

ARTICLE XVI

Uninsured Employers Guaranty Fund

Section 1601. Definitions.

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:

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

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

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

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

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

Section 1602. Fund.

(a) Establishment.--

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

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

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

(1) Assessments provided for under section 1607.

(2) Reimbursements or restitution.

(3) Interest on money in the fund.

(4) Administrative penalties provided for under section 1611.

(c) Use.-- The administrator shall establish and maintain the fund for the exclusive purpose of paying to any claimant or his dependents workers' compensation benefits due and payable under this act and the act of June 21, 1939 (P.L. 566, No. 284), known as The Pennsylvania Occupational Disease Act, and any costs specifically

associated therewith where the employer liable for the payments failed to insure or self-insure its workers' compensation liability under section 305 at the time the injuries took place.

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

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

Section 1603. Claims.

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

(b) Time.-- An injured worker shall notify the fund within 45 days after the worker knew that the employer was uninsured. The department shall have adequate time to monitor the claim and shall determine the obligations of the employer. No **employee shall receive compensation [shall be paid] from the fund [until] unless: (1) such employee timely notifies [notice is given] the fund within this 45-day period; and (2) the department determines that the employer failed to voluntarily accept and pay the claim or subsequently defaulted on payments of compensation. [No compensation shall be due until notice is given.]**

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

(d) Petitions.-- No claim petition may be filed against the fund until at least 21 days after notice of the claim is made to the fund; **provided, however, that unless such claim petition is filed within one hundred and twenty days after notice is given, no such petition shall be allowed.**

(e) The fund may establish lists of at least six designated health care providers who are accessible in each county of the Commonwealth in specialties relevant to the treatment of work injuries in this Commonwealth. If the fund establishes such a list, the fund shall be responsible only to reimburse expenses of medical treatments, services and accommodations if rendered by the physicians or other health care providers so designated for the period set forth in section 306(f.1)(1) from the date of the employee's notice to the fund under this section. Upon receipt of such notice, the fund will provide the list of designated providers to the employee, and will notify the employee of the requirements of this subsection. Should the employee receive treatments, services or accommodations from a health care provider which is not on the fund's list of designated providers, the fund will be relieved from liability for the payment of medical treatments, services or accommodations rendered during such applicable period.

(f) Payments made by the fund for medical treatment, services or accommodations rendered under this act prior to the fund's receipt of the notice required under this section will not exceed the amount that would be reimbursed by the Medical Assistance Program under Article IV of the Public Welfare Code, 62 P.S. § 401, et seq., for the same treatment, services or accommodations. Where such treatments, services or accommodations

would not be reimbursed by the Medical Assistance program, the same will not be reimbursed by the fund.

Section 1604. Claim Petition.

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

(b) In any proceeding under this article, the fund shall not be liable for wage loss benefits unless the amount of wages the employee earned at the time of injury is established by one or more of the following:

(1) Checks, check stubs or payroll records.

(2) Tax returns, including IRS forms W-2, 1099 or their successor.

(3) Unemployment compensation records.

(4) Other written documentation created contemporaneously with the payment of wages.

(c) The testimony of the uninsured employer may be sufficient to establish the existence of an employment relationship; however such testimony shall not be competent evidence of the payment or amount of wages for the purposes of a claim under this article.

Section 1605. Department.

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

(b) Reimbursement.-- The department shall, on behalf of the fund, exhaust all remedies at law against the uninsured employer in order to collect the amount of a voluntary payment or award, including voluntary payment or award itself and reimbursement of costs, interest, penalties, fees under section 440 and costs of the fund's attorney, which have been paid by the fund. The fund shall also be reimbursed for costs or attorney fees which are incurred in seeking reimbursement under this subsection. The department is authorized to investigate violations of section 305 for prosecution of the uninsured employer pursuant to section 305(b) and shall pursue such prosecutions through coordination with the appropriate prosecuting authority. **[Any restitution obtained shall be paid to the fund.] The fund shall be entitled to restitution of all payments made under this article as the result of any injury to an employee of an uninsured employer. Restitution to the fund under section 305 shall not be limited to the amount specified in the**

award of compensation, and shall include the amount of any voluntary payment or award and reimbursement of the fund's costs and the costs of the fund's attorney.

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

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

Section 1606. Other Remedies.

