

## No. 2003-53

## AN ACT

## HB 88

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and 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," further providing for the schedule of compensation; and further defining "employe."

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

Section 1. Section 306(b) of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281) and amended June 24, 1996 (P.L.350, No.57), is amended to read:

Section 306. The following schedule of compensation is hereby established:

\* \* \*

(b) (1) For disability partial in character caused by the compensable injury or disease (except the particular cases mentioned in clause (c)) sixty-six and two-thirds per centum of the difference between the wages of the injured employe, as defined in section 309, and the earning power of the employe thereafter; but such compensation shall not be more than the maximum compensation payable. This compensation shall be paid during the period of such partial disability except as provided in clause (e) of this section, but for not more than five hundred weeks. Should total disability be followed by partial disability, the period of five hundred weeks shall not be reduced by the number of weeks during which compensation was paid for total disability. The term "earning power," as used in this section, shall in no case be less than the weekly amount which the employe receives after the injury; and in no instance shall an employe receiving compensation under this section receive more in compensation and wages combined than the current wages of a fellow employe in employment similar to that in which the injured employe was engaged at the time of the injury.

(2) "Earning power" shall be determined by the work the employe is capable of performing and shall be based upon expert opinion evidence which includes job listings with agencies of the department, private job placement agencies and advertisements in the usual employment area. Disability partial in character shall apply if the employe is able to perform his previous work or can, considering the employe's residual productive skill, education, age and work experience, engage in any other kind of substantial gainful employment which exists in the usual employment area in which the employe lives within this Commonwealth. If the employe does

not live in this Commonwealth, then the usual employment area where the injury occurred shall apply. If the employer has a specific job vacancy the employe is capable of performing, the employer shall offer such job to the employe. In order to accurately assess the earning power of the employe, the insurer may require the employe to submit to an interview by **[an] a vocational expert [approved by the department and] who is selected by the insurer[.] and who meets the minimum qualifications established by the department through regulation. The vocational expert shall comply with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses.**

**(2.1) If an insurer refers an employe for an earning power assessment and the insurer has a financial interest with the person or in the entity that receives the referral, the insurer shall disclose that financial interest to the employe prior to the referral.**

(3) If the insurer receives medical evidence that the claimant is able to return to work in any capacity, then the insurer must provide prompt written notice, on a form prescribed by the department, to the claimant, which states all of the following:

(i) The nature of the employe's physical condition or change of condition.

(ii) That the employe has an obligation to look for available employment.

(iii) That proof of available employment opportunities may jeopardize the employe's right to receipt of ongoing benefits.

(iv) That the employe has the right to consult with an attorney in order to obtain evidence to challenge the insurer's contentions.

\* \* \*

Section 2. Section 601(a) of the act is amended by adding a clause to read:

Section 601. (a) In addition to those persons included within the definition of the word "employe" as defined in section 104, "employe" shall also include:

\* \* \*

**(10) An employe who, while in the course and scope of his employment, goes to the aid of a person and suffers injury or death as a direct result of any of the following:**

**(i) Preventing the commission of a crime, lawfully apprehending a person reasonably suspected of having committed a crime or aiding the victim of a crime. For purposes of this clause, the terms "crime" and "victim" shall have the same meanings as given to them in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the "Crime Victims Act."**

**(ii) Rendering emergency care, first aid or rescue at the scene of an emergency.**

\* \* \*

Section 3. All regulations and parts of regulations which are inconsistent with the amendment of section 306(b) of the act are abrogated.

Section 4. This act shall take effect in 60 days.

APPROVED—The 23rd day of December, A.D. 2003.

EDWARD G. RENDELL