

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1195 Session of 2013

INTRODUCED BY GORDNER, ERICKSON, VULAKOVICH, RAFFERTY AND MENSCH, NOVEMBER 22, 2013

AS AMENDED ON THIRD CONSIDERATION, DECEMBER 10, 2013

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," in liability and compensation,
8 further providing for injuries outside this Commonwealth; in
9 the Uninsured Employers Guaranty Fund, further providing for
10 definitions, for fund, for claims, for claim petition, for
11 administration and for assessments and transfers; and
12 providing for uninsured employer obligations and for
13 administrative penalties and stop-work orders.

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

16 Section 1. Section 305.2(c) of the act of June 2, 1915
17 (P.L.736, No.338), known as the Workers' Compensation Act,
18 reenacted and amended June 21, 1939 (P.L.520, No.281) and added
19 December 5, 1974 (P.L.782, No.263), is amended and the section
20 is amended by adding a subsection to 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

1 employer who is domiciled in another state and who has not
2 secured the payment of compensation as required by this act, the
3 [employer or his carrier may file with the director a
4 certificate, issued by] department may verify with the
5 commission or agency of such other state having jurisdiction
6 over [workmen's] workers' compensation claims[, certifying] that
7 such employer has secured the payment of compensation under the
8 [workmen's] workers' compensation law of such other state and
9 that with respect to said injury such employe is entitled to the
10 benefits provided under such law.

11 [In such event:

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

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

24 (3) The following shall apply:

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

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

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

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

25 ~~(c.1) If an employe alleges an injury incurred with an~~ <--
26 ~~employer that is domiciled in another state and that has not~~
27 ~~secured the payment of compensation as required by this act,~~
28 ~~such employe shall submit to the Uninsured Employers Guaranty~~
29 ~~Fund and to any workers' compensation judge hearing a petition~~
30 ~~against the fund, a decision, notice or ruling from such other~~

1 ~~state or its licensees that the employe has sought and is not~~
2 ~~entitled to benefits in such other state. No compensation shall~~
3 ~~be payable from the Uninsured Employers Guaranty Fund until the~~
4 ~~employe submits such decision, notice or ruling.~~

5 (C.1) IF AN EMPLOYE ALLEGES AN INJURY THAT IS INCURRED WITH <--
6 AN EMPLOYER WHICH IS DOMICILED IN ANOTHER STATE AND WHICH HAS
7 NOT SECURED THE PAYMENT OF COMPENSATION AS REQUIRED BY THIS ACT,
8 SUCH EMPLOYE SHALL PROVIDE TO THE UNINSURED EMPLOYERS GUARANTY
9 FUND AND TO ANY WORKER'S COMPENSATION JUDGE HEARING A PETITION
10 AGAINST THE FUND, A WRITTEN NOTICE, DENIAL OR RULING FROM SUCH
11 OTHER STATE OR AN INSURER LICENSED TO WRITE INSURANCE IN THAT
12 STATE AS TO THAT EMPLOYER, INDICATING THAT THE EMPLOYE IS NOT
13 ENTITLED TO WORKERS' COMPENSATION BENEFITS IN THAT STATE. NO
14 COMPENSATION SHALL BE PAYABLE FROM THE UNINSURED EMPLOYERS
15 GUARANTY FUND UNTIL THE EMPLOYE SUBMITS THE NOTICE, DENIAL OR
16 RULING, HOWEVER, THE EMPLOYE MAY FILE A NOTICE OR PETITION
17 AGAINST THE FUND UNDER ARTICLE XVI OF THIS ACT PRIOR TO SUCH
18 SUBMISSION.

19 * * *

20 Section 2. Sections 1601, 1602, 1603, 1604 and 1605 of the
21 act, added November 9, 2006 (P.L.1362, No.147), are amended to
22 read:

23 Section 1601. Definitions.

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

27 "Compensation." Benefits paid pursuant to sections 306 and
28 307.

29 "Employer." Any employer as defined in section 103. The term
30 does not include a person that qualifies as a self-insured

1 employer under section 305.