Nothing contained in this article shall serve to abrogate the provisions of section 305(d) allowing the claimant or dependents to bring a direct suit for damages at law as provided by Article II. The fund shall be entitled to assert rights to subrogation under section 319 for recovery made from the employer or any other third party.

Section 1607. Assessments.

For the purpose of establishing and maintaining the fund, the sum of \$ 1,000,000 is hereby transferred from the Administration Fund established under section 446 to the fund for operation of the fund for the period commencing on the effective date of this section through June 30, 2007. The department shall calculate the amount necessary to maintain the fund and shall assess insurers and self-insured employers as is necessary to provide an amount sufficient to pay outstanding and anticipated claims in the following year in a timely manner and to meet the costs of the department to administer the fund. The fund shall be maintained in the same manner as the Workmen's Compensation Administration Fund under section 446 and the regulations thereunder. In no event shall any annual assessment exceed 0.1% of the total compensation paid by all insurers or self-insured employers during the previous calendar year.

Section 1608. Regulations.

The department may promulgate regulations for the administration and enforcement of this article.

Section 1609. Insolvency.

(a) The liabilities of the fund are limited to the assets in the fund, and neither the fund nor the Commonwealth may be required to incur any debt under this article.

(b) The following shall apply:

(1) If the department projects that the aggregate payments to or on behalf of employees pursuant to this article during any one fiscal year may exceed the projected assets of the fund for that year, the secretary shall order the

payment of compensation under this article at a percentage of the full amounts payable under this act. The secretary shall adjust that percentage from time to time as is necessary based on updated projections.

(2) The department shall make payments that it considers appropriate as funds become available from time to time.

(3) 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 compensation under this article.

Section 1610. Uninsured Employer Obligations.

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

Section 1611. Administrative Penalties and Stop Work Orders.

(a) Upon the department's receipt of information indicating that an employer has failed to insure its obligations as required by this act, the department may require that such employer certify, on a form prescribed by the department, that such employer: (1) possesses the requisite insurance, identifying the insurer, policy period and policy number; (2) no longer operates a business, identifying the dates of operation and cessation of operation; (3) employs no individuals entitled to compensation under this act; or (4) is otherwise exempt from the requirements of obtaining insurance under this act, identifying the applicable exemption. The employer shall return such form to the department within 15 days of the department's service, by first class mail, of such form upon the employer.

(b) Any employer which does not return the form to the department within 15 days of service, as set forth above, may be assessed an administrative penalty of \$200 per day until the earlier of: (1) the date the employer returns such form; or (2) 30 days of non-compliance has elapsed. If such employer fails to return the form within 45 days of the department's service, as set forth above, the department may proceed with further enforcement under subsection (e).

(c) If the department's investigation under section 1605 reveals good cause to believe that the employer is required and has failed to insure its liabilities as required by this act, the department may proceed with further enforcement under subsection (e).

(d) For the purposes of enforcing the provisions of this article and section 305 of this act, all department employees or agents charged with its enforcement shall have the power to enter the premises or worksite of any employer which has

failed to respond to the department's requests under this section or which the department has good cause to believe is required and has failed to insure its liabilities as required by this act.

(e) The department may issue an order requiring the cessation of operations of an employer that has failed to insure its liabilities as required by the act. The department may, in its order, require compliance with such conditions as are necessary to ensure that the employer insures its liabilities as required by this act. An order issued under this section shall take effect when served upon the employer by first class mail or posting at the employer's worksite, and shall remain in effect against any successor corporation or business entity that has one or more of the same principals or officers as the employer against whom the order was issued and which is engaged in the same or equivalent trade or activity. Such order shall remain in effect until released by the department or a court of competent jurisdiction.

(f) Any appeal under this section shall be pursuant to 2 Pa.C.S.A. § 101, et seq. An appeal of the department's penalty or order shall not act as a supersedeas; provided, however, that, upon application and for cause shown, the department may issue such a supersedeas. The right of the department to issue an order under this section is in addition to any penalty which may be imposed pursuant to this act.

(g) Upon an employer's failure to comply with any order issued under this section, the Commonwealth or department may institute suit to enforce such order. Such proceedings may be initiated in the Commonwealth Court, or in the court of common pleas of Dauphin County or the county where the violation has occurred.

Section 305.2. Injuries occurring extraterritorially.

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(c) If an employe is entitled to the benefits of this act by reason of an injury sustained in this State in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this act, the **[employer or his carrier may file with the director a certificate, issued by] Department may verify with** the commission or agency of such other state having jurisdiction over workmen's compensation claims, **[certifying]** that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury such employe is entitled to the benefits provided under such law.

