

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 676 Session of 2017

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

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 24, 2017

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

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

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

21 Section 305.2. * * *

22 (c) If an employe is entitled to the benefits of this act by
23 reason of an injury sustained in this State in employment by an
24 employer who is domiciled in another state and who has not

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

10 In such event:

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

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

23 (3) The following shall apply:

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

30 (ii) If such employer's liability under the workmen's

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

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

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

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

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

9 * * *

10 Section 2. Sections 446(a) and (b), 1601, 1602, 1603, 1604,
11 1605 and 1607(a) of the act are amended to read:

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

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

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

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

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

27 (1) wages and salaries of employes for services performed in
28 the administration of these acts;

29 (2) reasonable travel expenses for employes while engaged in
30 official business; and

1 (3) moneys expended for office rental, equipment rental,
2 supplies, equipment, repairs, services, postage, books, and
3 periodicals.

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

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

21 (2) If on January 31, there exists in the [administration
22 fund] Workmen's Compensation Administration Fund any money in
23 excess of one hundred [thirty-three] twenty per centum of the
24 [current] approved budget, the following fiscal year's
25 assessment shall be reduced by an amount equal to that excess
26 amount.

27 * * *

28 Section 1601. Definitions.

29 The following words and phrases when used in this article
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Compensation." Benefits paid pursuant to sections 306 and
3 307.

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

7 "Fund." The Uninsured Employers Guaranty Fund established in
8 section 1602. The fund shall not be considered an insurer and
9 shall not be subject to penalties, unreasonable contest fees,
10 interest or any reporting and liability requirements under
11 section 440.

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

17 "Secretary." The Secretary of Labor and Industry of the
18 Commonwealth.
19 Section 1602. Fund.

20 (a) Establishment.--

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

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

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

27 (1) Assessments provided for under section 1607.

28 (2) Reimbursements or restitution.

29 (3) Interest on money in the fund.

30 (4) Administrative penalties provided for under section

1 1610.

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

11 (d) Administration.--The secretary shall be the
12 administrator of the fund and shall have the power to collect
13 money for and disburse money from the fund.

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

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

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

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

29 (2) the department determines that the employer failed
30 to voluntarily accept and pay the claim or subsequently

1 defaulted on payments of compensation. [No compensation shall
2 be due until notice is given.]

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

5 (d) Petitions.--

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

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

13 (e) List of providers.--

14 (1) The fund may establish lists of at least six
15 designated health care providers that are accessible in each
16 county in specialties relevant to the treatment of work
17 injuries in this Commonwealth, as referenced in section
18 306(f.1)(1).

19 (2) If the fund establishes a list under paragraph (1),
20 the fund shall be responsible only to reimburse expenses of
21 medical treatments, services and accommodations rendered by
22 the physicians or other health care providers that are
23 designated on the list for the period provided in section
24 306(f.1)(1) from the date of the employee's notice to the
25 fund under subsection (b).

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

27 (i) provide access to the list of designated
28 providers to the employee; and

29 (ii) notify the employee of the requirements of this
30 subsection.

1 (4) If the employee receives medical treatments,
2 services or accommodations from a health care provider that
3 is not designated on the list, the fund shall be relieved of
4 liability for the payment of medical treatments, services or
5 accommodations rendered during the period provided in section
6 306(f.1)(1) from the date of the employee's notice to the
7 fund under subsection (b).

8 Section 1604. Claim petition.

9 (a) Authorization.--If a claim for compensation is filed
10 under this article and the claim is not voluntarily accepted as
11 compensable, the employee may file a claim petition naming both
12 the employer and the fund as defendants. Failure of the
13 uninsured employer to answer a claim petition shall not serve as
14 an admission or otherwise bind the fund under section 416.

15 (b) Amount of wages.--In a proceeding under this article,
16 the fund shall not be liable for wage loss ~~benefits~~ PAYMENTS <--
17 unless the amount of wages the employee earned at the time of
18 injury is established by one of the following:

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

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

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

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

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

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

30 (7) Testimony of the claimant, if found credible by the

~~judge, which is provided in addition to one or more of the
items listed in paragraphs (1), (2), (3), (4), (5) and (6).~~

(C) LIMITATION ON WAGE LOSS PAYMENTS.--IF A JUDGE ACCEPTS
TESTIMONY AND FINDS IT TO BE CREDIBLE UNDER SUBSECTION (B) (7) AS
THE SOLE BASIS FOR DETERMINING WAGE LOSS PAYMENTS, WITHOUT
SUPPORTING EVIDENCE ESTABLISHED IN SUBSECTION (B) (1), (2), (3),
(4), (5) OR (6), THE WAGE LOSS PAYMENT RATE SHALL BE SIXTY-SIX
AND TWO-THIRDS PER CENTUM OF THE AVERAGE WEEKLY WAGE FOR THE
CLAIMANT'S OCCUPATION. THE JUDGE MAY REDUCE THE AVERAGE WEEKLY
WAGE LOSS PAYMENT UPON THE SUBMISSION OF EVIDENCE INDICATING A
LESSER WAGE AMOUNT OR BASED ON THE CLAIMANT'S LENGTH OF
EMPLOYMENT WITH THE EMPLOYER. FOR THE PURPOSES OF THIS
SUBSECTION, THE TERM "AVERAGE WEEKLY WAGE" IS THE AVERAGE WEEKLY
WAGE FOR THE CLAIMANT'S OCCUPATION BY METROPOLITAN STATISTICAL
AREA, AS DETERMINED BY THE UNITED STATES DEPARTMENT OF LABOR FOR
THE CALENDAR YEAR PRIOR TO THE YEAR IN WHICH THE CLAIMANT'S
INJURY OCCURRED, AND SHALL BE BASED ON THE METROPOLITAN
STATISTICAL AREA IN WHICH THE CLAIMANT'S INJURY OCCURRED.

