

No. 2

AN ACT

SB 824

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 assessment of insurers and self-insurers for necessary State expenses in administering the act and for certain reports in connection therewith.

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

Section 1. The 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), is amended by adding a section to read:

Section 446. *(a) There is hereby created 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 Administration Fund. The purpose of this fund shall be to finance the operating and administrative expenses of the Department of Labor and Industry, including the Workmen's Compensation Appeal Board and staff, but not the State Workmen's Insurance Fund, in the direct administration of The Pennsylvania Workmen's Compensation Act and The Pennsylvania Occupational Disease Act including:*

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

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

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

(b) The fund shall be maintained by no more than one (1) annual assessment payable in any calendar year on insurers and self-insurers under this act, including the State Workmen's Insurance Fund. The initial assessment for the period commencing July 1, 1975 through December 31, 1976, shall be seven per centum of the total compensation paid by each insurer, self-insurer and the State Workmen's Insurance Fund in the calendar year 1974. After the initial term, budgeted expenses shall be approved by the General Assembly on a fiscal year basis. Thereafter, the department shall make assessments and collect moneys based on the ratio that such insurer's or self-insurer's payments of compensation bear to the total compensation paid in the preceding calendar year in which the assessment is made. The total amount assessed shall be the approved budget. If on January 31, there exists in the administration fund any money

in excess of one hundred fifty per centum of the current budget the following fiscal year's assessment shall be reduced by an amount equal to that excess amount.

(c) 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 November 30 of each year. Payment of assessments shall be made to the department on or before January 31 of the next year 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: Provided, That notice of the initial 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 amendatory act. Payment of the initial assessments shall be made within thirty days of the mailing of said assessments.

If the General Assembly fails to approve the department's budget for the purposes of this act, by the last day of November, the department shall assess insurers, self-insurers and the State Workmen's Insurance Fund on the basis of that last approved operating budget. At such time as the General Assembly approves the proposed budget the department shall have the authority to make an adjustment in the assessments to reflect the approved budget. If the General Assembly fails to approve the department's budget prior to July 1 of any fiscal year, moneys in the fund are hereby appropriated to the department for the purposes of this act.

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. If any payment prescribed by this subsection is not made as aforesaid, the secretary of the department may recommend to the Insurance Commissioner that appropriate action be taken against the insurer or self-insurer, including revocation or suspension of the company's license to transact business in the Commonwealth.

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 (c) 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 fund, as directed by the court.

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.

(d) The Secretary of Labor and Industry shall be the administrator of the fund and shall have power to dispense and disburse moneys from the fund for the above purposes at his discretion. All moneys in the fund as are required to carry out the purposes of this act are hereby specifically appropriated to the Department of Labor and Industry for the use in the administration of this act from July 1, 1975 until June 30, 1976. Thereafter, annual appropriations shall be made. Estimates of the amounts to be expended from time to time shall however be submitted by the Secretary of Labor and Industry to the Governor for his approval or disapproval as in the case of other appropriations made to administrative departments, boards, and commissions. The State Treasurer shall be the custodian of the fund. It shall however be unlawful for the State Treasurer to honor any requisition for the expenditure of any moneys from the fund by the Secretary of Labor and Industry in excess of estimates approved by the Governor. The fund shall be audited by the Auditor General annually and a copy of the report of the audit furnished to assessed insurers and self-insurers upon request.

(e) Annual reports of the total 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: Provided, That reports for the calendar year 1974 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 therein in substantially the same form as its annual report to the Insurance Department.

(f) Contributions to the fund created by this act, at the rates specified by this act, shall be allowed in full by the Insurance Commissioner and the insurers shall be permitted to fund on an immediate and prospective basis for these costs.

(g) For the purposes of this section the terms "compensation" and "total compensation" shall include wage loss indemnity and payments for medical expenses under this act and under "The Pennsylvania Occupational Disease Act."

(h) Until such time as a sufficient cash balance shall exist in the Workmen's Compensation Administration Fund to meet promptly the expenses of the Commonwealth payable from such fund, the State Treasurer is hereby authorized and directed, from time to time, to transfer to the Workmen's Compensation Administration Fund, if the same be deficient, from the General Fund, such sums as the Governor shall direct. Any sums so transferred shall be available for the purposes for which the fund to which they are transferred is appropriated by law. Such transfers shall be made hereunder upon warrant of the State Treasurer upon requisition of the Governor.

(i) In order to reimburse the General Fund for such transfers, an amount equal to that transferred from the General Fund during any fiscal period shall be retransferred to the General Fund from the Workmen's Compensation Administration Fund in such amounts and at such times as the Governor shall direct, but in no event later than 30 days after the end of such fiscal period. Such transfers shall be made hereunder upon warrant of the State Treasurer upon requisition of the Governor.

(j) The moneys in the General Fund and in the Workmen's Compensation Administration Fund are hereby specifically appropriated for transfer from time to time as provided for in this act.

Section 2. This act shall take effect immediately.

APPROVED—The 2nd day of February, A. D. 1976.

MILTON J. SHAPP