

AMENDMENTS TO HOUSE BILL NO. 18

Sponsor: REPRESENTATIVE GALLOWAY

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1 Amend Bill, page 1, line 8, by inserting after "for"

2 injuries outside this Commonwealth and for

3 Amend Bill, page 1, line 9, by striking out "and,"

4 Amend Bill, page 1, line 10, by striking out the period after

5 "review" and inserting

6 and for the Workmen's Compensation Administration Fund; and, in

7 the Uninsured Employers Guaranty Fund, further providing for

8 definitions, for fund, for claims, for claim petition, for

9 administration and for assessments and transfers; and

10 providing for uninsured employer obligations, for

11 administrative penalties and stop-work orders and for annual

12 reports to General Assembly.

13 Amend Bill, page 1, lines 17 through 20, by striking out all

14 of said lines and inserting

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

24 [employer or his carrier may file with the director a

25 certificate, issued by] department may verify with the

26 commission or agency of such other state having jurisdiction

27 over [workmen's] workers' compensation claims[, certifying] that

28 such employer has secured the payment of compensation under the

29 [workmen's] workers' compensation law of such other state and

30 that with respect to said injury such employe is entitled to the

31 benefits provided under such law.

32 [In such event:

33 (1) The filing of such certificate shall constitute an

1 appointment by such employer or his carrier of the Secretary of
2 Labor and Industry as his agent for acceptance of the service of
3 process in any proceeding brought by such employe or his
4 dependents to enforce his or their rights under this act on
5 account of such injury;

6 (2) The secretary shall send to such employer or carrier, by
7 registered or certified mail to the address shown on such
8 certificate, a true copy of any notice of claim or other process
9 served on the secretary by the employe or his dependents in any
10 proceeding brought to enforce his or their rights under this
11 act;]

12 (3) The following shall apply:

13 (i) If such employer is a qualified self-insurer under the
14 [workmen's] workers' compensation law of such other state, such
15 employer shall[, upon submission of evidence, satisfactory to
16 the director, of his ability to meet his liability to such
17 employe under this act,] be deemed, for the purposes of such
18 employe, to be a qualified self-insurer under this act[;].

19 (ii) If such employer's liability under the workmen's
20 compensation law of such other state is insured, such employer's
21 carrier, as to such employe or his dependents only, shall be
22 deemed to be an insurer authorized to write insurance under and
23 be subject to this act: Provided, however, That unless its
24 contract with said employer requires it to pay an amount
25 equivalent to the compensation benefits provided by this act,
26 its liability for income benefits or medical and related
27 benefits shall not exceed the amounts of such benefits for which
28 such insurer would have been liable under the workmen's
29 compensation law of such other state[;].

30 (4) If the total amount for which such employer's insurance
31 is liable under clause (3) above is less than the total of the
32 compensation benefits to which such employe is entitled under
33 this act, the [secretary] department may, if [he deems it]
34 necessary, require the employer to file security[, satisfactory
35 to the secretary, to secure] to guarantee the payment of
36 benefits due such employe or his dependents under this act[;
37 and].

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

43 (c.1) If an employe alleges an injury that is incurred with
44 an employer which is domiciled in another state and which has
45 not secured the payment of compensation as required by this act,
46 such employe shall provide to the Uninsured Employers Guaranty
47 Fund and to any worker's compensation judge hearing a petition
48 against the fund, a written notice, denial, citation of law or
49 court or administrative ruling from such other state or an
50 insurer licensed to write insurance in that state as to that
51 employer, indicating that the employe is not entitled to

1 workers' compensation benefits in that state. No compensation
2 shall be payable from the Uninsured Employers Guaranty Fund
3 until the employe submits the notice, denial, citation or
4 ruling, however, the employe may file a notice or petition
5 against the fund under Article XVI of this act prior to the
6 submission.

7 * * *

8 Section 2. Section 306(f.1)(6)(ii) of the act is amended,
9 paragraph (3)(vi) is amended by adding a subclause and paragraph
10 (6) is amended by adding a subparagraph to read:

11 Amend Bill, page 7, line 16, by striking out all of said line
12 and inserting

13 Section 3. Sections 420, 446(a) and (b), 1601, 1602, 1603,
14 1604, 1605 and 1607 of the act are amended to read:

15 Amend Bill, page 8, by inserting between lines 17 and 18

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

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

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

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

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

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

33 (2) reasonable travel expenses for employes while engaged in
34 official business; [and]

35 (3) moneys expended for office rental, equipment rental,
36 supplies, equipment, repairs, services, postage, books, and
37 periodicals[.] and

38 (4) other operating and administrative expenses necessary
39 for the administration of this act.

