

The Uninsured Employer Guaranty Fund: Legislative Reform Proposal

PROVISION	CURRENT LAW	PROPOSAL
<p>Proof of wages</p>	<p>A claimant's testimony alone is sufficient to prove wages and establish the amount of benefits to be paid by the UEGF.</p> <p>Unlike other state benefit programs, the law does not require any corroborative proof of wages earned in order to receive benefits.</p>	<p>Requires evidence of wages earned other than the claimant's testimony to receive benefits. Proof of wages can include:</p> <ul style="list-style-type: none"> • A check, check stub or payroll record. • A tax return. • An unemployment compensation record. • A bank statement. • A written document created along with payment of wages. • Testimony of the employer.
<p>Stop-work orders</p>	<p>The department lacks suitable enforcement powers to proactively identify and penalize uninsured employers.</p>	<p>Allows the department to issue daily fines to businesses who do not respond to inquiries on their insurance status.</p> <p>Allows the department to issue stop-work orders.</p>
<p>Out-of-state coverage</p>	<p>If an out-of-state employer has insurance coverage in that state but not Pennsylvania, the law considers the employer to be "uninsured" and allows a claim to be filed against the UEGF.</p> <p>An outdated certification process exists for establishing coverage for a Pennsylvania injury.</p>	<p>Allows out-of-state employers and insurers more easily to assume responsibility for a UEGF claim where out-of-state coverage exists.</p> <p>Requires claimants to confirm the denial of out-of-state coverage prior to filing the award of a UEGF claim in Pennsylvania</p>
<p>Panel Providers</p>	<p>Because the UEGF does not have a pre-existing relationship with the uninsured employer, the injured worker is free to seek treatment with any physician, including those who may not be familiar with or experienced treating workers' compensation injuries.</p>	<p>Aligns the UEGF to what is required under current workers' compensation law by requiring UEGF claimants to treat with physicians on an established panel for 90-days.</p>
<p>45-day notice</p>	<p>A claimant must notify the UEGF within 45-days of the time when they <u>knew</u> that the employer was uninsured.</p> <p>The UEGF often does not receive notice until well after the alleged injury has occurred due to ambiguities of the law in determining when the claimant knew that there was no insurance coverage by the employer.</p>	<p>Clarifies that a claimant must notify the UEGF within 45-days of when the claimant has been advised by the employer or another source that the employer is uninsured.</p> <p>This change will make certain that the UEGF receives notification of injuries promptly, so there are no delays in the investigation or litigation.</p>

Restitution	Restitution is obtainable for awarded benefit payments and costs, but some ambiguity exists regarding the inclusion of the UEGF's fees, costs and settlement payments.	Clarifies that UEGF fees, costs and settlement payments made to claimants are to be included in criminal awards against an uninsured employer. Gives a greater incentive for employers to comply with the law and buy insurance.
Insolvency	In the event of funding shortfalls, there is no process in place to manage payment of benefits.	Clarifies the procedure for handling UEGF payments in the event of a funding shortfall. The proposed process is modeled after existing law for the Self-Insurance Guaranty Fund Prefund Account. Requires the department to notify the General Assembly of an anticipated funding shortfall.
Funding transfer	The UEGF is projected to exhaust all remaining revenue in a few months, assuming no catastrophic claims are awarded.	Transfers \$4 million from the Workers' Compensation Administrative Fund.
Interest payments	The UEGF suffers a significant delay in obtaining the necessary information to handle a claim because there is no pre-existing relationship with either the claimant or the uninsured employer. The current law excludes the UEGF from paying penalties, unreasonable fees, and reporting and liability requirements, but not interest.	Excludes the UEGF from payment of the interest owed on past due compensation which was not paid by the uninsured employer.

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," in liability and compensation,
8 further providing for injuries outside this Commonwealth; in
9 the Uninsured Employers Guaranty Fund, further providing for
10 definitions, for fund, for claims, for claim petition, for
11 administration and for assessments and transfers; and
12 providing for insolvency, for uninsured employer obligations
13 and for administrative penalties and stop-work orders.

