

No. 2002-155

AN ACT

HB 401

Amending the act of August 23, 1961 (P.L.1068, No.484), entitled, as reenacted and amended, "An act to provide for the creation and administration of a Coal and Clay Mine Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation," further providing for purpose, for disbursements, for inflation protection, for audits and for subrogation; providing for department report; providing for subsidence insurance; and making editorial changes.

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

Section 1. The title and sections 1, 3, 4, 5, 7 and 9 of the act of August 23, 1961 (P.L.1068, No.484), entitled, as reenacted and amended, "An act to provide for the creation and administration of a Coal and Clay Mine Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation," reenacted and amended November 27, 1972 (P.L.1243, No.278), are amended to read:

AN ACT

To provide for the creation and administration of a Coal and Clay Mine Subsidence Insurance Fund within the Department of Environmental [Resources] *Protection* for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation.

Section 1. Purposes.—Whereas, the anthracite and bituminous coal and clay mine areas have been faced with the grave problem of subsidence for many years, and

Whereas, these problems are becoming more widespread, and

Whereas, these conditions cause undue hardship upon a multitude of persons, and

[Whereas, studies reveal that the subsidence is traceable primarily to mining of thirty or more years ago and not necessarily to present day mining so that effective measures cannot readily be taken at this late date for the elimination of the problem, and]

Whereas, it would be to the advantage of residents of the anthracite and bituminous coal and clay mining regions to form a common bond to combat distress resulting from subsidence;

Now therefore, there shall be established a Coal and Clay Mine Subsidence Insurance Fund and a Coal and Clay Mine Subsidence Insurance Board with the powers and duties as herein set out.

Section 3. The Coal and Clay Mine Subsidence Insurance Board.—The Coal and Clay Mine Subsidence Insurance Board is hereby created consisting of the [Secretary of Environmental Resources] *secretary*, as chairman, and the [Commissioner of] Insurance *Commissioner* and the State Treasurer.

Section 4. The Coal and Clay Mine Subsidence Insurance Fund.—The premiums to be paid by owners of structures, as hereinafter described, are hereby constituted a Coal and Clay Mine Subsidence Insurance Fund, [hereinafter called fund,] for the purpose of insuring from the moneys in the fund such owners against the damages resulting from subsidence, of coal or clay mines. Such fund shall be administered by a board without liability on the part of the State except as hereinafter provided beyond the amount thereof and shall be applied to the payment of such damages.

Section 5. The Initial Source of Fund.—The expenses of the administration of the fund shall after July 1, 1972, be paid out of the general appropriation of the [Department of Environmental Resources] *department*.

Section 7. Schedule of Premiums.—At any time during each year, the [said] board shall prepare and publish a schedule of premiums or rates of insurance for subscribers, which schedule shall be printed and distributed free of charge to such persons who shall make application therefor, and any such subscriber may, at his option as hereinafter provided, pay to the fund the amount of premium appropriate, and upon payment thereof, shall be insured, as hereinafter provided, for the year for which such premium is paid, and such insurance shall cover all payments becoming due for which said premium is paid. The premium is fixed and shall be adequate to enable payment of all sums which may become due and payable under the provisions of this act, and adequate reserve sufficient to carry all policies and claims to maturity. In fixing the premiums payable by any subscriber, the board may take into account the condition of the premises of such subscriber in respect to the possibility of subsidence as shown by the report of any inspector appointed by the board or by the department, and they may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the premises of such subscribers in respect to the possibility of subsidence may justify, and they may increase the premiums of any subscriber whose loss experience warrants such change. The insurance of any subscriber shall not be effective until he shall have paid in full the premium so fixed and determined.

Section 9. Investment of Surplus.—The [said] board may invest any of the surplus or reserve belonging to the fund in such securities and investments as are authorized for investment by savings banks. All such

securities or evidences of indebtedness shall be placed in the hands of the State Treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof when due and pay the same into the fund. The State Treasurer shall pay for all such securities or evidences of indebtedness by check issued upon requisition of the board. All such payments shall be made only upon delivery of such securities or evidences of indebtedness to the State Treasurer. To all requisitions calling upon the State Treasurer to pay for any securities or evidences of indebtedness, there shall be attached a certified copy of the resolution of the board authorizing the investment. The [said] board may upon like resolution sell any of such securities.

