

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1840 Session of  
2017

INTRODUCED BY KAUFFMAN, EVERETT, PICKETT, BLOOM, ROTHMAN,  
MILLARD, MACKENZIE, GREINER, TURZAI, COX, IRVIN, MAHER, RYAN,  
WARD, WHEELAND, FEE, RADER, METCALFE, KEEFER, MCGINNIS,  
TOPPER, DELOZIER, MUSTIO, DUSH, NELSON, F. KELLER, SAYLOR,  
PHILLIPS-HILL, KNOWLES AND GROVE, OCTOBER 2, 2017

SENATOR WARD, LABOR AND INDUSTRY, IN SENATE, AS AMENDED,  
OCTOBER 2, 2018

## AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An  
2 act defining the liability of an employer to pay damages for  
3 injuries received by an employe in the course of employment;  
4 establishing an elective schedule of compensation; providing  
5 procedure for the determination of liability and compensation  
6 thereunder; and prescribing penalties," in liability and  
7 compensation, further providing for schedule of compensation,  
8 for computation of benefits and for physical examination or  
9 expert interview.

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

12 Section 1. Section 306(a.2) of the act of June 2, 1915  
13 (P.L.736, No.338), known as the Workers' Compensation Act, is  
14 repealed and the section is amended by adding a clause to read:

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

17 \* \* \*

18 [(a.2) (1) When an employe has received total disability  
19 compensation pursuant to clause (a) for a period of one hundred

1 four weeks, unless otherwise agreed to, the employe shall be  
2 required to submit to a medical examination which shall be  
3 requested by the insurer within sixty days upon the expiration  
4 of the one hundred four weeks to determine the degree of  
5 impairment due to the compensable injury, if any. The degree of  
6 impairment shall be determined based upon an evaluation by a  
7 physician who is licensed in this Commonwealth, who is certified  
8 by an American Board of Medical Specialties approved board or  
9 its osteopathic equivalent and who is active in clinical  
10 practice for at least twenty hours per week, chosen by agreement  
11 of the parties, or as designated by the department, pursuant to  
12 the most recent edition of the American Medical Association  
13 "Guides to the Evaluation of Permanent Impairment."

14 (2) If such determination results in an impairment rating  
15 that meets a threshold impairment rating that is equal to or  
16 greater than fifty per centum impairment under the most recent  
17 edition of the American Medical Association "Guides to the  
18 Evaluation of Permanent Impairment," the employe shall be  
19 presumed to be totally disabled and shall continue to receive  
20 total disability compensation benefits under clause (a). If such  
21 determination results in an impairment rating less than fifty  
22 per centum impairment under the most recent edition of the  
23 American Medical Association "Guides to the Evaluation of  
24 Permanent Impairment," the employe shall then receive partial  
25 disability benefits under clause (b): Provided, however, That no  
26 reduction shall be made until sixty days' notice of modification  
27 is given.

28 (3) Unless otherwise adjudicated or agreed to based upon a  
29 determination of earning power under clause (b) (2), the amount  
30 of compensation shall not be affected as a result of the change

1 in disability status and shall remain the same. An insurer or  
2 employe may, at any time prior to or during the five hundred-  
3 week period of partial disability, show that the employe's  
4 earning power has changed.

5 (4) An employe may appeal the change to partial disability  
6 at any time during the five hundred-week period of partial  
7 disability; Provided, That there is a determination that the  
8 employe meets the threshold impairment rating that is equal to  
9 or greater than fifty per centum impairment under the most  
10 recent edition of the American Medical Association "Guides to  
11 the Evaluation of Permanent Impairment."

12 (5) Total disability shall continue until it is adjudicated  
13 or agreed under clause (b) that total disability has ceased or  
14 the employe's condition improves to an impairment rating that is  
15 less than fifty per centum of the degree of impairment defined  
16 under the most recent edition of the American Medical  
17 Association "Guides to the Evaluation of Permanent Impairment."

18 (6) Upon request of the insurer, the employe shall submit to  
19 an independent medical examination in accordance with the  
20 provisions of section 314 to determine the status of impairment:  
21 Provided, however, That for purposes of this clause, the employe  
22 shall not be required to submit to more than two independent  
23 medical examinations under this clause during a twelve-month  
24 period.