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

16 Section 1. Section 305.2(c) of the act of June 2, 1915
17 (P.L.736, No.338), known as the Workers' Compensation Act,
18 reenacted and amended June 21, 1939 (P.L.520, No.281) and added
19 December 5, 1974 (P.L.782, No.263), is amended and the section
20 is amended by adding a subsection to read:

21 Section 305.2. * * *

22 (c) If an employe^e is entitled to the benefits of this act by
23 reason of an injury sustained in this State in employment by an

1 employer who is domiciled in another state and who has not
2 secured the payment of compensation as required by this act, the
3 [employer or his carrier may file with the director a
4 certificate, issued by] department may verify with the
5 commission or agency of such other state having jurisdiction
6 over [workmen's] workers' compensation claims[, certifying] that
7 such employer has secured the payment of compensation under the
8 [workmen's] workers' compensation law of such other state and
9 that with respect to said injury such employe is entitled to the ←
10 benefits provided under such law.

11 (In such event:

12 (1) The filing of such certificate shall constitute an
13 appointment by such employer or his carrier of the Secretary of
14 Labor and Industry as his agent for acceptance of the service of
15 process in any proceeding brought by such employe or his
16 dependents to enforce his or their rights under this act on
17 account of such injury;

18 (2) The secretary shall send to such employer or carrier, by
19 registered or certified mail to the address shown on such
20 certificate, a true copy of any notice of claim or other process
21 served on the secretary by the employe or his dependents in any
22 proceeding brought to enforce his or their rights under this
23 act.)

24 (3) The following shall apply:

25 (i) If such employer is a qualified self-insurer under the
26 [workmen's] workers' compensation law of such other state, such
27 employer shall[, upon submission of evidence, satisfactory to
28 the director, of his ability to meet his liability to such
29 employe under this act,] be deemed, for the purposes of such
30 employe to be a qualified self-insurer under this act[;]. ←

1 (ii) If such employer's liability under the workmen's
2 compensation law of such other state is insured, such employer's
3 carrier, as to such employe^e or his dependents only, shall be
4 deemed to be an insurer authorized to write insurance under and
5 be subject to this act: Provided, however, That unless its
6 contract with said employer requires it to pay an amount
7 equivalent to the compensation benefits provided by this act,
8 its liability for income benefits or medical and related
9 benefits shall not exceed the amounts of such benefits for which
10 such insurer would have been liable under the workmen's
11 compensation law of such other state[;].

12 (4) If the total amount for which such employer's insurance
13 is liable under clause (3) above is less than the total of the
14 compensation benefits to which such employe is entitled under
15 this act, the [secretary] department may, if [he deems it]
16 necessary, require the employer to file security[, satisfactory
17 to the secretary, to secure] to guarantee the payment of
18 benefits due such employe^e or his dependents under this act[;
19 and].

20 (5) Upon compliance with the preceding requirements of this
21 subsection (c), such employer, as to such employe^e only, shall be
22 deemed to have secured the payment of compensation under this
23 act[.], and shall not be an uninsured employer for purposes of
24 Article XVI.

25 (c.1) If an employe^e alleges an injury incurred with an
26 employer that is domiciled in another state and that has not
27 secured the payment of compensation as required by this act,
28 such employe shall submit to the Uninsured Employers Guaranty
29 Fund and to any workers' compensation judge hearing a petition
30 against the fund, a decision, notice or ruling from such other

1 state or its licensees that the employe has sought and is not
2 entitled to benefits in such other state. No compensation shall
3 be payable from the Uninsured Employers Guaranty Fund until the
4 employe submits such decision, notice or ruling.

5 * * *

6 Section 2. Sections 1601, 1602, 1603, 1604 and 1605 of the
7 act, added November 9, 2006 (P.L.1362, No.147), are amended to
8 read:

9 Section 1601. Definitions.

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

13 "Compensation." Benefits paid pursuant to sections 306 and
14 307.

15 "Employer." Any employer as defined in section 103. The term
16 does not include a person that qualifies as a self-insured
17 employer under section 305.

18 "Fund." The Uninsured Employers Guaranty Fund established in
19 section 1602. The fund shall not be considered an insurer and
20 shall not be subject to penalties, unreasonable contest fees,
21 interest or any reporting and liability requirements under
22 section 440.

23 "Policyholder." A holder of a workers' compensation policy
24 issued by the State Workers' Insurance Fund, or an insurer that
25 is a domestic, foreign or alien mutual association or stock
26 company writing workers' compensation insurance on risks which
27 would be covered by this act.

