

## No. 2000-53

## AN ACT

## SB 1244

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 assessments; providing for payments of claims for benefits to certain individuals; and establishing rights and obligations of the Department of Labor and Industry.

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

Section 1. Section 446(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 added February 2, 1976 (P.L.2, No.2), is amended to read:

Section 446. \* \* \*

(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] *Workers'* 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] *one hundred thirty-three* per centum of the current budget the following fiscal year's assessment shall be reduced by an amount equal to that excess amount.

\* \* \*

Section 2. Section 901 of the act, added July 2, 1993 (P.L.190, No.44), is amended to read:

Section 901. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

*"Account"* means the Prefund Account established in section 909(a).

*"Compensation"* means benefits paid pursuant to sections 306 and 307.

*"Defaulted self-insurer"* means an employer exempted by the Department of Labor and Industry from the requirement to insure its

*liability under this act or under section 305 of the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania Occupational Disease Act," for claims on injuries or exposures to the hazard of disease which occurred prior to October 30, 1993, and which has failed to pay that liability due to its financial inability or due to its filing for bankruptcy or being declared bankrupt or insolvent.*

"Employer" means a self-insured employer or the employer as defined in this act.

*"Fiscal year" means the fiscal year of the Commonwealth.*

"Guaranty Fund" or "fund" means the Self-Insurance Guaranty Fund established in section 902 for injuries and exposures occurring on or after the establishment of the Self-Insurance Guaranty Fund.

*"Prefund claimant" means an employe or a dependent of an employe of a defaulted self-insurer who is entitled to benefits under this act or the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania Occupational Disease Act," as the result of injury or exposure to the hazard of disease which occurred prior to October 30, 1993.*

"Security" means surety bonds, cash, negotiable securities of the United States Government or the Commonwealth or other negotiable securities, such as letter of credit, acceptable to the department which are posted by the fund to guaranty the payment of workers' compensation benefits.

"Self-insurer" means an employer exempted under section 305 or a group self-insurance fund permitted to operate under Article VIII.

*"Workmen's Compensation Administration Fund" means the special fund established in section 446.*

Section 3. The act is amended by adding a section to read:

*Section 909. (a) There is established in the Self-Insurance Guaranty Fund a restricted account known as the Prefund Account. The department shall annually transfer up to one million six hundred thousand dollars (\$1,600,000) of accumulated interest in the Workmen's Compensation Administration Fund to the account.*

*(b) Accumulated interest in the Workmen's Compensation Administration Fund is specifically appropriated to the department on a continuing basis in such amounts as are necessary for the purpose of this section. The secretary shall have the power to dispense and disburse accumulated interest in the Workmen's Compensation Administration Fund under this section.*

*(c) Transfers to the account pursuant to subsection (a) shall be used to pay claims for loss of wages occurring or medical treatment provided after the effective date of this section under sections 306(a), (b), (c) and (f.1) and 307 of this act or under sections 306(a), (b) and (c) and 307 of the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania Occupational Disease Act," to a prefund claimant upon exhaustion of the security posted by the liable defaulted self-insurer: Provided, That:*

(1) *the benefits are payable under a notice of compensation payable, an agreement for compensation or a petition for compensation and the petition, notice or agreement was filed with the department before January 1, 1997;*

(2) *payments from the account are not used to pay interest, penalties or attorney fees related to the payment of benefits;*

(3) *payments from the account are used to pay claims for benefits relating to medical treatment under section 306(f.1) of this act that are not covered or not paid for, in whole or in part, by other types of insurance or Federal, State or private benefit programs;*

(4) *this section shall not be construed to require payment of claims for benefits when transfers to the account pursuant to subsection (a) are insufficient to satisfy claims for benefits by prefund claimants except to the extent required by subsection (e)(1); and*

(5) *the receipt of benefits under this section is subject to the law in effect as of the effective date of this section and not the date of an award from a petition, a notice of compensation payable or an agreement for compensation.*

(d) *When payments are made from the account on behalf of a defaulted self-insurer, the department assumes the rights and obligations of the defaulted self-insurer under this act and "The Pennsylvania Occupational Disease Act" with regard to the payment of claims. The department shall have the right to:*

(1) *Initiate and prosecute legal action against the defaulted self-insurer to require the payment of benefits under this act or "The Pennsylvania Occupational Disease Act."*

(2) *Obtain, in any manner or by use of any process or procedure, including the commencement and prosecution of legal action, reimbursement from a defaulted self-insurer and its successor, assigns and estate all payments from the account to its prefund claimants, including reimbursement of all benefits paid as well as reasonable administrative and legal costs associated with the payment.*

(e) *The following shall apply:*

(1) *If the department projects that the aggregate payments to prefund claimants pursuant to this section during any one fiscal year may exceed the transfer to the account for that year, the secretary shall order the payment of benefits under sections 306(a), (b) and (c) and 307 at a percentage of the full amounts payable under this act and "The Pennsylvania Occupational Disease Act." The percentage shall be uniformly applied to all benefits under those sections paid during that fiscal year. The secretary shall adjust that percentage from time to time as is necessary based on updated projections on payment of benefits.*

(2) *To take action under paragraph (1), the department must provide a minimum of sixty (60) days' notice to the General Assembly of the impending action. The notice must be in the form of a written report of*

*the pending funding shortfall to the chairpersons and the minority chairpersons of the Appropriations Committee and the Labor and Industry Committee of the Senate and the chairpersons and the minority chairpersons of the Appropriations Committee and the Labor Relations Committee of the House of Representatives. The General Assembly may appropriate sufficient funds to the account to continue full payment of benefits to prefund claimants for that fiscal year.*

*(f) A prefund claimant shall within three years of the effective date of this section or within three years of last receiving benefits from a defaulted self-insurer or its security, whichever occurs later, forward to the department an application for benefits that includes all of the following:*

- (1) Name of the prefund claimant.*
- (2) The prefund claimant's Social Security number.*
- (3) The department claim number of the claim for which benefits are requested, if known.*
- (4) The prefund claimant's date of birth.*
- (5) The date of injury giving rise to the claim.*
- (6) The name of the employer at the time of injury.*
- (7) If known, the date of receipt of the last payment from the defaulted self-insurer or its security.*
- (8) The amount of current wages from current employment or self-employment.*
- (9) A signature certifying that the request for benefits is true and correct and that the prefund claimant is aware of the penalties provided by law for making false statements for the purpose of obtaining benefits.*
- (10) Any other information required by the department that is relevant in determining the entitlement to or amount of benefits.*

*(g) Nothing in this section shall be construed to require the department to make wage loss payments to an individual who is currently receiving wages equal to or in excess of the benefit they would receive under this section. Nothing in this section shall be construed to require the department to make a wage loss payment that would result in an individual receiving more in wages and compensation combined than his pre-injury wage.*

*(h) Applications and other information submitted to the department under this section and section 305 shall not be public records for purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, and shall not be subject to public disclosure.*

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

APPROVED—The 22nd day of June, A.D. 2000.

THOMAS J. RIDGE