25 (7) In no event shall the total number of weeks of partial  
26 disability exceed five hundred weeks for any injury or  
27 recurrence thereof, regardless of the changes in status in  
28 disability that may occur. In no event shall the total number of  
29 weeks of total disability exceed one hundred four weeks for any  
30 employe who does not meet a threshold impairment rating that is

1 equal to or greater than fifty per centum impairment under the  
2 most recent edition of the American Medical Association "Guides  
3 to the Evaluation of Permanent Impairment" for any injury or  
4 recurrence thereof.

5 (8) (i) For purposes of this clause, the term "impairment"  
6 shall mean an anatomic or functional abnormality or loss that  
7 results from the compensable injury and is reasonably presumed  
8 to be permanent.

9 (ii) For purposes of this clause, the term "impairment  
10 rating" shall mean the percentage of permanent impairment of the  
11 whole body resulting from the compensable injury. The percentage  
12 rating for impairment under this clause shall represent only  
13 that impairment that is the result of the compensable injury and  
14 not for any preexisting work-related or nonwork-related  
15 impairment.]

16 (a.3) (1) When an employe has received total disability  
17 compensation pursuant to clause (a) for a period of one hundred  
18 four weeks, unless otherwise agreed to, the employe shall be  
19 required to submit to a medical examination which shall be  
20 requested by the insurer within sixty days upon the expiration  
21 of the one hundred four weeks to determine the degree of  
22 impairment due to the compensable injury, if any. The degree of  
23 impairment shall be determined based upon an evaluation by a  
24 physician who is licensed in this Commonwealth, who is certified  
25 by an American Board of Medical Specialties approved board or  
26 its osteopathic equivalent and who is active in clinical  
27 practice for at least twenty hours per week, chosen by agreement  
28 of the parties, or as designated by the department, pursuant to  
29 the American Medical Association "Guides to the Evaluation of  
30 Permanent Impairment," 6th edition (second printing April 2009).

1 (2) If such determination results in an impairment rating  
2 that meets a threshold impairment rating that is equal to or  
3 greater than thirty-five per centum impairment under the  
4 American Medical Association "Guides to the Evaluation of  
5 Permanent Impairment," 6th edition (second printing April 2009),  
6 the employe shall be presumed to be totally disabled and shall  
7 continue to receive total disability compensation benefits under  
8 clause (a). If such determination results in an impairment  
9 rating less than thirty-five per centum impairment under the  
10 American Medical Association "Guides to the Evaluation of  
11 Permanent Impairment," 6th edition (second printing April 2009),  
12 the employe shall then receive partial disability benefits under  
13 clause (b): Provided, however, That no reduction shall be made  
14 until sixty days' notice of modification is given.

15 (3) Unless otherwise adjudicated or agreed to based upon a  
16 determination of earning power under clause (b) (2), the amount  
17 of compensation shall not be affected as a result of the change  
18 in disability status and shall remain the same. An insurer or  
19 employe may, at any time prior to or during the five hundred-  
20 week period of partial disability, show that the employe's  
21 earning power has changed.

22 (4) An employe may appeal the change to partial disability  
23 at any time during the five hundred-week period of partial  
24 disability; Provided, That there is a determination that the  
25 employe meets the threshold impairment rating that is equal to  
26 or greater than thirty-five per centum impairment under the  
27 American Medical Association "Guides to the Evaluation of  
28 Permanent Impairment," 6th edition (second printing April 2009).

29 (5) Total disability shall continue until it is adjudicated  
30 or agreed under clause (b) that total disability has ceased or

1 the employe's condition improves to an impairment rating that is  
2 less than thirty-five per centum of the degree of impairment  
3 defined under the American Medical Association "Guides to the  
4 Evaluation of Permanent Impairment," 6th edition (second  
5 printing April 2009).

6 (6) Upon request of the insurer, the employe shall submit to  
7 an independent medical examination in accordance with the  
8 provisions of section 314 to determine the status of impairment:  
9 Provided, however, That for purposes of this clause, the employe  
10 shall not be required to submit to more than two independent  
11 medical examinations under this clause during a twelve-month  
12 period.

