

No. 117

AN ACT

SB 660

Amending the act of July 1, 1937 (P.L.2532, No.470), entitled "An act to establish funds to provide security for the payment of benefits in event of the insolvency of an insurance carrier authorized to write workmen's compensation insurance in this Commonwealth; and to provide for the administration thereof," combining the Stock Workmen's Compensation Security Fund and the Mutual Carrier and Reciprocal Exchange Workmen's Compensation Security Fund into a single Workmen's Compensation Security Fund.

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

Section 1. Sections 2 and 3, act of July 1, 1937 (P.L.2532, No.470), known as the "Workmen's Compensation Security Fund Act," amended July 2, 1953 (P.L.347, No.80), are amended to read:

Section 2. As hereafter used in this act, unless the context or subject matter otherwise require—

["Stock Fund" means the stock workmen's compensation security fund.

"Mutual Fund" means the mutual carrier and reciprocal exchange workmen's compensation security fund created by this act.

"Funds" means the stock workmen's compensation security fund and the mutual carrier and reciprocal exchange workmen's compensation security fund.

"Fund" means either the stock fund or the mutual carrier and reciprocal exchange fund, as the context may require.]

"Fund" means the Workmen's Compensation Security Fund created by this act.

"Fund year" means the calendar year.

"Stock Company" means any stock corporation authorized to transact the business of workmen's compensation insurance in this Commonwealth, except an insolvent stock company.

"Mutual carrier" means any corporation or association organized and operating on the mutual plan, including the State Workmen's Insurance Fund, authorized to transact the business of workmen's compensation insurance in this Commonwealth, except an insolvent mutual carrier.

"Reciprocal exchange" means any association or group of persons exchanging contracts of insurance or indemnity on the reciprocal or inter-insurance plan, authorized to transact the business of workmen's compensation insurance in this Commonwealth, except an insolvent reciprocal exchange.

"Carrier" means either a stock company, a mutual company, a reciprocal exchange, or the State Workmen's Insurance Fund, as the context may require.

"Insolvent stock company," "insolvent mutual carrier," or "insolvent reciprocal exchange" means a stock company, a mutual company, a reciprocal exchange, or the State Workmen's Insurance Fund, as the case may be, which has been determined to be insolvent, or for which, or for the assets of which, a receiver or liquidator, howsoever entitled, has been appointed by a court or public officer of competent jurisdiction and authority, after the effective date of this act.

"Commissioner" means the Insurance Commissioner of this Commonwealth.

"Workmen's Compensation Law," means the Workmen's Compensation Act of 1915 or any supplement or amendment thereto or revision thereof and the Pennsylvania Occupational Disease Act of 1939 or any supplement or amendment thereto or revision thereof.

Section 3. There is hereby created a fund, to be known as "**The [Stock] Workmen's Compensation Security Fund,**" for the purpose of assuring to persons entitled thereto the compensation provided by the Workmen's Compensation Law for employments insured in insolvent stock companies; *insolvent mutual carriers; insolvent reciprocal exchanges; or the State Workmen's Insurance Fund.* Such fund shall be applicable to the payment of valid claims for compensation heretofore or hereafter made pursuant to the Workmen's Compensation Law and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this act of an insolvent stock company; *insolvent mutual carrier or insolvent reciprocal exchange or the insolvent State Workmen's Insurance Fund.* Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by stock companies, *mutual carriers and reciprocal exchanges* as herein defined, all property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys deposited or invested, as herein provided. The fund shall be administered by the commissioner in accordance with the provisions of this act.

Section 2. Section 4 of the act is amended to read:

Section 4. Every stock company, *mutual carrier and reciprocal exchange* shall, on or before the first day of September, one thousand nine hundred and thirty-eight, file with the Treasurer of the Commonwealth, and with the commissioner, identical returns under oath, on a form to be prescribed and furnished by the commissioner, stating the amount of net written premiums for the year's period ending June thirtieth, one thousand nine hundred and thirty-eight, on policies issued, renewed, or extended by such *stock* company, *mutual carrier and reciprocal exchange* to insure payment of compensation pursuant to the Workmen's Compensation Law. For the purposes of this act, "net

written premiums" shall mean gross written premiums, less return premiums on policies returned not taken and on policies cancelled. Thereafter on or before the first day of September of each year, each such *stock* company, *mutual carrier and reciprocal exchange* shall file similar identical returns, stating the amount of such net written premiums for the year's period ending on the preceding June thirtieth on policies issued, renewed, or extended by such *stock* company, *mutual carrier and reciprocal exchange*.

