

No. 70

AN ACT

HB 1121

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," providing for the establishment of the Workmen's Compensation Supersedeas Fund, and requiring annual reports of compensation paid.

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

Section 1. Subsections (a) and (b) of section 441 and section 443, act of June 2, 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's Compensation Act," reenacted and amended June 21, 1939 (P.L.520, No.281), added February 8, 1972 (P.L.25, No.12), are amended to read:

Section 441. (a) If any insurer licensed to transact the business of workmen's compensation insurance within this Commonwealth repeatedly or unreasonably fails to pay promptly compensation for which it is liable *or fails or refuses to submit any report or to pay any assessment made under this act*, the secretary may recommend to the Insurance Commissioner that the license of the company to transact such business be revoked, or suspended setting forth in detail the reasons for his recommendation. The Insurance Commissioner shall thereupon furnish a copy of the secretary's report to the insurer and shall set a date for public hearing, at which both the insurer and the secretary shall be afforded an opportunity to present evidence. If, after the hearing, the commissioner is satisfied that the insurer has failed to live up to his obligations under this act, he shall promptly revoke or suspend its license.

(b) If any employer who is subject to this act as an approved self-insurer repeatedly or unreasonably fails to pay promptly compensation for which it is liable *or fails or refuses to submit any report or to pay any assessment made under this act*, the secretary may revoke or suspend the privilege granted to the employer to carry its own risk and require it to insure its liability. The secretary shall not take such action against any employer until the employer has been notified in writing of the charges made against it and has been given an opportunity to be heard before the secretary in answer to the charges. From the revocation or suspension of such license or privilege under subsections (a) and (b) of this section an appeal shall lie to the Commonwealth Court.

* * *

Section 443. [If, in any case in which a supersedeas has been denied under the provisions of section 413 or section 430, payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not in fact payable, the insurer who has made such payments shall be reimbursed therefor. A fund shall be credited for this purpose, to be maintained as follows: The department shall assess and collect from each insurer the proportion of the amount of such payments made during the preceding year that the total compensation paid by such insurer during such year bore to the total compensation paid by all insurers during that year: Provided, however, That in the first year in which assessments are made under this provision, the total amount assessed and collected shall be two hundred per cent of the amount paid in such cases during the preceding year.] *(a) If, in any case in which a supersedeas has been requested and denied under the provisions of section 413 or section 430, payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not, in fact, payable, the insurer who has made such payments shall be reimbursed therefor. Application for reimbursement shall be made to the department on forms prescribed by the department and furnished by the insurer. Applications may be assigned to a workmen's compensation referee for a hearing and determination of eligibility for reimbursement pursuant to this act. An appeal shall lie in the manner and on the grounds provided in section 423 of this act, from any allowance or disallowance of reimbursement under this section.*

(b) There is hereby established a special fund in the State Treasury, separate and apart from all other public moneys or funds of this Commonwealth, to be known as the Workmen's Compensation Supersedeas Fund. The purpose of this fund shall be to provide moneys for payments pursuant to subsection (a), to include reimbursement to the Commonwealth for any such payments made from general revenues. The department shall be charged with the maintenance and conservation of this fund. The fund shall be maintained by annual assessments on insurers and self-insurers under this act, including the State Workmen's Insurance Fund. The department shall make assessments and collect moneys pursuant to this section of the act. Assessments shall be based on the ratio that such insurer's or self-insurer's payments of compensation bear to the total compensation paid in the year preceding the year of assessment. The total amount to be assessed shall be one hundred percent of the amount reimbursed to insurers and self-insurers in the preceding year pursuant to this section, except that the first annual assessment made under this act shall be in the amount of two hundred fifty thousand dollars (\$250,000). The department shall give notice to every insurer and self-insurer under this

act, including the State Workmen's Insurance Fund, of the amount assessed against such insurer, self-insurer or the State Workmen's Insurance Fund on or before June 30 of the year following the year upon which the assessment is based: Provided, That notice of the first annual assessment under this act shall be given to every insurer and self-insurer under this act, including the State Workmen's Insurance Fund, within ninety days of the effective date of this amending act. Payment of assessments shall be made to the department within thirty days of receipt of notice of the amount assessed, unless the department specifies on the notices sent to all insurers and self-insurers an installment plan of payment, in which case each such insurer shall pay each installment on or before the date specified therefore by the department within fifteen days after the receipt of such notice, the insurer or self-insurer against which such assessment has been made may file with the department objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The department, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the department shall record its findings on the objections and shall transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with such findings, which amount or any installment thereof then due, shall be paid by the objector within ten days after receipt of notice of the findings.

No suit or proceeding shall be maintained in any court for the purpose of restraining or in anywise delaying the collection or payment of any assessment made under this subsection but every insurer or self-insurer against which an assessment is made shall pay the same as provided in subsection (b) of this section. Any insurer or self-insurer making any such payment may, at any time within two years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, invalid, in whole or in part, provided objections, as hereinbefore provided, were filed with the department, and payment of the assessment was made under protest either as to all or part thereof. In any action for recovery of any payments made under this section, the claimant shall be entitled to raise every relevant issue of law, but the findings of fact made by the department, pursuant to this section, shall be prima facie evidence of the facts therein stated. If it is finally determined in any such action that all or any part of the assessment for which payment was made under protest was excessive, erroneous, unlawful, or invalid, the department shall make a refund to the claimant out of the appropriation specified in subsection (c) as directed by the court.

(c) The department shall keep a record of the manner in which it shall have computed the amount assessed against every insurer or self-

insurer. Such records shall be open to inspection by all interested parties. The determination of such assessments and the records and data upon which the same are made, shall be considered prima facie correct; and in any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof. The fund shall be subject to audit by the Auditor General and a copy of the report of the audit furnished to assessed insurers and self-insurers upon request. The Secretary of Labor and Industry shall be the administrator of the fund and shall have the power to dispense and disburse moneys from the fund for the purpose of payments made pursuant to this section. All moneys in the fund as are required to carry out the purposes of this section are hereby specifically appropriated to the Department of Labor and Industry. The State Treasurer shall be custodian of the fund. Disbursements of moneys pursuant to this section shall be upon final adjudication of requests for payments pursuant thereto.

Section 2. The act is amended by adding a section to read:

Section 445. Annual reports of compensation paid by insurers, self-insurers and the State Workmen's Insurance Fund shall be made on a calendar year basis to the department not later than April 15 of the following year, except that for the year 1974 reports shall be filed within sixty days of the effective date of this amending act. Nothing in this act shall be construed to preclude insurers from filing its annual report required herein in substantially the same form as its annual report to the Insurance Department.

Section 3. This act shall take effect immediately.

APPROVED—The 30th day of July, A. D. 1975.

MILTON J. SHAPP