Section 2. Section 10 of the act, amended November 20, 1981 (P.L.350, No.127), is amended to read:

Section 10. Disbursements from Fund.—(a) Moneys from the general appropriation of the [Department of Environmental Resources] *department* are hereby made available for the expense of administering the fund including the purchase through the Department of General Services of surety bonds for such officers or employes of the board as may be required to furnish them supplies, materials, motor vehicles, workmen's insurance covering the officers and employes of the board, and liability insurance covering vehicles operated by the officers and employes of the board.

(b) Moneys from the general appropriation of the [Department of Environmental Resources] *department* shall also be available [for payment, to the Insurance Department, of the cost incurred by that department in examining and auditing the fund in such amounts as the Insurance Department shall determine, and] for payment, to the Treasury Department, of the cost of making disbursements out of the fund on behalf of the fund at such amounts as the Treasury Department, with the approval of the Executive Board, shall determine.

(c) The board shall keep an accurate account of the money paid in premiums by the subscribers and the disbursements on account of damages to the premises thereof, and if at the expiration of any year there shall be a balance remaining after deducting such disbursements, the unearned premiums on undetermined risks and the percentage of premiums paid or payable to create or maintain the surplus provided herein, and after setting aside an adequate reserve, so much of the balance as the board may determine to be safely distributable may either be allocated to the cost of administering the fund or be distributed among the subscribers in proportion to the premiums paid by them and the proportionate share of such subscribers as shall remain subscribers to the fund shall be credited to the installment of premiums next due by them and the proportionate share of such subscribers as shall have ceased to be subscribers in the fund shall be refunded to them out of the fund in the manner hereinafter provided.

(d) *Moneys from the general appropriation to the department shall also be available to pay a one-time commission as determined by the board to insurance producers who forward applications for mine*

subsidence insurance to the board pursuant to section 12 if a policy is issued pursuant to an application submitted by an insurance producer. The amount of the commission shall be determined by the board on an annual basis.

Section 3. Sections 12 and 12.1 of the act, amended or added July 10, 1984 (P.L.711, No.151), are amended to read:

Section 12. Application for Insurance; Terms of Insurance; Penalty for False Statement; *List of Mining Areas*.—(a) Any owner of a structure located within the anthracite or bituminous coal or clay mine region and who desires to become a subscriber to [said] *the* fund for the purpose of insuring such a structure therein against damages from coal or clay mine subsidences, shall make a [written request for an application for such insurance to the said board or any of its agents. The board shall then send to the owner of the structure an application in which application the applicant shall state the name, address, date of ownership of the premises to be insured, the condition of the premises, prior subsidence experience, if any, nature of title whether it includes any subsurface support, whether any agreement exists concerning surface support.] *complete application as prescribed by the board to the board, its agents or insurance producers.* Thereupon, the board shall make such investigation as may be necessary if such application complies with the rules and regulations of the board and within sixty days after the request for an application is received shall issue a certificate showing the acceptance of the application and the amount of premium payable by such applicant for the year for which premium is sought. *The amount of insurance coverage shall not exceed the replacement cost of the insured structure or the maximum amount of coverage established by the fund, whichever is less.* Policies may be issued for one year, for two years or for three years as the board may establish. Except as provided in subsection (b), no insurance shall become effective until the premiums have been paid. All premiums shall be payable to the State Treasurer whereupon a receipt shall be issued therefor. The receipt for premium together with a certificate of the board shall be evidence that the applicant has become a subscriber to the fund and is insured.

(b) If the board fails to make the necessary investigations or inspection and fails to approve or deny an application for insurance within sixty days of receipt of the written request for an application by the board or any of its agents, in accordance with this section, the insurance requested by the applicant shall be deemed granted. The insurance shall be effective from the date the written request for an application was received by the board or any of its agents, but the coverage will be null and void if the applicant fails to remit the premium payment within twenty days from the day the bill for the premium was postmarked.

(1) The insurance may be subjected to later reductions, and premiums adjusted accordingly, if the board determines that the amount of insurance

coverage requested is in excess of the current **[market value] replacement cost** of the structure or **[current statutory limits] the maximum amount of coverage established by the fund**, whichever is less.

(2) The insurance shall be void if, upon inspection of the structure, the board determines that either (i) mine subsidence damage occurred prior to the request by the applicant for insurance, or (ii) the applicant by his unreasonable actions or in actions is responsible for the failure of the board to inspect the structure within sixty days of receipt of the written request for an application in accordance with this section.