28 "Secretary." The Secretary of Labor and Industry of the
29 Commonwealth.

30 Section 1602. Fund.

1 (a) Establishment.--

2 (1) There is established a special fund to be known as
3 the Uninsured Employers Guaranty Fund.

4 (2) The fund shall be maintained as a separate fund in
5 the State Treasury subject to the procedures and provisions
6 set forth in this article.

7 (b) Source.--The sources of the fund are:

8 (1) Assessments provided for under section 1607.

9 (2) Reimbursements or restitution.

10 (3) Interest on money in the fund.

11 (4) Administrative penalties provided for under section
12 1611.

13 (c) Use.--The administrator shall establish and maintain the
14 fund for the exclusive purpose of paying to any claimant or his
15 dependents workers' compensation benefits due and payable under
16 this act and the act of June 21, 1939 (P.L.566, No.284), known
17 as The Pennsylvania Occupational Disease Act, and any costs
18 specifically associated therewith where the employer liable for
19 the payments failed to insure or self-insure its workers'
20 compensation liability under section 305 at the time the
21 injuries took place.

22 (d) Administration.--The secretary shall be the
23 administrator of the fund and shall have the power to collect
24 money for and disburse money from the fund.

25 (e) Status.--The fund shall have all of the same rights []
26 duties, responsibilities and obligations]) as an insurer.
27 Section 1603. Claims.

28 (a) Scope.--This section shall apply to claims for an injury
29 or a death which occurs on or after the effective date of this
30 article.

1 (b) Time.--An injured worker shall notify the fund within 45
2 days after the worker [knew] has been advised by the employer or
3 another source that the employer was uninsured. The department
4 shall have adequate time to monitor the claim and shall
5 determine the obligations of the employer. No employee shall
6 receive compensation [shall be paid] from the fund [until notice
7 is given] unless:

8 (1) the employee notifies the fund within the time
9 period specified in this subsection; and

10 (2) the department determines that the employer failed
11 to voluntarily accept and pay the claim or subsequently
12 defaulted on payments of compensation. (No compensation shall
13 be due until notice is given.)

14 (c) Process.--After notice, the fund shall process the claim
15 in accordance with the provisions of this act.

16 (d) Petitions.--

17 (1) No claim petition may be filed against the fund
18 until at least 21 days after notice of the claim is made to
19 the fund.

20 (2) A claim petition shall be filed within 120 days
21 after notice of the claim is made to the fund. If the time
22 requirement under this paragraph is not met, a claim petition
23 shall not be allowed.

24 (e) List of providers.--

25 (1) The fund may establish lists of at least six
26 designated health care providers that are accessible in each
27 county in specialties relevant to the treatment of work
28 injuries in this Commonwealth, as referenced in section
29 306(f.1)(1).

30 (2) If the fund establishes a list under paragraph (1),

1 the fund shall be responsible only to reimburse expenses of
2 medical treatments, services and accommodations rendered by
3 the physicians or other health care providers that are
4 designated on the list for the period set forth in section
5 306(f.1)(1) from the date of the employee's notice to the
6 fund under subsection (b).

7 (3) On the notice under subsection (b), the fund shall:

8 (i) provide access to the list of designated
9 providers to the employee; and

10 (ii) notify the employee of the requirements of this
11 subsection.

12 (4) If the employee receives medical treatments,
13 services or accommodations from a health care provider that
14 is not designated on the list, the fund shall be relieved of
15 liability for the payment of medical treatments, services or
16 accommodations rendered during the period set forth in
17 section 306(f.1)(1) from the date of the employee's notice to
18 the fund under subsection (b).

19 Section 1604. Claim petition.

20 (a) Authorization.--If a claim for compensation is filed
21 under this article and the claim is not voluntarily accepted as
22 compensable, the employee may file a claim petition naming both
23 the employer and the fund as defendants. Failure of the
24 uninsured employer to answer a claim petition shall not serve as
25 an admission or otherwise bind the fund under section 416.

26 (b) Amount of wages.--In a proceeding under this article,
27 the fund shall not be liable for wage loss benefits unless the
28 amount of wages the employee earned at the time of injury is
29 established by one of the following:

30 (1) A check, check stub or payroll record.

