

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 876 Session of 2015

INTRODUCED BY GORDNER, BAKER, EICHELBERGER, RAFFERTY, FOLMER, VULAKOVICH AND MENSCH, JUNE 8, 2015

AS AMENDED ON SECOND CONSIDERATION, JUNE 14, 2016

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 procedure, further providing for the Workmen's Compensation
10 Administration Fund; and, in the Uninsured Employers Guaranty
11 Fund, further providing for definitions, for fund, for
12 claims, for claim petition, for administration and for
13 assessments and transfers; and providing for uninsured
14 employer obligations, for administrative penalties and stop-
15 work orders and for annual reports to General Assembly.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

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

23 Section 305.2. * * *

24 (c) If an employe is entitled to the benefits of this act by

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

12 [In such event:

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

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

25 (3) The following shall apply:

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

1 employee, to be a qualified self-insurer under this act[;].

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

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

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

26 (c.1) If an employe alleges an injury that is incurred with
27 an employer which is domiciled in another state and which has
28 not secured the payment of compensation as required by this act,
29 such employe shall provide to the Uninsured Employers Guaranty
30 Fund and to any worker's compensation judge hearing a petition

1 against the fund, a written notice, denial, citation of law or
2 court or administrative ruling from such other state or an
3 insurer licensed to write insurance in that state as to that
4 employer, indicating that the employe is not entitled to
5 workers' compensation benefits in that state. No compensation
6 shall be payable from the Uninsured Employers Guaranty Fund
7 until the employe submits the notice, denial, citation or
8 ruling, however, the employe may file a notice or petition
9 against the fund under Article XVI of this act prior to the
10 submission.

11 * * *

12 Section 2. Section 446(a) and (b) of the act, amended June
13 22, 2000 (P.L.390, No.53) and June 22, 2001 (P.L.606, No.49),
14 are amended to read:

15 Section 446. (a) There is hereby created a special fund in
16 the State Treasury, separate and apart from all other public
17 moneys or funds of this Commonwealth, to be known as the
18 Workmen's Compensation Administration Fund.

19 (a.1) The purpose of [this fund] the Workmen's Compensation
20 Administration Fund shall be to finance:

21 (1) the Prefund Account established in section 909(a); and

22 (2) the operating and administrative expenses of the
23 Department of Labor and Industry, including the Workmen's
24 Compensation Appeal Board and staff, but not the State Workmen's
25 Insurance Fund, in the direct administration of The Pennsylvania
26 Workmen's Compensation Act and The Pennsylvania Occupational
27 Disease Act [including].

28 (a.2) The operating and administrative expenses in
29 subsection (a.1)(2) shall include only the following:

30 (1) wages and salaries of employes for services performed in

1 the administration of these acts;

2 (2) reasonable travel expenses for employes while engaged in
3 official business; [and] <--

4 (3) moneys expended for office rental, equipment rental,
5 supplies, equipment, repairs, services, postage, books, and
6 periodicals[.] AND <--

7 (4) OTHER OPERATING AND ADMINISTRATIVE EXPENSES NECESSARY
8 FOR THE ADMINISTRATION OF THIS ACT.

9 (b) The [fund] Workmen's Compensation Administration Fund
10 shall be maintained by no more than one (1) annual assessment
11 payable in any calendar year on insurers and self-insurers under
12 this act, including the State Workers' Insurance Fund[. After
13 the initial term, budgeted expenses shall be approved by the
14 General Assembly on a fiscal year basis. Thereafter, the] as
15 follows:

16 (1) The department shall [make assessments and] submit for
17 approval to the General Assembly on a fiscal year basis a
18 proposed budget sufficient to cover the Prefund Account and
19 other operating and administrative expenses under subsection
20 (a.1). The total amount approved by the General Assembly shall
21 be the approved budget. The department shall collect moneys
22 based on the ratio that such insurer's or self-insurer's
23 payments of compensation bear to the total compensation paid in
24 the preceding calendar year in which the annual assessment is
25 made. †The total amount assessed shall be BASED UPON the <--
26 approved budget.† <--

27 (2) If on January 31, there exists in the [administration
28 fund] Workmen's Compensation Administration Fund any money in
29 excess of one hundred [thirty-three] twenty per centum of the
30 [current] approved budget, the following fiscal year's

1 assessment shall be reduced by [an] A DOLLAR amount equal to <--
2 that excess amount.

3 * * *

4 Section 3. Sections 1601, 1602, 1603, 1604 and 1605 of the
5 act, added November 9, 2006 (P.L.1362, No.147), are amended to
6 read:

7 Section 1601. Definitions.

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

11 "Compensation." Benefits paid pursuant to sections 306 and
12 307.

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

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

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

26 "Secretary." The Secretary of Labor and Industry of the
27 Commonwealth.

28 Section 1602. Fund.

29 (a) Establishment.--

30 (1) There is established a special fund to be known as

1 the Uninsured Employers Guaranty Fund.

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

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

6 (1) Assessments provided for under section 1607.

7 (2) Reimbursements or restitution.

8 (3) Interest on money in the fund.

9 (4) Administrative penalties provided for under section
10 1611.

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

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

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

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

29 (b) Time.--An injured worker shall notify the fund within 45
30 days after the worker [knew] has been advised by the employer or

1 another source that the employer was uninsured. The department
2 shall have adequate time to monitor the claim and shall
3 determine the obligations of the employer. No employee shall
4 receive compensation [shall be paid] from the fund [until notice
5 is given] unless:

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

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

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

14 (d) Petitions.--

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

18 (2) A claim petition shall be filed within 180 days
19 after notice of the claim is made to the fund. If the time
20 requirement under this paragraph is not met, a claim petition
21 shall not be allowed.

22 (e) List of providers.--

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

28 (2) If the fund establishes a list under paragraph (1),
29 the fund shall be responsible only to reimburse expenses of
30 medical treatments, services and accommodations rendered by

1 the physicians or other health care providers that are
2 designated on the list for the period set forth in section
3 306(f.1)(1) from the date of the employee's notice to the
4 fund under subsection (b).

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

6 (i) provide access to the list of designated
7 providers to the employee; and

8 (ii) notify the employee of the requirements of this
9 subsection.

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

17 Section 1604. Claim petition.

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

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

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

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

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

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

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

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

9 (7) Testimony of the claimant, if found credible by the
10 judge, which is provided in addition to one or more of the <--
11 items listed in paragraphs (1), (2), (3), (4), (5) and (6).

12 (C) LIMITATION ON WAGE LOSS BENEFITS.--IF A JUDGE ACCEPTS <--
13 TESTIMONY AND FINDS IT TO BE CREDIBLE UNDER SUBSECTION (B) (7) AS
14 THE SOLE BASIS FOR DETERMINING WAGE LOSS BENEFITS, WITHOUT
15 SUPPORTING EVIDENCE ESTABLISHED IN SUBSECTION (B) (1), (2), (3),
16 (4), (5) OR (6), THE WAGE LOSS BENEFIT RATE SHALL BE SIXTY-SIX
17 AND TWO-THIRDS PERCENT OF THE AVERAGE WEEKLY WAGE FOR THE
18 CLAIMANT'S OCCUPATION. THE JUDGE MAY REDUCE THE AVERAGE WEEKLY
19 WAGE LOSS BENEFIT UPON THE SUBMISSION OF EVIDENCE INDICATING A
20 LESSER WAGE AMOUNT OR BASED ON THE CLAIMANT'S LENGTH OF
21 EMPLOYMENT WITH THE EMPLOYER. FOR THE PURPOSES OF THIS
22 SUBSECTION, THE TERM "AVERAGE WEEKLY WAGE" IS THE AVERAGE WEEKLY
23 WAGE FOR THE CLAIMANT'S OCCUPATION BY METROPOLITAN STATISTICAL
24 AREA, AS DETERMINED BY THE UNITED STATES DEPARTMENT OF LABOR FOR
25 THE CALENDAR YEAR PRIOR TO THE YEAR IN WHICH THE CLAIMANT'S
26 INJURY OCCURRED, AND SHALL BE BASED ON THE METROPOLITAN
27 STATISTICAL AREA IN WHICH THE CLAIMANT'S INJURY OCCURRED.