(c) Whoever shall knowingly furnish or make any false certificate, application or statement herein required shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand five hundred dollars (\$1,500) and shall undergo imprisonment not exceeding one year.

(d) In order to assist insurance producers and potential policyholders in identifying structures that could be at risk from mine subsidence damage, the board shall publish and update in the Pennsylvania Bulletin a list of areas in this Commonwealth that are believed to be at risk for mine subsidence damage.

Section 12.1. Application for an Increase in Insurance.—(a) Additions in the amount of insurance, up to the allowable limits, may be made at any time by the subscriber by submitting a written statement to the board or to any of its agents *except during a period when a claim filed by the subscriber is open and pending investigation by the department*. Upon receipt of the subscriber's written statement by the board or any of its agents, the board shall have sixty days from the day the request was received to reinspect the structure. If reinspection occurs within the sixty-day period and the structure passes the reinspection, the new amount of insurance shall be effective from the date of premium payment after reinspection. If reinspection does not occur within the sixty-day period, the new amount of insurance shall be effective from the date the subscriber's written request for additional insurance was received by the board or any of its agents, but the additional coverage will be null and void if the applicant fails to remit the premium payment within twenty days from the day the bill for additional premium is postmarked.

(b) The additional insurance may be subjected to later reductions, and premiums adjusted accordingly, if the board determines that the added insurance raises the total amount of insurance in excess of the current **[market value] replacement cost** of the structure or **[current statutory limits] the maximum amount of coverage established by the fund**, whichever is less.

(c) The additional insurance shall be void if, upon reinspection of the structure, the board determines that either:

(1) Mine subsidence damage occurred prior to the request of the subscriber for additional insurance.

(2) The subscriber's unreasonable actions or inactions are responsible for the board's failure to reinspect the insured structure within sixty days of receipt of the written request for an increase in the amount of coverage by the board or any of its agents.

Section 4. Sections 13, 14, 15 and 17 of the act are amended to read:

Section 13. **Audit by Auditor General.**—The Auditor General through such agents as he may select shall, at least once each year, make a complete examination and audit of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements, and for these purposes the Auditor General is hereby authorized to employ such consultants, experts, accountants or investigators as he may deem advisable.

The expense incurred in making said examination and audit shall be certified to the fund by the Auditor General and shall be paid from the general appropriation of the [Department of Environmental Resources] *department*.

The first audit of such fund may, in the discretion of the Auditor General, extend back to the creation of such fund or to any other period in its life.

[Section 14. **Audit by Insurance Department.**—The Insurance Department at least once each year shall make a complete examination and audit of the affairs of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements to ascertain its financial condition and its ability to fulfill its obligations, whether the board in managing the fund has complied with the provisions of law relating to the fund and the equity of the board's plans and dealings with its policyholders.

For the purpose of any examination and audit authorized by this act, the Commissioner of Insurance, his deputy or his examiners shall have free access to all the books, records and papers pertaining to the fund, and all persons charged with the management of the fund or connected therewith as employees are hereby directed and required to give to the Commissioner of Insurance, his deputy or officers the means, facilities and opportunity for such examination and audit.

The expenses incurred by the Insurance Department in making any examination and audit under the provisions of this act shall be ascertained by the department, certified to the fund, and paid from the general appropriation of the Department of Environmental Resources.]

Section 15. **Claims against Fund.**—Any subscriber to the fund must file with the board a true statement of his claim for any subsidence and shall give to the board an opportunity to investigate and to determine whether the board will pay the claim.

Section 17. **Subrogation to Rights of Claimants.**—Nothing herein shall relieve any person, partnership, or corporation otherwise liable therefor

from any liability for damages sustained; and the fund shall be subrogated to the rights of any property owners' insurance herein.

Section 5. The act is amended by adding a section to read:

Section 20. Department Report.—*The department shall make an annual report on the program and on experience with mine subsidence insurance sales through producers to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives.*

Section 6. Sections 22 and 24.1 of the act are amended to read:

Section 22. Employees of the Board to Be Part of the Department [of Environmental Resources].—All employes of the board shall be employed by and located in the [Department of Environmental Resources] *department* and shall be subject to the administrative jurisdiction and authority of the [Secretary of Environmental Resources] *secretary*.

Section 24.1. Appeals.—Any party aggrieved by an action of the board [hereunder] shall have the right to appeal to the Environmental Hearing Board.

Section 7. This act shall take effect in 180 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER