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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 676 Session of  
2017

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INTRODUCED BY GORDNER, MENSCH, FOLMER, RAFFERTY AND REGAN,  
MAY 4, 2017

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REFERRED TO LABOR AND INDUSTRY, MAY 4, 2017

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

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

15 Section 1. Section 305.2(c) of the act of June 2, 1915  
16 (P.L.736, No.338), known as the Workers' Compensation Act, is  
17 amended and the section is amended by adding a subsection to  
18 read:

19 Section 305.2. \* \* \*

20 (c) If an employe is entitled to the benefits of this act by  
21 reason of an injury sustained in this State in employment by an  
22 employer who is domiciled in another state and who has not  
23 secured the payment of compensation as required by this act, the

1 [employer or his carrier may file with the director a  
2 certificate, issued by] department may verify with the  
3 commission or agency of such other state having jurisdiction  
4 over [workmen's] workers' compensation claims[, certifying] that  
5 such employer has secured the payment of compensation under the  
6 [workmen's] workers' compensation law of such other state and  
7 that with respect to said injury such employe is entitled to the  
8 benefits provided under such law.

9 In such event:

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

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

22 (3) The following shall apply:

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

29 (ii) If such employer's liability under the workmen's  
30 compensation law of such other state is insured, such employer's

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

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

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

23 (c.1) If an employe alleges an injury that is incurred with  
24 an employer which is domiciled in another state and which has  
25 not secured the payment of compensation as required by this act,  
26 such employe shall provide to the Uninsured Employers Guaranty  
27 Fund and to any worker's compensation judge hearing a petition  
28 against the fund, a written notice, denial, citation of law or  
29 court or administrative ruling from such other state or an  
30 insurer licensed to write insurance in that state as to that

1 employer, indicating that the employe is not entitled to  
2 workers' compensation benefits in that state. No compensation  
3 shall be payable from the Uninsured Employers Guaranty Fund  
4 until the employe submits the notice, denial, citation or  
5 ruling, however, the employe may file a notice or petition  
6 against the fund under Article XVI of this act prior to the  
7 submission.

8 \* \* \*

9 Section 2. Sections 1601, 1602, 1603, 1604 and 1605 of the  
10 act are amended to read:

11 Section 1601. Definitions.

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

15 "Compensation." Benefits paid pursuant to sections 306 and  
16 307.

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

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

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

30 "Secretary." The Secretary of Labor and Industry of the

1 Commonwealth.

2 Section 1602. Fund.

3 (a) Establishment.--

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

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

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

10 (1) Assessments provided for under section 1607.

11 (2) Reimbursements or restitution.

12 (3) Interest on money in the fund.

13 (4) Administrative penalties provided for under section  
14 1610.

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

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

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

29 Section 1603. Claims.

30 (a) Scope.--This section shall apply to claims for an injury

1 or a death which occurs on or after the effective date of this  
2 article.

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

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

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

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

18 (d) Petitions.--

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

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

26 (e) List of providers.--

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

1 306(f.1) (1).

2 (2) If the fund establishes a list under paragraph (1),  
3 the fund shall be responsible only to reimburse expenses of  
4 medical treatments, services and accommodations rendered by  
5 the physicians or other health care providers that are  
6 designated on the list for the period provided in section  
7 306(f.1) (1) from the date of the employee's notice to the  
8 fund under subsection (b).

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

10 (i) provide access to the list of designated  
11 providers to the employee; and

12 (ii) notify the employee of the requirements of this  
13 subsection.

14 (4) If the employee receives medical treatments,  
15 services or accommodations from a health care provider that  
16 is not designated on the list, the fund shall be relieved of  
17 liability for the payment of medical treatments, services or  
18 accommodations rendered during the period provided in section  
19 306(f.1) (1) from the date of the employee's notice to the  
20 fund under subsection (b).