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

47 (1) The department shall [make assessments and] submit for

1 approval to the General Assembly on a fiscal year basis a
2 proposed budget sufficient to cover the Prefund Account and
3 other operating and administrative expenses under subsection
4 (a.1). The total amount approved by the General Assembly shall
5 be the approved budget. The department shall collect moneys
6 based on the ratio that such insurer's or self-insurer's
7 payments of compensation bear to the total compensation paid in
8 the preceding calendar year in which the annual assessment is
9 made. The total amount assessed shall be based upon the approved
10 budget.

11 (2) If on January 31, there exists in the [administration
12 fund] Workmen's Compensation Administration Fund any money in
13 excess of one hundred [thirty-three] twenty per centum of the
14 [current] approved budget, the following fiscal year's
15 assessment shall be reduced by [an] a dollar amount equal to
16 that excess amount.

17 * * *

18 Section 1601. Definitions.

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

22 "Compensation." Benefits paid pursuant to sections 306 and
23 307.

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

27 "Fund." The Uninsured Employers Guaranty Fund established in
28 section 1602. The fund shall not be considered an insurer and
29 shall not be subject to penalties, unreasonable contest fees,
30 interest or any reporting and liability requirements under
31 section 440.

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

37 "Secretary." The Secretary of Labor and Industry of the
38 Commonwealth.

39 Section 1602. Fund.

40 (a) Establishment.--

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

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

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

47 (1) Assessments provided for under section 1607.

48 (2) Reimbursements or restitution.

49 (3) Interest on money in the fund.

50 (4) Administrative penalties provided for under section
51 1611.

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

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

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

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

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

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

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

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

34 (d) Petitions.--

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

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

42 (e) List of providers.--

43 (1) The fund may establish lists of at least six
44 designated health care providers that are accessible in each
45 county in specialties relevant to the treatment of work
46 injuries in this Commonwealth, as referenced in section
47 306(f.1)(1).

48 (2) If the fund establishes a list under paragraph (1),
49 the fund shall be responsible only to reimburse expenses of
50 medical treatments, services and accommodations rendered by
51 the physicians or other health care providers that are

1 designated on the list for the period set forth in section
2 306(f.1)(1) from the date of the employee's notice to the
3 fund under subsection (b).

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

5 (i) provide access to the list of designated
6 providers to the employee; and

7 (ii) notify the employee of the requirements of this
8 subsection.

9 (4) If the employee receives medical treatments,
10 services or accommodations from a health care provider that
11 is not designated on the list, the fund shall be relieved of
12 liability for the payment of medical treatments, services or
13 accommodations rendered during the period set forth in
14 section 306(f.1)(1) from the date of the employee's notice to
15 the fund under subsection (b).

16 Section 1604. Claim petition.

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

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

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

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

30 (3) Unemployment compensation records, including form
31 UC-2A.

32 (4) Bank statements or records showing regular and
33 recurring deposits.

34 (5) Written documentation created contemporaneously with
35 the payment of wages.

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

38 (7) Testimony of the claimant, if found credible by the
39 judge.

40 (c) Limitation on wage loss benefits.--If a judge accepts
41 testimony and finds it to be credible under subsection (b)(7) as
42 the sole basis for determining wage loss benefits, without
43 supporting evidence established in subsection (b)(1), (2), (3),
44 (4), (5) or (6), the wage loss benefit rate shall be sixty-six
45 and two-thirds percent of the average weekly wage for the
46 claimant's occupation. The judge may reduce the average weekly
47 wage loss benefit upon the submission of evidence indicating a
48 lesser wage amount or based on the claimant's length of
49 employment with the employer. For the purposes of this
50 subsection, the term "average weekly wage" is the average weekly
51 wage for the claimant's occupation by metropolitan statistical

1 area, as determined by the United States Department of Labor for
2 the calendar year prior to the year in which the claimant's
3 injury occurred, and shall be based on the metropolitan
4 statistical area in which the claimant's injury occurred.
5 Section 1605. Department.

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

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

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

35 (d) Liens.--If payments of any nature have been made by the
36 fund on behalf of an uninsured employer, the fund shall file a
37 certified proof of payment with the prothonotary of a court of
38 common pleas, and the prothonotary shall enter the entire
39 balance as a judgment against the employer. The judgment shall
40 be a statutory lien against property of the employer in the
41 manner set forth in section 308.1 of the act of December 5, 1936
42 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
43 Compensation Law, and execution may issue on it. The fund has
44 the right to update the amount of the lien as payments are made.
45 Section 1607. Assessments and transfers.

46 (a) [For the purpose of establishing and maintaining the
47 fund, the sum of \$1,000,000 is hereby transferred from the
48 Administration Fund established under section 446 to the fund
49 for operation of the fund for the period commencing on the
50 effective date of this section through June 30, 2007.] (1) The
51 department shall calculate the amount necessary to maintain the

1 fund and shall assess insurers and self-insured employers as is
2 necessary to provide an amount sufficient to pay outstanding and
3 anticipated claims in the following year in a timely manner and
4 to meet the costs of the department to administer the fund. The
5 fund shall be maintained in the same manner as the Workmen's
6 Compensation Administration Fund under section 446 and the
7 regulations thereunder.

8 (2) In no event shall any annual assessment exceed
9 [0.1%] 0.25% of the total compensation paid by all insurers
10 or self-insured employers during the previous calendar year.

11 (3) Each fiscal year, the department shall determine the
12 expenses of the fund for the prior fiscal year. If the total
13 amount assessed for the prior fiscal year exceeds 130% of the
14 expenses for that prior fiscal year, the current fiscal year
15 assessment shall be reduced by a dollar amount equal to that
16 excess amount.

17 [(b) For the purposes of further maintaining the fund, the
18 sum of \$4,000,000 is hereby transferred to the fund from the
19 Administration Fund established under section 446.]

20 (c) For the purposes of further maintaining the Uninsured
21 Employers Guaranty Fund, the outstanding loan which occurred on
22 March 15, 2016, from the Workers' Compensation Administration
23 Fund established under section 446 in the amount of \$4,000,000
24 used to maintain the fund is hereby designated an additional
25 transfer and shall not be repaid.

26 Section 4. The act is amended by adding sections to read:
27 Section 1609. (Reserved).

28 Section 1610. Uninsured employer obligations.

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

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

32 (a) Certification.--

33 (1) If the department receives information indicating
34 that an employer has failed to insure the employer's
35 obligations as required by this act, the department may
36 require the employer to certify, on a form prescribed by the
37 department, that the employer meets one of the following:

38 (i) Possesses the requisite insurance. This
39 subparagraph shall require the identification of the
40 insurer, policy period and policy number.

41 (ii) No longer operates a business. This
42 subparagraph shall require a statement of the dates of
43 operation and cessation of operation.

44 (iii) Does not employ an individual entitled to
45 compensation under this act.

46 (iv) Is otherwise exempt from the requirements of
47 obtaining insurance under this act. This paragraph shall
48 require the identification of the applicable exemption.

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

51 (i) If an employer does not return the form within

1 15 days of service by the department, the department may
2 assess an administrative penalty of \$200 per day until
3 the earlier of:

4 (A) the date the employer complies; or

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

6 (ii) If an employer does not comply with this
7 paragraph within 45 days of service under this paragraph,
8 the department may proceed with further enforcement under
9 subsection (d).

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

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

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

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

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

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

31 (4) The order shall be effective against a successor
32 entity that:

33 (i) has one or more of the same principals or
34 officers as the employer against whom the order was
35 issued; and

36 (ii) is engaged in the same or equivalent trade or
37 activity.

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

41 (f) Appeal.--

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

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

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

50 (g) Noncompliance.--

51 (1) Upon failure to comply with an order under

1 subsection (d) and (f), the department may institute an
2 action to enforce the order.

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

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

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

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

11 (A) the Twelfth Judicial District; or

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

14 Section 1612. Annual report to General Assembly.

15 On or before September 1 of each year, the Department of
16 Labor and Industry shall submit to the Labor and Industry
17 Committee of the Senate and the Labor and Industry Committee of
18 the House of Representatives a report outlining the department's
19 efforts to identify and prosecute uninsured employers, any
20 penalties resulting from that activity, the status of claims and
21 operations, including the number of claims filed, pending and
22 paid in the past year and an analysis of the administrative
23 expenses of the fund.

24 Section 5. Applicability is as follows:

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

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

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

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

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

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

36 Amend Bill, page 8, line 18, by striking out "3" and
37 inserting

38 6

39 Amend Bill, page 8, line 22, by striking out "4" and
40 inserting

41 7