13 (7) In no event shall the total number of weeks of partial  
14 disability exceed five hundred weeks for any injury or  
15 recurrence thereof, regardless of the changes in status in  
16 disability that may occur. In no event shall the total number of  
17 weeks of total disability exceed one hundred four weeks for any  
18 employe who does not meet a threshold impairment rating that is  
19 equal to or greater than thirty-five per centum impairment under  
20 the American Medical Association "Guides to the Evaluation of  
21 Permanent Impairment," 6th edition (second printing April 2009),  
22 for any injury or recurrence thereof.

23 (8) THE AMERICAN MEDICAL ASSOCIATION "GUIDES TO THE <--  
24 EVALUATION OF PERMANENT IMPAIRMENT," 6TH EDITION (SECOND  
25 PRINTING APRIL 2009), IS INCORPORATED BY REFERENCE IN THIS  
26 CLAUSE.

27 ~~(8)~~ (9) (i) For purposes of this clause, the term <--  
28 "impairment" shall mean an anatomic or functional abnormality or  
29 loss that results from the compensable injury and is reasonably  
30 presumed to be permanent.

1     (ii) For purposes of this clause, the term "impairment  
2 rating" shall mean the percentage of permanent impairment of the  
3 whole body resulting from the compensable injury. The percentage  
4 rating for impairment under this clause shall represent only  
5 that impairment that is the result of the compensable injury and  
6 not for any preexisting work-related or nonwork-related  
7 impairment.

8       \* \* \*

9       Section 2. Sections 307(7) and 314(b) of the act are amended  
10 to read:

11       Section 307. In case of death, compensation shall be  
12 computed on the following basis, and distributed to the  
13 following persons: Provided, That in no case shall the wages of  
14 the deceased be taken to be less than fifty per centum of the  
15 Statewide average weekly wage for purposes of this section:

16       \* \* \*

17       (7) Whether or not there be dependents as aforesaid, the  
18 reasonable expense of burial, not exceeding [three thousand  
19 dollars (\$3,000)] seven thousand dollars (\$7,000), which shall  
20 be paid by the employer or insurer directly to the undertaker  
21 (without deduction of any amounts theretofore paid for  
22 compensation or for medical expenses).

23       \* \* \*

24       Section 314.   \* \* \*

25       (b) In the case of a physical examination, the employe shall  
26 be entitled to have a health care provider of his own selection,  
27 to be paid by him, participate in such examination requested by  
28 his employer or ordered by the workers' compensation judge. In  
29 instances where an examination is requested in relation to  
30 section [306(a.2)(1)] 306(a.3)(1), such examination shall be

1 performed by a physician who is licensed in this Commonwealth,  
2 who is certified by an American Board of Medical Specialties  
3 approved board or its osteopathic equivalent and who is in  
4 active clinical practice for at least twenty (20) hours per  
5 week.

6 ~~Section 3. The following shall apply:~~ <--

7 ~~(1) For the purposes of determining whether an employee~~  
8 ~~shall submit to a medical examination to determine the degree~~  
9 ~~of impairment and whether an employee has received total~~  
10 ~~disability compensation for the period of 104 weeks under~~  
11 ~~section 306(a.3) (1) of the act, an insurer shall be given~~  
12 ~~credit for weeks of total disability compensation paid prior~~  
13 ~~to the effective date of this paragraph. This section shall~~  
14 ~~not be construed to alter the requirements of section~~  
15 ~~306(a.3) of the act.~~

16 ~~(2) For the purposes of determining the total number of~~  
17 ~~weeks of partial disability compensation payable under~~  
18 ~~section 306(a.3) (7) of the act, an insurer shall be given~~  
19 ~~credit for weeks of partial disability compensation paid~~  
20 ~~prior to the effective date of this paragraph.~~

21 ~~(3) Within 90 days following the effective date of the~~  
22 ~~addition of section 306(a.3) of the act, the Pennsylvania~~  
23 ~~Compensation Rating Bureau shall calculate the savings~~  
24 ~~achieved through the implementation of that subsection.~~  
25 ~~Immediately following this calculation, the amount of savings~~  
26 ~~shall be used to provide an immediate reduction in rates,~~  
27 ~~equal to the savings, applicable to employers' workers'~~  
28 ~~compensation policies.~~

29 Section 4 3. This act shall take effect immediately. <--