28 Section 1605. Department.

29 (a) Insurance inquiry.--Within ten days of notice of a
30 claim, the fund shall demand from the employer proof of

1 applicable insurance coverage. Within 14 days from the date of
2 the fund's request, the employer must provide proof of
3 insurance. If the employer does not provide proof, there shall
4 be rebuttable presumption of uninsurance.

5 (b) Reimbursement.--The department shall, on behalf of the
6 fund, exhaust all remedies at law against the uninsured employer
7 in order to collect the amount of a voluntary payment or award,
8 including voluntary payment or award itself and reimbursement of
9 costs, interest, penalties, fees under section 440 and costs of
10 the fund's attorney, which have been paid by the fund. The fund
11 shall also be reimbursed for costs or attorney fees which are
12 incurred in seeking reimbursement under this subsection. The
13 department is authorized to investigate violations of section
14 305 for prosecution of the uninsured employer pursuant to
15 section 305(b) and shall pursue such prosecutions through
16 coordination with the appropriate prosecuting authority. [Any
17 restitution obtained shall be paid to the fund.] The fund shall
18 be entitled to restitution of all payments made under this
19 article as the result of any injury to an employee of an
20 uninsured employer. Restitution to the fund under section 305
21 shall not be limited to the amount specified in the award of
22 compensation and shall include the amount of any voluntary
23 payment or award and reimbursement of the fund's costs and the
24 fees of the fund's attorney.

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

28 (d) Liens.--If payments of any nature have been made by the
29 fund on behalf of an uninsured employer, the fund shall file a
30 certified proof of payment with the prothonotary of a court of

1 common pleas, and the prothonotary shall enter the entire
2 balance as a judgment against the employer. The judgment shall
3 be a statutory lien against property of the employer in the
4 manner set forth in section 308.1 of the act of December 5, 1936
5 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
6 Compensation Law, and execution may issue on it. The fund has
7 the right to update the amount of the lien as payments are made.

8 Section 4. Section 1607 of the act is amended to read:

9 Section 1607. Assessments and transfers.

10 (a) [For the purpose of establishing and maintaining the
11 fund, the sum of \$1,000,000 is hereby transferred from the
12 Administration Fund established under section 446 to the fund
13 for operation of the fund for the period commencing on the
14 effective date of this section through June 30, 2007.] (1) The
15 department shall calculate the amount necessary to maintain the
16 fund and shall assess insurers and self-insured employers as is
17 necessary to provide an amount sufficient to pay outstanding and
18 anticipated claims in the following year in a timely manner and
19 to meet the costs of the department to administer the fund. The
20 fund shall be maintained in the same manner as the Workmen's
21 Compensation Administration Fund under section 446 and the
22 regulations thereunder.

23 (2) In no event shall any annual assessment exceed
24 [0.1%] 0.25% of the total compensation paid by all insurers
25 or self-insured employers during the previous calendar year.

26 (3) Each fiscal year, the department shall determine the
27 expenses of the fund for the prior fiscal year. If the total
28 amount assessed for the prior fiscal year exceeds 130% of the
29 expenses for that prior fiscal year, the current fiscal year
30 assessment shall be reduced by an A DOLLAR amount equal to <--

1 that excess amount.

2 [(b) For the purposes of further maintaining the fund, the
3 sum of \$4,000,000 is hereby transferred to the fund from the
4 Administration Fund established under section 446.]

