

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 870 Session of 2021

INTRODUCED BY LAUGHLIN, SEPTEMBER 17, 2021

REFERRED TO LABOR AND INDUSTRY, SEPTEMBER 17, 2021

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 the definitions of
 8 "injury," "personal injury" and "injury arising in the course
 9 of his employment," providing for diseases with long latency
 10 periods between occupational exposure and manifestation of
 11 the disease and further providing for liability.

12 The General Assembly of the Commonwealth of Pennsylvania
 13 hereby enacts as follows:

14 Section 1. Section 301(c) of the act of June 2, 1915
 15 (P.L.736, No.338), known as the Workers' Compensation Act, is
 16 amended and the section is amended by adding a subsection to
 17 read:

18 Section 301. * * *

19 (c) (1) The terms "injury" and "personal injury," as used
 20 in this act, shall be construed to mean an injury to an employe,
 21 regardless of his previous physical condition, except as
 22 provided under [subsection (f)] subsections (f) and (g), arising
 23 in the course of his employment and related thereto, and such

1 disease or infection as naturally results from the injury or is
2 aggravated, reactivated or accelerated by the injury; and
3 wherever death is mentioned as a cause for compensation under
4 this act, it shall mean only death resulting from such injury
5 and its resultant effects, and occurring within three hundred
6 weeks after the injury. The limitation with respect to a disease
7 under this paragraph having to occur within three hundred weeks
8 of the last date of exposure shall not apply to claims filed
9 under subsection (g) (1). The term "injury arising in the course
10 of his employment," as used in this article, shall not include
11 an injury caused by an act of a third person intended to injure
12 the employe because of reasons personal to him, and not directed
13 against him as an employe or because of his employment; nor
14 shall it include injuries sustained while the employe is
15 operating a motor vehicle provided by the employer if the
16 employe is not otherwise in the course of employment at the time
17 of injury; but shall include all other injuries sustained while
18 the employe is actually engaged in the furtherance of the
19 business or affairs of the employer, whether upon the employer's
20 premises or elsewhere, and shall include all injuries caused by
21 the condition of the premises or by the operation of the
22 employer's business or affairs thereon, sustained by the
23 employe, who, though not so engaged, is injured upon the
24 premises occupied by or under the control of the employer, or
25 upon which the employer's business or affairs are being carried
26 on, the employe's presence thereon being required by the nature
27 of his employment.

28 (2) The terms "injury," "personal injury," and "injury
29 arising in the course of his employment," as used in this act,
30 shall include, unless the context clearly requires otherwise,

1 occupational disease as defined in section 108 of this act:
2 Provided, That whenever occupational disease is the basis for
3 compensation, for disability or death under this act, it shall
4 apply only to disability or death resulting from such disease
5 and occurring within three hundred weeks after the last date of
6 employment in an occupation or industry to which he was exposed
7 to hazards of such disease: And provided further, That if the
8 employe's compensable disability has occurred within such
9 period, his subsequent death as a result of the disease shall
10 likewise be compensable. This limitation shall not apply to
11 claims filed under subsection (g) (1). The provisions of this
12 paragraph (2) shall apply only with respect to the disability or
13 death of an employe which results in whole or in part from the
14 employe's exposure to the hazard of occupational disease after
15 June 30, 1973 in employment covered by The Pennsylvania
16 Workmen's Compensation Act. The employer liable for compensation
17 provided by section 305.1 or section 108, subsections (k), (l),
18 (m), (o), (p), (q) or (r), shall be the employer in whose
19 employment the employe was last exposed for a period of not less
20 than one year to the hazard of the occupational disease claimed.
21 In the event the employe did not work in an exposure at least
22 one year for any employer during the three hundred week period
23 prior to disability or death, the employer liable for the
24 compensation shall be that employer giving the longest period of
25 employment in which the employe was exposed to the hazards of
26 the disease claimed.