21 Section 1604. Claim petition.

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

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

1 established by one of the following:

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

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

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

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

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

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

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

16 Section 1605. Department.

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

23 (b) Reimbursement.--The department shall, on behalf of the  
24 fund, exhaust all remedies at law against the uninsured employer  
25 in order to collect the amount of a voluntary payment or award,  
26 including voluntary payment or award itself and reimbursement of  
27 costs, interest, penalties, fees under section 440 and costs of  
28 the fund's attorney, which have been paid by the fund. The fund  
29 shall also be reimbursed for costs or attorney fees which are  
30 incurred in seeking reimbursement under this subsection. The

1 department is authorized to investigate violations of section  
2 305 for prosecution of the uninsured employer pursuant to  
3 section 305(b) and shall pursue such prosecutions through  
4 coordination with the appropriate prosecuting authority. [Any  
5 restitution obtained shall be paid to the fund.] The fund shall  
6 be entitled to restitution of all payments made under this  
7 article as the result of an injury to an employee of an  
8 uninsured employer. Restitution to the fund under section 305  
9 shall not be limited to the amount specified in the award of  
10 compensation and shall include the amount of a voluntary payment  
11 or award and reimbursement of the fund's costs and the fees of  
12 the fund's attorney.

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

16 (d) Liens.--If payments of any nature have been made by the  
17 fund on behalf of an uninsured employer, the fund shall file a  
18 certified proof of payment with the prothonotary of a court of  
19 common pleas, and the prothonotary shall enter the entire  
20 balance as a judgment against the employer. The judgment shall  
21 be a statutory lien against property of the employer in the  
22 manner set forth in section 308.1 of the act of December 5, 1936  
23 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment  
24 Compensation Law, and execution may issue on it. The fund has  
25 the right to update the amount of the lien as payments are made.

26 Section 3. The act is amended by adding sections to read:  
27 Section 1609. Uninsured employer obligations.

28 Nothing in this article shall alter the uninsured employer's  
29 obligations under this act.

30 Section 1610. Administrative penalties and stop-work orders.

1 (a) Certification.--

2 (1) If the department receives information indicating  
3 that an employer has failed to insure the employer's  
4 obligations as required by this act, the department may  
5 require the employer to certify, on a form prescribed by the  
6 department, that the employer meets one of the following:

7 (i) Possesses the requisite insurance. This  
8 subparagraph shall require the identification of the  
9 insurer, policy period and policy number.

10 (ii) No longer operates a business. This  
11 subparagraph shall require a statement of the dates of  
12 operation and cessation of operation.

13 (iii) Does not employ an individual entitled to  
14 compensation under this act.

15 (iv) Is otherwise exempt from the requirements of  
16 obtaining insurance under this act. This paragraph shall  
17 require the identification of the applicable exemption.

18 (2) The employer shall return the form to the department  
19 within 15 days of service of the form by the department. The  
20 following shall apply:

21 (i) If an employer does not return the form within  
22 15 days of service by the department, the department may  
23 assess an administrative penalty of \$200 per day until  
24 the earlier of:

25 (A) the date the employer complies; or

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

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

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

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

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

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

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

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

22 (4) The order shall be effective against a successor  
23 entity that:

24 (i) has one or more of the same principals or  
25 officers as the employer against whom the order was  
26 issued; and

27 (ii) is engaged in the same or equivalent trade or  
28 activity.

29 (e) Nonexclusivity.--An order under subsection (d) is in  
30 addition to a penalty which may be imposed pursuant to this act.

1 (f) Appeal.--

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

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

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

10 (g) Noncompliance.--

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

14 (2) An action under this subsection may be initiated as  
15 follows:

16 (i) In Commonwealth Court under 42 Pa.C.S. §  
17 761(a)(2) (relating to original jurisdiction).

18 (ii) In a court of common pleas under 42 Pa.C.S. §  
19 931(b) (relating to original jurisdiction and venue).

20 Venue for an action under this subparagraph lies in  
21 either:

22 (A) the Twelfth Judicial District; or

23 (B) the judicial district where the violation  
24 occurred.

25 Section 4. Applicability is as follows:

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

30 (2) The following provisions shall apply retroactively

1 to claims existing as of the effective date of this paragraph  
2 for which compensation has not been paid or awarded:

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

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

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

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

7 Section 5. This act shall take effect immediately.