

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An
2 act defining the liability of an employer to pay damages for
3 injuries received by an employe in the course of employment;
4 establishing an elective schedule of compensation; providing
5 procedure for the determination of liability and compensation
6 thereunder; and prescribing penalties," in damages by action
7 at law, further providing for recovery; in liability and
8 compensation, further providing for schedule of compensation,
9 repealing provisions relating to computation of benefits and
10 providing for computation of benefits; in procedure, further
11 providing for compromise and release, for collective
12 bargaining agreement and for workers' compensation insurance;
13 in additional coverages, further providing for irrebuttable
14 presumption; in Self-Insurance Guaranty Fund, further
15 providing for definitions and for prefund account; and, in
16 Uninsured Employers Guaranty Fund, further providing for
17 definitions.

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

20 Section 1. Sections 204(a) and 306(g) introductory
21 paragraph, (4), (5) and (6) and (h) of the act of June 2, 1915
22 (P.L.736, No.338), known as the Workers' Compensation Act, are
23 amended to read:

24 Section 204. (a) No agreement, composition, or release of
25 damages made before the date of any injury shall be valid or

1 shall bar a claim for damages resulting therefrom; and any such
2 agreement is declared to be against the public policy of this
3 Commonwealth. The receipt of benefits from any association,
4 society, or fund shall not bar the recovery of damages by action
5 at law, nor the recovery of compensation under article three
6 hereof; and any release executed in consideration of such
7 benefits shall be void: Provided, however, That if the employe
8 receives unemployment compensation benefits, such amount or
9 amounts so received shall be credited as against the amount of
10 the award made under the provisions of sections 108 and 306,
11 except for benefits payable under section 306(c) or [307] 307.1.
12 Fifty per centum of the benefits commonly characterized as "old
13 age" benefits under the Social Security Act (49 Stat. 620, 42
14 U.S.C. § 301 et seq.) shall also be credited against the amount
15 of the payments made under sections 108 and 306, except for
16 benefits payable under section 306(c): Provided, however, That
17 the Social Security offset shall not apply if old age Social
18 Security benefits were received prior to the compensable injury.
19 The severance benefits paid by the employer directly liable for
20 the payment of compensation and the benefits from a pension plan
21 to the extent funded by the employer directly liable for the
22 payment of compensation which are received by an employe shall
23 also be credited against the amount of the award made under
24 sections 108 and 306, except for benefits payable under section
25 306(c). The employe shall provide the insurer with proper
26 authorization to secure the amount which the employe is
27 receiving under the Social Security Act.

28 * * *

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

1 * * *

2 (g) Should the employe die from some other cause than the
3 injury, payments of compensation to which the deceased would
4 have been entitled to under section 306(c)(1) to (25) shall be
5 paid to the following persons who at the time of the death of
6 the deceased were dependents [within the definition of clause 7
7 of section 307] as defined in section 307.1 and in the following
8 order and amounts:

9 * * *

10 (4) If there is no surviving widow or widower and no
11 surviving child or children of the deceased then to that
12 dependent or those dependents named in [clause 5 of section 307]
13 section 307.1(a)(5).

14 (5) If there are no persons eligible as named above or in
15 those classes then to those persons who are named in [clause 6
16 of section 307] section 307.1(a)(6).

17 (6) When such compensation is paid to dependents above
18 named, compensation shall not cease even though the person
19 receiving the payments ceases to be a dependent as defined in
20 section [307] 307.1.

21 * * *

22 (h) Any person receiving compensation under section 306(a)
23 or (c)(23) or [307] 307.1 as a result of an injury which
24 occurred prior to August 31, 1993, shall, beginning January 1,
25 2007, receive a minimum amount of one hundred dollars (\$100) per
26 week. The additional compensation shall be paid by the self-
27 insured employer or insurance carrier making payment and shall
28 be reimbursed in advance by the Commonwealth on a quarterly
29 basis as provided in rules and regulations of the department.
30 The payment of additional compensation shall be made by the

1 carrier or self-insured employer only during those fiscal years
2 for which appropriations are made to cover reimbursement.

3 Section 2. Section 307 of the act is repealed:

4 [Section 307. In case of death, compensation shall be
5 computed on the following basis, and distributed to the
6 following persons: Provided, That in no case shall the wages of
7 the deceased be taken to be less than fifty per centum of the
8 Statewide average weekly wage for purposes of this section:

9 (1) If there be no widow nor widower entitled to
10 compensation, compensation shall be paid to the guardian of the
11 child or children, or, if there be no guardian, to such other
12 persons as may be designated by the board as hereinafter
13 provided as follows:

14 (a) If there be one child, thirty-two per centum of wages of
15 deceased, but not in excess of the Statewide average weekly
16 wage.

17 (b) If there be two children, forty-two per centum of wages
18 of deceased, but not in excess of the Statewide average weekly
19 wage.

20 (c) If there be three children, fifty-two per centum of
21 wages of deceased, but not in excess of the Statewide average
22 weekly wage.

23 (d) If there be four children, sixty-two per centum of wages
24 of deceased, but not in excess of the Statewide average weekly
25 wage.

26 (e) If there be five children, sixty-four per centum of
27 wages of deceased, but not in excess of the Statewide average
28 weekly wage.

29 (f) If there be six or more children, sixty-six and two-
30 thirds per centum of wages of deceased, but not in excess of the

1 Statewide average weekly wage.

2 The amounts payable under (b), (c), (d), (e) and (f) of clause
3 (1) of this section shall be divided equally among the children
4 if those children are with different guardians.

5 (2) To the widow or widower, if there be no children, fifty-
6 one per centum of wages, but not in excess of the Statewide
7 average weekly wage.