27 * * *

28 (g) (1) Notwithstanding the limitations with respect to a
29 disease under subsection (c) (2) having to occur within three
30 hundred weeks of the last date of exposure, and under subsection

1 (c) (2) with respect to disability or death resulting from an
2 occupational disease having to occur within three hundred weeks
3 after the last date of employment in an occupation or industry
4 to which a claimant was exposed to the hazards of disease,
5 claims filed for a disease under subsection (c) (1) or (2) for
6 which the time period between exposure to the hazard of disease
7 in the workplace and manifestation of disease is greater than
8 three hundred weeks must be filed within three years of the date
9 on which a claimant is diagnosed with the disease. It shall be a
10 claimant's burden to prove that the disease for which
11 compensation is sought has a latency period of more than three
12 hundred weeks. If an employee is receiving or is eligible to
13 receive occupational disease benefits at the time of the
14 employee's death, a death or survivor claim must be brought
15 within three hundred weeks of the date of death. If the deceased
16 employee was not receiving benefits or was not eligible to
17 receive benefits at the time of death, a death claim must be
18 filed within three hundred weeks of a diagnostic document that
19 shows the presence of the occupational disease and filed within
20 three years of the death date.

21 (2) The following shall apply to claims made under this
22 subsection, where the last date of employment in the occupation
23 or industry to which a claimant was exposed to the hazards of
24 disease occurred prior to the effective date of this paragraph:

25 (i) An insurer shall not be liable for a compensable claim
26 under this subsection that was not compensable prior to the
27 effective date of this paragraph as the result of the limitation
28 with respect to a disease under subsection (c) (1) having to
29 occur within three years of the last date of exposure or the
30 limitation under subsection (c) (2) with respect to disability or

1 death resulting from an occupational disease having to occur
2 within three hundred weeks after the last date of employment in
3 an occupation or industry to which a claimant was exposed to the
4 hazards of disease.

5 (ii) An insured or self-insured employer who receives a
6 notice or petition for a compensable claim under this
7 subsection, which the insurer is not required to pay under
8 subparagraph (i), may refer the claim to the Workers'
9 Compensation Security Fund, established under the act of July 1,
10 1937 (P.L.2532, No.470), known as the "Workers' Compensation
11 Security Fund Act." An employer who refers a claim shall
12 immediately report the claim to the Workers' Compensation
13 Security Fund and send written notice by certified mail to the
14 claimant, the insurer and the Workers' Compensation Security
15 Fund within forty-five (45) days of receipt of the notice or
16 petition, or within forty-five (45) days from the time the
17 employer was informed by the insurer that the insurer is not
18 required to pay the claim under subparagraph (i). The notice
19 shall include all claim information received by the employer,
20 contact information for the claimant and any other information
21 required by the Workers' Compensation Security Fund.

22 (iii) The Workers' Compensation Security Fund shall pay
23 compensable claims submitted under subparagraph (ii) in
24 accordance with this act, if the employer has provided notice
25 under subparagraph (ii) and the claim is compensable under this
26 subsection. The Workers' Compensation Security Fund shall not be
27 required to pay any claim that is not authorized under this
28 subsection or any claim under this subsection where the last
29 date of employment in the occupation or industry to which a
30 claimant was exposed to the hazards of disease occurred on or

1 after the effective date of this paragraph, unless required by
2 the "Workers' Compensation Security Fund Act." The Workers'
3 Compensation Security Fund may establish regulations, policies
4 and procedures for the submission of claims under subparagraph
5 (ii), including the form of the notice, and the administration
6 of claims.

7 (iv) The Insurance Commissioner shall include in his regular
8 report to the Governor a statement of the expenses of
9 administering claims paid under this subsection, along with the
10 information required under section 14 of the "Workers'
11 Compensation Security Fund Act."

12 (3) This subsection shall not apply to claims filed under
13 section 108(r).

14 Section 1.1. Section 303 of the act is amended by adding a
15 subsection to read:

16 Section 303. * * *

17 (c) This act provides the exclusive remedy for any injury or
18 disease that may arise out of hazardous occupational exposure,
19 whether the disease is compensable or not.

20 Section 2. This act shall apply as follows:

21 (1) Except as provided in paragraph (2), this act shall
22 apply to claims filed on or after the effective date of this
23 act.

24 (2) The addition of sections 301(g) and 303(c) of the
25 act shall apply to civil claims existing as of the effective
26 date of this paragraph, if the plaintiff was barred from
27 seeking compensation for an occupational disease by the time
28 limit under section 301(c) (2), for which compensation has not
29 been paid or awarded.

30 Section 3. The provisions of this act shall be applied

1 retroactively to the date on which the last injurious exposure
2 occurred. As a result, any claim filed on or after the effective
3 date of this section may be based on hazardous occupational
4 exposure that occurred prior to the effective date of this
5 section.

6 Section 4. This act shall take effect immediately.