Section 1605. Department.

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

(b) Reimbursement.--The department shall, on behalf of the fund, exhaust all remedies at law against the uninsured employer in order to collect the amount of a voluntary payment or award, including voluntary payment or award itself and reimbursement of costs, interest, penalties, fees under section 440 and costs of

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

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

19 (d) Liens.--If payments of any nature have been made by the
20 fund on behalf of an uninsured employer, the fund shall file a
21 certified proof of payment with the prothonotary of a court of
22 common pleas, and the prothonotary shall enter the entire
23 balance as a judgment against the employer. The judgment shall
24 be a statutory lien against property of the employer in the
25 manner set forth in section 308.1 of the act of December 5, 1936
26 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
27 Compensation Law, and execution may issue on it. The fund has
28 the right to update the amount of the lien as payments are made.
29 Section 1607. Assessments and transfers.

30 (a) [For the purpose of establishing and maintaining the

1 fund, the sum of \$1,000,000 is hereby transferred from the
2 Administration Fund established under section 446 to the fund
3 for operation of the fund for the period commencing on the
4 effective date of this section through June 30, 2007.] (1) The
5 department shall calculate the amount necessary to maintain the
6 fund and shall assess insurers and self-insured employers as is
7 necessary to provide an amount sufficient to pay outstanding and
8 anticipated claims in the following year in a timely manner and
9 to meet the costs of the department to administer the fund. The
10 fund shall be maintained in the same manner as the Workmen's
11 Compensation Administration Fund under section 446 and the
12 regulations thereunder.

13 (2) In no event shall any annual assessment exceed
14 [0.1%] 0.25% of the total compensation paid by all insurers
15 or self-insured employers during the previous calendar year.

16 (3) Each fiscal year, the department shall determine the
17 expenses of the fund for the prior fiscal year. If the total
18 amount assessed for the prior fiscal year exceeds 130% of the
19 expenses for that prior fiscal year, the current fiscal year
20 assessment shall be reduced by an amount equal to that excess
21 amount.

22 * * *

23 Section 3. The act is amended by adding sections to read:

24 Section 1609. Uninsured employer obligations.

25 Nothing in this article shall alter the uninsured employer's
26 obligations under this act.

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

28 (a) Certification.--

29 (1) If the department receives information indicating
30 that an employer has failed to insure the employer's

1 obligations as required by this act, the department may
2 require the employer to certify, on a form prescribed by the
3 department, that the employer meets one of the following:

4 (i) Possesses the requisite insurance. This
5 subparagraph shall require the identification of the
6 insurer, policy period and policy number.

7 (ii) No longer operates a business. This
8 subparagraph shall require a statement of the dates of
9 operation and cessation of operation.

10 (iii) Does not employ an individual entitled to
11 compensation under this act.

12 (iv) Is otherwise exempt from the requirements of
13 obtaining insurance under this act. This paragraph shall
14 require the identification of the applicable exemption.

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

18 (i) If an employer does not return the form within
19 15 days of service by the department, the department may
20 assess an administrative penalty of \$200 per day until
21 the earlier of:

22 (A) the date the employer complies; or

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

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

28 (b) Good cause.--If the department's investigation under
29 section 1605 reveals good cause to believe that the employer is
30 required and has failed to insure the employer's liabilities as

1 required by this act, the department may proceed with further
2 enforcement under subsection (d).

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

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

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

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

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

19 (4) The order shall be effective against a successor
20 entity that:

21 (i) has one or more of the same principals or
22 officers as the employer against whom the order was
23 issued; and

24 (ii) is engaged in the same or equivalent trade or
25 activity.

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

28 (f) Appeal.--

29 (1) An order under subsection (d) is subject to 2
30 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of

1 Commonwealth agency action).

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

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

7 (g) Noncompliance.--

8 (1) Upon failure to comply with an order under
9 subsection (d) and (f), the department may institute an
10 action to enforce the order.

11 (2) An action under this subsection may be initiated as
12 follows:

13 (i) In Commonwealth Court under 42 Pa.C.S. §
14 761(a)(2) (relating to original jurisdiction).

15 (ii) In a court of common pleas under 42 Pa.C.S. §
16 931(b) (relating to original jurisdiction and venue).

17 Venue for an action under this subparagraph lies in
18 either:

19 (A) the Twelfth Judicial District; or

20 (B) the judicial district where the violation
21 occurred.

22 Section 4. Applicability is as follows:

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

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

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

- 1 (ii) The amendment of section 1601 of the act.
- 2 (iii) The amendment of section 1603(b) of the act.
- 3 (iv) The amendment of section 1604 of the act.
- 4 Section 5. This act shall take effect immediately.