2 "Fund." The Uninsured Employers Guaranty Fund established in
3 section 1602. The fund shall not be considered an insurer and
4 shall not be subject to penalties, unreasonable contest fees,
5 interest or any reporting and liability requirements under
6 section 440.

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

12 "Secretary." The Secretary of Labor and Industry of the
13 Commonwealth.
14 Section 1602. Fund.

15 (a) Establishment.--

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

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

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

22 (1) Assessments provided for under section 1607.

23 (2) Reimbursements or restitution.

24 (3) Interest on money in the fund.

25 (4) Administrative penalties provided for under section
26 1611.

27 (c) Use.--The administrator shall establish and maintain the
28 fund for the exclusive purpose of paying to any claimant or his
29 dependents workers' compensation benefits due and payable under
30 this act and the act of June 21, 1939 (P.L.566, No.284), known

1 as The Pennsylvania Occupational Disease Act, and any costs
2 specifically associated therewith where the employer liable for
3 the payments failed to insure or self-insure its workers'
4 compensation liability under section 305 at the time the
5 injuries took place.

6 (d) Administration.--The secretary shall be the
7 administrator of the fund and shall have the power to collect
8 money for and disburse money from the fund.

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

11 Section 1603. Claims.

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

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

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

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

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

30 (d) Petitions.--

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

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

8 (e) List of providers.--

9 (1) The fund may establish lists of at least six
10 designated health care providers that are accessible in each
11 county in specialties relevant to the treatment of work
12 injuries in this Commonwealth, as referenced in section
13 306(f.1)(1).

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

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

22 (i) provide access to the list of designated
23 providers to the employee; and

24 (ii) notify the employee of the requirements of this
25 subsection.

26 (4) If the employee receives medical treatments,
27 services or accommodations from a health care provider that
28 is not designated on the list, the fund shall be relieved of
29 liability for the payment of medical treatments, services or
30 accommodations rendered during the period set forth in

1 section 306(f.1)(1) from the date of the employee's notice to
2 the fund under subsection (b).

3 Section 1604. Claim petition.

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

10 (b) Amount of wages.--In a proceeding under this article,
11 the fund shall not be liable for wage loss benefits unless the
12 amount of wages the employee earned at the time of injury is
13 established by one of the following:

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

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

17 (3) Unemployment compensation records, including form
18 UC-2A.

19 (4) Bank statements or records showing regular and
20 recurring deposits.

21 (5) Written documentation created contemporaneously with
22 the payment of wages.

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

25 (7) TESTIMONY OF THE CLAIMANT, IF FOUND CREDIBLE BY THE <--
26 JUDGE, WHICH IS PROVIDED IN ADDITION TO ONE OR MORE OF THE
27 ITEMS LISTED IN PARAGRAPHS (1), (2), (3), (4), (5) AND (6).

28 Section 1605. Department.

29 (a) Insurance inquiry.--Within ten days of notice of a
30 claim, the fund shall demand from the employer proof of

1 applicable insurance coverage. Within 14 days from the date of
2 the fund's request, the employer must provide proof of
3 insurance. If the employer does not provide proof, there shall
4 be rebuttable presumption of uninsurance.

5 (b) Reimbursement.--The department shall, on behalf of the
6 fund, exhaust all remedies at law against the uninsured employer
7 in order to collect the amount of a voluntary payment or award,
8 including voluntary payment or award itself and reimbursement of
9 costs, interest, penalties, fees under section 440 and costs of
10 the fund's attorney, which have been paid by the fund. The fund
11 shall also be reimbursed for costs or attorney fees which are
12 incurred in seeking reimbursement under this subsection. The
13 department is authorized to investigate violations of section
14 305 for prosecution of the uninsured employer pursuant to
15 section 305(b) and shall pursue such prosecutions through
16 coordination with the appropriate prosecuting authority. [Any
17 restitution obtained shall be paid to the fund.] The fund shall
18 be entitled to restitution of all payments made under this
19 article as the result of any injury to an employee of an
20 uninsured employer. Restitution to the fund under section 305
21 shall not be limited to the amount specified in the award of
22 compensation and shall include the amount of any voluntary
23 payment or award and reimbursement of the fund's costs and the
24 fees of the fund's attorney.