*

Remove maximum amount section

1 (2) A tax return. This paragraph includes IRS form W-2
2 and form 1099, and successors to those forms.

3 (3) Unemployment compensation records, including form
4 UC-2A.

5 (4) Bank statements or records showing regular and
6 recurring deposits.

7 (5) Written documentation created contemporaneously with
8 the payment of wages.

9 (6) Testimony of the uninsured employer presented under
10 oath at a hearing or deposition. *

11 Section 1605. Department.

12 (a) Insurance inquiry.--Within ten days of notice of a
13 claim, the fund shall demand from the employer proof of
14 applicable insurance coverage. Within 14 days from the date of
15 the fund's request, the employer must provide proof of
16 insurance. If the employer does not provide proof, there shall
17 be rebuttable presumption of uninsurance.

18 (b) Reimbursement.--The department shall, on behalf of the
19 fund, exhaust all remedies at law against the uninsured employer
20 in order to collect the amount of a voluntary payment or award,
21 including voluntary payment or award itself and reimbursement of
22 costs, interest, penalties, fees under section 440 and costs of
23 the fund's attorney, which have been paid by the fund. The fund
24 shall also be reimbursed for costs or attorney fees which are
25 incurred in seeking reimbursement under this subsection. The
26 department is authorized to investigate violations of section
27 305 for prosecution of the uninsured employer pursuant to
28 section 305(b) and shall pursue such prosecutions through
29 coordination with the appropriate prosecuting authority. [Any
30 restitution obtained shall be paid to the fund.] The fund shall

1 be entitled to restitution of all payments made under this
2 article as the result of any injury to an employee of an
3 uninsured employer. Restitution to the fund under section 305
4 shall not be limited to the amount specified in the award of
5 compensation and shall include the amount of any voluntary
6 payment or award and reimbursement of the fund's costs and the
7 fees of the fund's attorney.

8 (c) Bankruptcy.--The department has the right to appear and
9 represent the fund as a creditor in a bankruptcy proceeding
10 involving the uninsured employer.

11 (d) Liens.--If payments of any nature have been made by the
12 fund on behalf of an uninsured employer, the fund shall file a
13 certified proof of payment with the prothonotary of a court of
14 common pleas, and the prothonotary shall enter the entire
15 balance as a judgment against the employer. The judgment shall
16 be a statutory lien against property of the employer in the
17 manner set forth in section 308.1 of the act of December 5, 1936
18 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
19 Compensation Law, and execution may issue on it. The fund has
20 the right to update the amount of the lien as payments are made.

21 Section 2.1. Section 1607 of the act is amended by adding a
22 subsection to read:

23 Section 1607. Assessments and transfers.

24 * * *

25 (c) For the purposes of further maintaining the fund, the
26 sum of \$4,000,000 is hereby transferred to the fund from the
27 Administration Fund established under section 446.

28 Section 3. The act is amended by adding sections to read:

29 Section 1609. Insolvency.

30 (a) Limitation of liability.--The liability of the fund is

1 limited to the assets in the fund. Neither the fund nor the
2 Commonwealth may be required to incur any debt under this
3 article.

4 (b) Limited payments.--

5 (1) If the department projects that the aggregate
6 payments to or on behalf of employees under this article
7 during a fiscal year may exceed the projected assets of the
8 fund for that year, the secretary shall order the payment of
9 compensation under this article at a percentage of the full
10 amounts payable under this act. The secretary shall adjust
11 that percentage as necessary, based on updated projections.

12 (2) The department shall make payments it considers
13 appropriate as funds become available.

14 (3) To take action under paragraph (1), the department
15 shall provide a minimum of 60 days' notice to the General
16 Assembly of the impending action. The notice shall be in the
17 form of a written report of the pending funding shortfall to
18 the chairman and minority chairman of the Appropriations
19 Committee of the Senate and the chairman and minority
20 chairman of the Labor and Industry Committee of the Senate
21 and the chairman and minority chairman of the Appropriations
22 Committee of the House of Representatives and the chairman
23 and minority chairman of the Labor and Industry Committee of
24 the House of Representatives.