Section 3. Section 5 of the act, amended July 2, 1953 (P.L.347, No.80), is amended to read:

Section 5. For the privilege of carrying on the business of workmen's compensation insurance in this Commonwealth, every *stock* company, *mutual carrier and reciprocal exchange* shall pay into the [stock] fund on the first day of September, one thousand nine hundred and thirty-eight, a sum equal to one per centum of its net written premiums as shown by the return hereinbefore prescribed for the period ending June thirtieth, one thousand nine hundred and thirty-eight, and thereafter each such *stock* company, *mutual carrier and reciprocal exchange* upon filing each annual return shall pay a sum equal to one per centum of its net written premiums for the period covered by such return. When the aggregate amount of all such payments into the [stock] fund, together with accumulated interest thereon, less all its expenditures and known liabilities, becomes equal to five per centum of the loss reserves of all *stock* companies, *mutual carriers and reciprocal exchanges* for the payment of benefits under the Workmen's Compensation Law as of June thirtieth next preceding, no further contribution to said fund shall be required to be made: Provided, however, That whenever thereafter the amount of said fund shall be reduced below five per centum of such loss reserves as of said date, by reason of payments from and known liabilities of said [stock] fund or by reasons of an increase of the loss reserves of all *stock* companies, *mutual carriers and reciprocal exchanges*, then such contribution to said fund shall be resumed from such date as the commissioner shall prescribe, and shall continue until such fund, over and above its known liabilities, shall be equal to five per centum of such reserves.

Section 4. Sections 6, 7 and 8 of the act are hereby repealed.

Section 5. Sections 9 and 10 of the act are amended to read:

Section 9. The commissioner may adopt, amend, and enforce rules and regulations necessary for the proper administration of such [funds] fund. In the event any carrier shall fail to file any return, or make any payment required by this act, or in case the commissioner shall have cause to believe that any return or other statement filed is false or inaccurate in any particular, or that any payment made is incorrect, he shall have full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts, and shall determine the correct amount to be paid, and may proceed in any court of competent

jurisdiction to recover for the benefit of the **[funds] fund** any sums shown to be due upon such examination and determination. Any carrier which fails to make any statement as required by this act, or to pay any contribution when due, shall thereby forfeit to the fund **[entitled to its contribution]** a penalty of five per centum of the amount of unpaid contribution determined to be due, as provided by this act, plus one per centum of such amount for each month of delay or fraction thereof after the expiration of the first month of such delay. The commissioner shall revoke the certificate of authority to do business in this Commonwealth of any carrier which shall fail to comply with the provisions of this act or to pay any penalty imposed in accordance with this act.

Section 10. **[Each] The** fund created by this act shall be separate and apart **[from any other fund so created, and]** from all other Commonwealth moneys. The State Treasurer shall be the custodian of said **[funds] fund**, and all disbursements from said **[funds] fund** shall be made by the State Treasurer upon vouchers signed by the commissioner, as hereinafter provided. The moneys of said **[funds] fund** may be invested by the State Treasurer and commissioner only in bonds and securities which are the direct obligations of, or which are guaranteed as to principal and interest by, the United States or of this Commonwealth. The State Treasurer and commissioner may sell any of the securities in which said **[funds are] fund is** invested, if advisable for **[their] its** proper administration or in the best interest of such **[funds] fund**, and all earnings from the investment of such **[funds] fund** shall be credited to such **[funds] fund**. If at any time any contributing **[stock or mutual]** carrier, as herein defined, shall, upon due notice to the Insurance Commissioner, cease to transact the business of workmen's compensation insurance, the contributions of such carrier, at the time such carrier ceases to transact the business of workmen's compensation insurance, shall be refunded, provided that all its outstanding liability on workmen's compensation insurance shall have terminated.

Section 6. Section 11 of the act, amended July 29, 1941 (P.L. 578, No. 244), is amended to read:

Section 11. (1) A valid claim for compensation or installments thereof, heretofore or hereafter made pursuant to the Workmen's Compensation Law, which has remained or shall remain due and unpaid for sixty days by reason of default, after the effective date of this act, by an insolvent carrier, shall be paid from the **[proper] fund** in the manner provided in this act. Any person in interest may file with the commissioner an application for payment of compensation from the **[proper] fund** on a form to be prescribed and furnished by the commissioner. A certified copy of the award must accompany the application. The commissioner shall thereupon certify to the State Treasurer such award for payment according to the terms of the same, whereupon payment shall be made by the State Treasurer, on warrant of the Auditor General and on requisition of the commissioner.

(2) Payment of an award from **[either] the fund** shall not give the commissioner of such fund any right of recovery against the employer.

(3) An employer may pay an award or a part thereof in advance of payment from the fund and shall thereupon be subrogated to the rights of the employe or other party in interest against such fund to the extent of the amount so paid.

(4) The commissioner shall be entitled to recover the sum of all liabilities of such insolvent carrier assumed by **[such stock or mutual] the fund** from such carrier, its receiver, liquidator, rehabilitator, conservator or trustee in bankruptcy and all others, except employers, liable under any of the terms of the Workmen's Compensation Law, and may prosecute an action or other proceedings therefor. All moneys, recovered in any such action or proceedings, shall forthwith be placed to the credit of the **[stock or mutual] fund** which has assumed such liability by the State Treasurer, to reimburse the **[stock or mutual] fund** which has assumed such liability, to the extent of the moneys so recovered and paid. If and when all liabilities of all **[stock or of all mutual] carriers** for workmen's compensation losses in this Commonwealth shall have been fully liquidated, distribution shall be made to all contributing **[stock companies or to all contributing mutual] carriers** of the remaining balance of such **[funds in the proportion in which each carrier made contribution to its respective] fund**: Provided, however, That an insolvent carrier shall be entitled to share in the said distribution of **[its respective] the fund** only to the extent that its distributive share of said fund is in excess of any losses paid out of said fund for its account by the treasurer, in accordance with the terms of this act.

Section 7. Sections 12, 14, and 15 of the act are amended and a section is added to read:

Section 12. After the effective date of this act, upon any carrier becoming **[an] insolvent [stock company, an insolvent mutual carrier, or an insolvent reciprocal exchange, as the case may be,]** the commissioner shall so notify the Workmen's Compensation Board, which shall immediately advise the commissioner—(a) of all claims for compensation pending or thereafter made against every employer insured by such insolvent carrier, or against such insolvent carrier; (b) of all unpaid or continuing awards made upon claims for compensation prior to or after the date of such notice from the commissioner; and (c) of all appeals from or applications for modification, rescission or review of such awards.

Section 14. The expenses of administering **[each] the fund** shall be paid out of such fund. The commissioner shall serve as administrator of **[each] the fund** without additional remuneration, but may be allowed and paid, from **[either of the funds] the fund**, expenses incurred in the performance of his duties in connection with **[each] the fund**. The compensation of persons employed by the commissioner, for the purposes of this act, in connection with **[either of the funds] the fund**

shall be deemed administration expenses payable out of **[each]** such fund, in the manner provided in section ten of this act. The commissioner shall include in his regular report to the Governor a statement of the expenses of administering **[each of such funds] the fund** during the period covered by such report.

Section 15. Other than the obligation to contribute to **[a] the fund** as provided in this act, no deposit, bond or other security shall be required of any carrier as a condition to authorization to transact the business of workmen's compensation insurance in this Commonwealth.

Contributions to the **[funds] fund** created by this act, at the rates fixed by this act, shall be allowed in full as expenses of the business of workmen's compensation insurance by the commissioner in fixing and approving rates for such insurance.

Section 15.1. All assets, moneys, securities, reserves, surplus liabilities and the like presently in either the Stock Workmen's Compensation Security Fund or the Mutual Carrier and Reciprocal Exchange Workmen's Compensation Security Fund shall forthwith be transferred to the single Workmen's Compensation Security Fund created hereby.

Section 8. This act shall take effect immediately.

APPROVED—The 18th day of October, A. D. 1975.

MILTON J. SHAPP