19 Committee of the Senate and the chairman and minority  
20 chairman of the Labor and Industry Committee of the Senate  
21 and the chairman and minority chairman of the Appropriations  
22 Committee of the House of Representatives and the chairman  
23 and minority chairman of the Labor and Industry Committee of  
24 the House of Representatives.

25 Section 1610. Uninsured employer obligations.

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

28 Section 1611. Administrative penalties and stop-work orders.

29 (a) Certification.--

30 (1) If the department receives information indicating

1 that an employer has failed to insure its obligations as  
2 required by this act, the department may require the employer  
3 to certify, on a form prescribed by the department, that the  
4 employer meets one of the following:

5 (i) Possesses the requisite insurance. This  
6 subparagraph requires identification of the insurer,  
7 policy period and policy number.

8 (ii) No longer operates a business. This  
9 subparagraph requires statement of the dates of operation  
10 and cessation of operation.

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

13 (iv) Is otherwise exempt from the requirements of  
14 obtaining insurance under this act. This paragraph  
15 requires identification of the applicable exemption.

16 (2) The employer shall return the form to the department  
17 within 15 days of service of the form by the department.

18 (i) If an employer does not return the form within  
19 15 days of service by the department, the department may  
20 assess an administrative penalty of \$200 per day until  
21 the earlier of:

22 (A) the date the employer complies; or

23 (B) 30 days from service under this paragraph.

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

28 (b) Good cause.--If the department's investigation under  
29 section 1605 reveals good cause to believe that the employer is  
30 required and has failed to insure its liabilities as required by

1 this act, the department may proceed with further enforcement  
2 under subsection (d).

3 (c) Enforcement.--For the purposes of enforcing section 305  
4 and this article, all department employees or agents charged  
5 with enforcement may enter the premises or worksite of an  
6 employer that is subject to subsection (a)(2)(ii) or (b).

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

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

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

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

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

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

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

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

29 (f) Appeal.--

30 (1) An order under subsection (d) is subject to 2

1 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of  
2 Commonwealth agency action).

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

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

8 (g) Noncompliance.--

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

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

14 (i) In Commonwealth Court under 42 Pa.C.S. §  
15 761(a)(2) (relating to original jurisdiction).

16 (ii) In a court of common pleas under 42 Pa.C.S. §  
17 931(b) (relating to original jurisdiction and venue).

18 Venue for an action under this subparagraph lies in  
19 either:

20 (A) the Twelfth Judicial District; or

21 (B) the judicial district where the violation  
22 occurred.

23 Section 4. Applicability is as follows:

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

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

- 1 (i) The amendment of section 305.2(c) of the act.
- 2 (ii) The amendment of section 1601 of the act.
- 3 (iii) The amendment of section 1603(b) of the act.
- 4 (iv) The amendment of section 1604 of the act.
- 5 Section 5. This act shall take effect immediately.