25 Section 1610. Uninsured employer obligations.

26 Nothing in this article shall otherwise alter the uninsured
27 employer's obligations under this act.

28 Section 1611. Administrative penalties and stop-work orders.

29 (a) Certification.--

30 (1) If the department receives information indicating

1 that an employer has failed to insure its obligations as
2 required by this act, the department may require the employer
3 to certify, on a form prescribed by the department, that the
4 employer meets one of the following:

5 (i) Possesses the requisite insurance. This
6 subparagraph requires identification of the insurer,
7 policy period and policy number.

8 (ii) No longer operates a business. This
9 subparagraph requires statement of the dates of operation
10 and cessation of operation.

11 (iii) Does not employ an individual entitled to
12 compensation under this act.

13 (iv) Is otherwise exempt from the requirements of
14 obtaining insurance under this act. This paragraph
15 requires identification of the applicable exemption.

16 (2) The employer shall return the form to the department
17 within 15 days of service of the form by the department.

18 (i) If an employer does not return the form within
19 15 days of service by the department, the department may
20 assess an administrative penalty of \$200 per day until
21 the earlier of:

22 (A) the date the employer complies; or

23 (B) 30 days from service under this paragraph.

24 (ii) If an employer does not comply with this
25 paragraph within 45 days of service under this paragraph,
26 the department may proceed with further enforcement under
27 subsection (d).

28 (b) Good cause.--If the department's investigation under
29 section 1605 reveals good cause to believe that the employer is
30 required and has failed to insure its liabilities as required by

1 this act, the department may proceed with further enforcement
2 under subsection (d).

3 (c) Enforcement.--For the purposes of enforcing section 305
4 and this article, all department employees or agents charged
5 with enforcement may enter the premises or worksite of an
6 employer that is subject to subsection (a)(2)(ii) or (b).

7 (d) Stop-work order.--The department may issue an order
8 requiring the cessation of operations of an employer that has
9 failed to insure its liabilities as required by this act. The
10 following apply:

11 (1) The order may require compliance with conditions
12 necessary to ensure that the employer insures its liabilities
13 as required by this act.

14 (2) The order shall take effect when served upon the
15 employer by first class mail or posting at the employer's
16 worksite.

17 (3) The order shall remain in effect until released by
18 the department or a court of competent jurisdiction.

19 (4) The order shall be effective against a successor
20 entity that:

21 (i) has one or more of the same principals or
22 officers as the employer against whom the order was
23 issued; and

24 (ii) is engaged in the same or equivalent trade or
25 activity.

26 (e) Nonexclusivity.--An order under subsection (d) is in
27 addition to any penalty which may be imposed pursuant to this
28 act.

29 (f) Appeal.--

30 (1) An order under subsection (d) is subject to 2

1 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of
2 Commonwealth agency action).

3 (2) Except as set forth in paragraph (3), an appeal of a
4 penalty under subsection (a)(2)(i) or an order under
5 subsection (d) shall not act as a supersedeas.

6 (3) Upon application and for cause shown, the department
7 may issue a supersedeas.

8 (g) Noncompliance.--

9 (1) Upon failure to comply with an order under
10 subsection (d) and (f), the department may institute an
11 action to enforce the order.

12 (2) An action under this subsection may be initiated as
13 follows:

14 (i) In Commonwealth Court under 42 Pa.C.S. §
15 761(a)(2) (relating to original jurisdiction).

16 (ii) In a court of common pleas under 42 Pa.C.S. §
17 931(b) (relating to original jurisdiction and venue).

18 Venue for an action under this subparagraph lies in
19 either:

20 (A) the Twelfth Judicial District; or

21 (B) the judicial district where the violation
22 occurred.


23 Section 4. Applicability is as follows:

24 (1) The amendment of section 1603(d) and (e) of the act
25 shall apply to every claim in which notice under section 1603
26 of the act is provided to the fund on or after the effective
27 date of this paragraph.

28 (2) The following provisions shall apply retroactively
29 to claims existing as of the effective date of this paragraph
30 for which compensation has not been paid or awarded:

1 (i) The amendment of section 305.2(c) of the act.

2 (ii) The amendment of section 1601 of the act.

3 (iii) The amendment of section 1603(b) ~~and (f)~~ of 
4 the act.

5 (iv) The amendment of section 1604 of the act.

6 Section 5. This act shall take effect immediately.