In such event:

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

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

(3)

(i) (1) If such employer is a qualified self-insurer under the workmen's compensation law of such other state, such employer shall [, upon submission of evidence, satisfactory to the director, of his ability to meet his liability to such employe under this act,] be deemed, for the purposes of such employe, to be a qualified self-insurer under this act;

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

[(4)] (3) If the total amount for which such employer's insurance is liable under clause [(3)] (2) above is less than the total of the compensation benefits to which such employe is entitled under this act, the [secretary] Department may, if [he] it deems it necessary, require the employer to file security [, satisfactory to the secretary,] to secure the payment of benefits due such employe or his dependents under this act; and

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

(d) If an employe alleges an injury incurred with an employer who is domiciled in another state and who has not secured the payment of compensation as required

by this act, such employe shall submit to the fund and to any workers' compensation judge hearing a petition against the fund, a decision, notice or ruling from such other state or its licensees that the employee has sought and is not entitled to benefits in such other state. No compensation shall be payable from the fund until the employe submits such decision, notice or ruling.

[(d)] (e) As used in this section:

(1) "United States" includes only the states of the United States and the District of Columbia.

(2) "State" includes any state of the United States, the District of Columbia, or any Province of Canada.

(3) "Carrier" includes any insurance company licensed to write workmen's compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workmen's compensation law.

(4) A person's employment is principally localized in this or another state when (i) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (ii) having worked at or from such place of business, his duties have required him to go outside of the State not over one year, or (iii) if clauses (1) and (2) foregoing are not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

(5) An employe whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this act.

(6) "Workmen's compensation law" includes "occupational disease law."

Sec. 2 -- Effective date:

The amendments to sections 1602, 1605, 1609, 1610 and 1611 shall take effect immediately.

The amendments to sections 1603(d) and 1603(e) apply to all claims in which notice under section 1603 is provided to the fund on or after the effective date of this act.

The amendments to section 1601, 1603(b), 1603(f), 1604 and 305.2 shall apply retroactively to all claims existing as of the effective date of this act for which compensation has not been paid or awarded.

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 to read as follows:

SECTION 1607. ASSESSMENTS AND TRANSFERS.

- (A) FOR THE PURPOSE OF ESTABLISHING AND MAINTAINING THE FUND, THE SUM OF \$1,000,000 IS HEREBY TRANSFERRED FROM THE ADMINISTRATION FUND ESTABLISHED UNDER SECTION 446 TO THE FUND FOR OPERATION OF THE FUND FOR THE PERIOD COMMENCING ON THE EFFECTIVE DATE OF THIS SECTION THROUGH JUNE 30, 2007. THE DEPARTMENT SHALL CALCULATE THE AMOUNT NECESSARY TO MAINTAIN THE FUND AND SHALL ASSESS INSURERS AND SELF-INSURED EMPLOYERS AS IS NECESSARY TO PROVIDE AN AMOUNT SUFFICIENT TO PAY OUTSTANDING AND ANTICIPATED CLAIMS IN THE FOLLOWING YEAR IN A TIMELY MANNER AND TO MEET THE COSTS OF THE DEPARTMENT TO ADMINISTER THE FUND. THE FUND SHALL BE MAINTAINED IN THE SAME MANNER AS THE WORKMEN'S COMPENSATION ADMINISTRATION FUND UNDER SECTION 446 AND THE REGULATIONS THEREUNDER. IN NO EVENT SHALL ANY ANNUAL ASSESSMENT EXCEED 0.1% OF THE TOTAL COMPENSATION PAID BY ALL INSURERS OR SELF-INSURED EMPLOYERS DURING THE PREVIOUS CALENDAR YEAR.
- (B) FOR THE PURPOSES OF FURTHER MAINTAINING THE FUND, THE SUM OF \$4,000,000 IS HEREBY TRANSFERRED TO THE FUND FROM THE ADMINISTRATION FUND ESTABLISHED UNDER SECTION 446.

(C) FOR THE PURPOSES OF FURTHER MAINTAINING THE
FUND, THE SUM OF \$3,000,000 IS HEREBY TRANSFERRED TO
THE FUND FROM THE ADMINISTRATION FUND ESTABLISHED
UNDER SECTION 446.

SECTION 2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.