5 (c) For the purposes of further maintaining the Uninsured
6 Employers Guaranty Fund, the outstanding loan which occurred on
7 March 15, 2016, from the Workers' Compensation Administration
8 Fund established under section 446 in the amount of \$4,000,000
9 used to maintain the fund is hereby designated an additional
10 transfer and shall not be repaid.

11 Section 5. The act is amended by adding sections to read:
12 Section 1609. (Reserved).

13 Section 1610. Uninsured employer obligations.

14 Nothing in this article shall alter the uninsured employer's
15 obligations under this act.

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

17 (a) Certification.--

18 (1) If the department receives information indicating
19 that an employer has failed to insure the employer's
20 obligations as required by this act, the department may
21 require the employer to certify, on a form prescribed by the
22 department, that the employer meets one of the following:

23 (i) Possesses the requisite insurance. This
24 subparagraph shall require the identification of the
25 insurer, policy period and policy number.

26 (ii) No longer operates a business. This
27 subparagraph shall require a statement of the dates of
28 operation and cessation of operation.

29 (iii) Does not employ an individual entitled to
30 compensation under this act.

1 (iv) Is otherwise exempt from the requirements of
2 obtaining insurance under this act. This paragraph shall
3 require the identification of the applicable exemption.

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

6 (i) If an employer does not return the form within
7 15 days of service by the department, the department may
8 assess an administrative penalty of \$200 per day until
9 the earlier of:

10 (A) the date the employer complies; or

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

12 (ii) If an employer does not comply with this
13 paragraph within 45 days of service under this paragraph,
14 the department may proceed with further enforcement under
15 subsection (d).

16 (b) Good cause.--If the department's investigation under
17 section 1605 reveals good cause to believe that the employer is
18 required and has failed to insure the employer's liabilities as
19 required by this act, the department may proceed with further
20 enforcement under subsection (d).

21 (c) Enforcement.--For the purposes of enforcing section 305
22 and this article, each department employee or agent charged with
23 enforcement may enter the premises or worksite of an employer
24 that is subject to subsection (a)(2)(ii) or (b).

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

29 (1) The order may require compliance with conditions
30 necessary to ensure that the employer insures its liabilities

1 as required by this act.

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

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

7 (4) The order shall be effective against a successor
8 entity that:

9 (i) has one or more of the same principals or
10 officers as the employer against whom the order was
11 issued; and

12 (ii) is engaged in the same or equivalent trade or
13 activity.

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

17 (f) Appeal.--

18 (1) An order under subsection (d) is subject to 2
19 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of
20 Commonwealth agency action).

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

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

26 (g) Noncompliance.--

27 (1) Upon failure to comply with an order under
28 subsection (d) and (f), the department may institute an
29 action to enforce the order.

30 (2) An action under this subsection may be initiated as

1 follows:

2 (i) In Commonwealth Court under 42 Pa.C.S. §
3 761(a)(2) (relating to original jurisdiction).

4 (ii) In a court of common pleas under 42 Pa.C.S. §
5 931(b) (relating to original jurisdiction and venue).

6 Venue for an action under this subparagraph lies in
7 either:

8 (A) the Twelfth Judicial District; or

9 (B) the judicial district where the violation
10 occurred.

11 Section 1612. Annual report to General Assembly.

12 On or before September 1 of each year, the Department of
13 Labor and Industry shall submit to the Labor and Industry
14 Committee of the Senate and the Labor and Industry Committee of
15 the House of Representatives a report outlining the department's
16 efforts to identify and prosecute uninsured employers, any
17 penalties resulting from that activity, the status of claims and
18 operations, including the number of claims filed, pending and
19 paid in the past year and an analysis of the administrative
20 expenses of the fund.

21 Section 6. Applicability is as follows:

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

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

29 (i) The amendment of section 305.2(c) of the act.

30 (ii) The amendment of section 1601 of the act.

1 (iii) The amendment of section 1603(b) of the act.

2 (iv) The amendment of section 1604 of the act.

3 Section 7. This act shall take effect immediately.