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

28 (d) Liens.--If payments of any nature have been made by the
29 fund on behalf of an uninsured employer, the fund shall file a
30 certified proof of payment with the prothonotary of a court of

1 common pleas, and the prothonotary shall enter the entire
2 balance as a judgment against the employer. The judgment shall
3 be a statutory lien against property of the employer in the
4 manner set forth in section 308.1 of the act of December 5, 1936
5 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
6 Compensation Law, and execution may issue on it. The fund has
7 the right to update the amount of the lien as payments are made.

8 Section 2.1. Section 1607 of the act is amended by adding a
9 subsection to read:

10 Section 1607. Assessments and transfers.

11 * * *

12 (c) For the purposes of further maintaining the fund, the
13 sum of \$4,000,000 is hereby transferred to the fund from the
14 Administration Fund established under section 446.

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

16 Section 1609. (Reserved).

17 Section 1610. Uninsured employer obligations.

18 Nothing in this article shall otherwise alter the uninsured
19 employer's obligations under this act.

20 Section 1611. Administrative penalties and stop-work orders.

21 (a) Certification.--

22 (1) If the department receives information indicating
23 that an employer has failed to insure its obligations as
24 required by this act, the department may require the employer
25 to certify, on a form prescribed by the department, that the
26 employer meets one of the following:

27 (i) Possesses the requisite insurance. This
28 subparagraph requires identification of the insurer,
29 policy period and policy number.

30 (ii) No longer operates a business. This

1 subparagraph requires statement of the dates of operation
2 and cessation of operation.

3 (iii) Does not employ an individual entitled to
4 compensation under this act.

5 (iv) Is otherwise exempt from the requirements of
6 obtaining insurance under this act. This paragraph
7 requires identification of the applicable exemption.

8 (2) The employer shall return the form to the department
9 within 15 days of service of the form by the department.

10 (i) If an employer does not return the form within
11 15 days of service by the department, the department may
12 assess an administrative penalty of \$200 per day until
13 the earlier of:

14 (A) the date the employer complies; or

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

16 (ii) If an employer does not comply with this
17 paragraph within 45 days of service under this paragraph,
18 the department may proceed with further enforcement under
19 subsection (d).

20 (b) Good cause.--If the department's investigation under
21 section 1605 reveals good cause to believe that the employer is
22 required and has failed to insure its liabilities as required by
23 this act, the department may proceed with further enforcement
24 under subsection (d).

25 (c) Enforcement.--For the purposes of enforcing section 305
26 and this article, all department employees or agents charged
27 with enforcement may enter the premises or worksite of an
28 employer that is subject to subsection (a)(2)(ii) or (b).

29 (d) Stop-work order.--The department may issue an order
30 requiring the cessation of operations of an employer that has

1 failed to insure its liabilities as required by this act. The
2 following apply:

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

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

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

11 (4) The order shall be effective against a successor
12 entity that:

13 (i) has one or more of the same principals or
14 officers as the employer against whom the order was
15 issued; and

16 (ii) is engaged in the same or equivalent trade or
17 activity.

18 (e) Nonexclusivity.--An order under subsection (d) is in
19 addition to any penalty which may be imposed pursuant to this
20 act.

21 (f) Appeal.--

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

25 (2) Except as set forth in paragraph (3), an appeal of a
26 penalty under subsection (a) (2) (i) or an order under
27 subsection (d) shall not act as a supersedeas.

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

30 (g) Noncompliance.--

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

4 (2) An action under this subsection may be initiated as
5 follows:

6 (i) In Commonwealth Court under 42 Pa.C.S. §
7 761(a)(2) (relating to original jurisdiction).

8 (ii) In a court of common pleas under 42 Pa.C.S. §
9 931(b) (relating to original jurisdiction and venue).

10 Venue for an action under this subparagraph lies in
11 either:

12 (A) the Twelfth Judicial District; or

13 (B) the judicial district where the violation
14 occurred.

15 Section 4. Applicability is as follows:

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

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

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

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

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

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

27 Section 5. This act shall take effect immediately.