

No. 1995-1

AN ACT

HB 3

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 definitions and for the schedule of compensation.

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 Workers' Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281), is amended by adding sections to read:

Section 105.4. *The term "hazardous occupational noise," as used in this act, means noise levels exceeding permissible noise exposures as defined in Table G-16 of OSHA Occupational Noise Exposure Standards, 29 CFR 1910.95 (relating to occupational noise exposure) (July 1, 1994).*

Section 105.5. *The term "Impairment Guides," as used in this act, means the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition (June 1993).*

Section 105.6. *The term "long-term exposure," as used in this act, means exposure to noise exceeding the permissible daily exposure for at least three days each week for forty weeks of one year.*

Section 2. Section 306(c)(8) of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

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

* * *

(c) For all disability resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows:

* * *

(8) (i) For [the complete loss of hearing, in both ears, sixty-six and two-thirds per centum of wages during two hundred sixty weeks; for complete loss of hearing in one ear, sixty-six and two-thirds per centum of wages during sixty weeks.] *permanent loss of hearing which is medically established as an occupational hearing loss caused by long-term exposure to hazardous occupational noise, the percentage of impairment shall be calculated by using the binaural formula provided in the Impairment Guides. The number of weeks for which compensation shall be payable shall be determined by multiplying the percentage of binaural hearing impairment as calculated under the Impairment Guides by two*

hundred sixty weeks. Compensation payable shall be sixty-six and two-thirds per centum of wages during this number of weeks, subject to the provisions of clause (1) of subsection (a) of this section.

(ii) For permanent loss of hearing not caused by long-term exposure to hazardous occupational noise which is medically established to be due to other occupational causes such as acoustic trauma or head injury, the percentage of hearing impairment shall be calculated by using the formulas as provided in the Impairment Guides. The number of weeks for which compensation shall be payable for such loss of hearing in one ear shall be determined by multiplying the percentage of impairment by sixty weeks. The number of weeks for which compensation shall be payable for such loss of hearing in both ears shall be determined by multiplying the percentage of impairment by two hundred sixty weeks. Compensation payable shall be sixty-six and two-thirds per centum of wages during this number of weeks, subject to the provisions of clause (1) of subsection (a) of this section.

(iii) Notwithstanding the provisions of subclauses (i) and (ii) of this clause, if there is a level of binaural hearing impairment as calculated under the Impairment Guides which is equal to or less than ten per centum, no benefits shall be payable. Notwithstanding the provisions of subclauses (i) and (ii) of this clause, if there is a level of binaural hearing impairment as calculated under the Impairment Guides which is equal to or more than seventy-five per centum, there shall be a presumption that the hearing impairment is total and complete, and benefits shall be payable for two hundred sixty weeks.

(iv) The percentage of hearing impairment for which compensation may be payable shall be established solely by audiogram. The audiometric testing must conform to OSHA Occupational Noise Exposure Standards, 29 CFR 1910.95 (relating to occupational noise exposure) and Appendices C, D and E to Part 1910.95 (July 1, 1994).

(v) If an employe has previously received compensation under subclause (i) or (ii) of this clause, he may receive additional compensation under subclause (i) or (ii) of this clause for any work-related increase in hearing impairment which occurred after the date of any previous award of or agreement for compensation and only if the increase in hearing impairment is ten percentage points greater than the previous compensated impairment. Any employe who has claimed a complete loss of hearing prior to the effective date of this clause and has received an award or payment for hearing loss shall be barred from claiming compensation for hearing loss or receiving payment therefor pursuant to subclause (i) or (ii) of this clause.

(vi) An employer shall be liable only for the hearing impairment caused by such employer. If previous occupational hearing impairment or hearing impairment from nonoccupational causes is established at or prior to the time of employment, the employer shall not be liable for the hearing

impairment so established whether or not compensation has previously been paid or awarded.

(vii) An employer may require an employe to undergo audiometric testing at the expense of the employer from time to time. If an employer chooses to require an employe to undergo audiometric testing, the employer shall be required to notify the employe in writing that unless the employe submits to audiometric testing at the expense of and at the request of the employer the employe shall lose the right to pursue a claim for occupational hearing loss against that employer. Any employe who undergoes audiometric testing at the direction of an employer may request a copy and a brief explanation of the results which shall be provided to the employe within thirty days of the date they are available.

(viii) Whenever an occupational hearing loss caused by long-term exposure to hazardous occupational noise is the basis for compensation or additional compensation, the claim shall be barred unless a petition is filed within three years after the date of last exposure to hazardous occupational noise in the employ of the employer against whom benefits are sought.

(ix) The date of injury for occupational hearing loss under subclause (i) of this clause shall be the earlier of the date on which the claim is filed or the last date of long-term exposure to hazardous occupational noise while in the employ of the employer against whom the claim is filed.

(x) Whether the employe has been exposed to hazardous occupational noise or has long-term exposure to such noise shall be affirmative defenses to a claim for occupational hearing loss and not a part of the claimant's burden of proof in a claim.

(xi) The healing period provided for under clause (25) of this subsection shall not be applicable to any hearing loss under subclause (i) or (ii) of this clause.

* * *

Section 3. This act shall apply as follows:

(1) Except as provided in paragraph (2), the amendment or addition of sections 105.4, 105.5, 105.6 and 306(c)(8) of the act shall apply to claims filed on or after the effective date of this act.

(2) The amendment or addition of sections 105.5 and 306(c)(8)(i), (ii) and (iv) shall apply retroactively to all claims existing as of the effective date of this act for which compensation has not been paid or awarded.

Section 4. This act shall take effect immediately.

APPROVED—The 22nd day of February, A.D. 1995.

THOMAS J. RIDGE