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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1387 Session of  
2021

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INTRODUCED BY E. NELSON, PICKETT, SCHWEYER, R. MACKENZIE,  
DAVANZO, KEEFER, B. MILLER, WHEELAND, RYAN AND SILVIS,  
MAY 14, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MAY 14, 2021

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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 Uninsured  
7 Employers Guaranty Fund, further providing for claim  
8 petition.

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

11 Section 1. Section 1604 of the act of June 2, 1915 (P.L.736,  
12 No.338), known as the Workers' Compensation Act, is amended to  
13 read:

14 Section 1604. Claim petition.

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

1 (b) Amount of wages.--In a proceeding under this article,  
2 the fund shall not be liable for wage loss payments unless the  
3 amount of wages the employee earned at the time of injury is  
4 established by one of the following:

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

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

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

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

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

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

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

19 [(c) Limitation on wage loss payments.--If a judge accepts  
20 testimony and finds it to be credible under subsection (b) (7) as  
21 the sole basis for determining wage loss payments, without  
22 supporting evidence established in subsection (b) (1), (2), (3),  
23 (4), (5) or (6), the wage loss payment rate shall be 66.6% of  
24 the average weekly wage for the claimant's occupation. The judge  
25 may reduce the average weekly wage loss payment upon the  
26 submission of evidence indicating a lesser wage amount or based  
27 on the claimant's length of employment with the employer. For  
28 the purposes of this subsection, the term "average weekly wage"  
29 is the average weekly wage for the claimant's occupation by  
30 metropolitan statistical area, as determined by the United

1 States Department of Labor for the calendar year prior to the  
2 year in which the claimant's injury occurred, and shall be based  
3 on the metropolitan statistical area in which the claimant's  
4 injury occurred.]

5 (d) Reports.--

6 (1) If the department has reasonable cause to suspect  
7 that a claimant or uninsured employer has not reported, has  
8 underreported or is delinquent in the payment of any Federal  
9 or State tax, the department shall make a report within 30  
10 days to the United States Internal Revenue Service, the  
11 Department of Revenue or any other applicable Federal or  
12 State agency. The department shall cooperate with an  
13 investigation initiated as the result of a report made under  
14 this subsection.

15 (2) If the department has reasonable cause to suspect  
16 that an uninsured construction industry employer has  
17 misclassified a claimant in violation of the act of October  
18 13, 2010 (P.L.506, No.72), known as the Construction  
19 Workplace Misclassification Act, the department shall make a  
20 report to the Bureau of Labor Law Compliance for an  
21 investigation into the potential misclassification of the  
22 claimant.

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