8 (3) To the widow or widower who is the guardian of all of
9 the deceased's children, payment shall be as follows:

10 (a) If there is one child, sixty per centum of wages, but
11 not in excess of the Statewide average weekly wage.

12 (b) If there are two or more children, sixty-six and two-
13 thirds per centum of wages, but not in excess of the Statewide
14 average weekly wage.

15 (4) If there is a widow or widower who is not the guardian
16 of all of the deceased's children, the widow or widower and to
17 the respective guardians as follows:

18 (a) If there is one child, a total of sixty per centum of
19 wages, but not in excess of the Statewide average weekly wage,
20 to be divided equally between the widow or widower and the
21 child.

22 (b) If there are two or more children, a total of sixty-six
23 and two-thirds per centum of wages, but not in excess of the
24 Statewide average weekly wage, to be divided as follows: thirty-
25 three and one-third per centum to the widow or widower and the
26 remainder to be divided equally among the children.

27 (5) If there be neither widow, widower, nor children
28 entitled to compensation, then to the father or mother, if
29 dependent to any extent upon the employe at the time of the
30 injury, thirty-two per centum of wages but not in excess of the

1 Statewide average weekly wage: Provided, however, That in the
2 case of a minor child who has been contributing to his parents,
3 the dependency of said parents shall be presumed: And provided
4 further, That if the father or mother was totally dependent upon
5 the deceased employe at the time of the injury, the compensation
6 payable to such father or mother shall be fifty-two per centum
7 of wages, but not in excess of the Statewide average weekly
8 wage.

9 (6) If there be neither widow, widower, children, nor
10 dependent parent, entitled to compensation, then to the brothers
11 and sisters, if actually dependent upon the decedent for support
12 at the time of his death, twenty-two per centum of wages for one
13 brother or sister, and five per centum additional for each
14 additional brother or sister, with a maximum of thirty-two per
15 centum of wages of deceased, but not in excess of the Statewide
16 average wage, such compensation to be paid to their guardian, or
17 if there be no guardian, to such other person as may be
18 designated by the board, as hereinafter provided.

19 (7) Whether or not there be dependents as aforesaid, the
20 reasonable expense of burial, not exceeding three thousand
21 dollars (\$3,000), which shall be paid by the employer or insurer
22 directly to the undertaker (without deduction of any amounts
23 theretofore paid for compensation or for medical expenses).

24 Compensation shall be payable under this section to or on
25 account of any child, brother, or sister, only if and while such
26 child, brother, or sister, is under the age of eighteen unless
27 such child, brother or sister is dependent because of disability
28 when compensation shall continue or be paid during such
29 disability of a child, brother or sister over eighteen years of
30 age or unless such child is enrolled as a full-time student in

1 any accredited educational institution when compensation shall
2 continue until such student becomes twenty-three. No
3 compensation shall be payable under this section to a widow,
4 unless she was living with her deceased husband at the time of
5 his death, or was then actually dependent upon him and receiving
6 from him a substantial portion of her support. No compensation
7 shall be payable under this section to a widower, unless he be
8 incapable of self-support at the time of his wife's death and be
9 at such time dependent upon her for support. If members of
10 decedent's household at the time of his death, the terms "child"
11 and "children" shall include step-children, adopted children and
12 children to whom he stood in loco parentis, and children of the
13 deceased and shall include posthumous children. Should any
14 dependent of a deceased employe die or remarry, or should the
15 widower become capable of self-support, the right of such
16 dependent or widower to compensation under this section shall
17 cease except that if a widow remarries, she shall receive one
18 hundred four weeks compensation at a rate computed in accordance
19 with clause (2) in a lump sum after which compensation shall
20 cease: Provided, however, That if, upon investigation and
21 hearing, it shall be ascertained that the widow or widower is
22 living with a man or woman, as the case may be, in meretricious
23 relationship and not married, or the widow living a life of
24 prostitution, the board may order the termination of
25 compensation payable to such widow or widower. If the
26 compensation payable under this section to any person shall, for
27 any cause, cease, the compensation to the remaining persons
28 entitled thereunder shall thereafter be the same as would have
29 been payable to them had they been the only persons entitled to
30 compensation at the time of the death of the deceased.

1 The board may, if the best interest of a child or children
2 shall so require, at any time order and direct the compensation
3 payable to a child or children, or to a widow or widower on
4 account of any child or children, to be paid to the guardian of
5 such child or children, or, if there be no guardian, to such
6 other person as the board as hereinafter provided may direct. If
7 there be no guardian or committee of any minor, dependent, or
8 insane employe, or dependent, on whose account compensation is
9 payable, the amount payable on account of such minor, dependent,
10 or insane employe, or dependent may be paid to any surviving
11 parent, or such other person as the board may order and direct,
12 and the board may require any person, other than a guardian or
13 committee, to whom it has directed compensation for a minor,
14 dependent, or insane employe, or dependent to be paid, to
15 render, as and when it shall so order, accounts of the receipts
16 and disbursements of such person, and to file with it a
17 satisfactory bond in a sum sufficient to secure the proper
18 application of the moneys received by such person.]

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

20 Section 307.1. (a) Subject to subsections (b) and (c), in
21 case of death, compensation shall be computed on the following
22 basis and distributed as follows:

23 (1) If there is no widow or widower entitled to
24 compensation, the following shall apply:

25 (i) Compensation shall be paid to the guardian of the child
26 or children or, if there is no guardian, to other persons as may
27 be designated by the board as follows:

28 (A) If there is one child, thirty-two per centum of wages of
29 the deceased.

30 (B) If there are two children, forty-two per centum of wages

1 of the deceased.

2 (C) If there are three children, fifty-two per centum of
3 wages of the deceased.

4 (D) If there are four children, sixty-two per centum of
5 wages of the deceased.

6 (E) If there are five children, sixty-four per centum of
7 wages of the deceased.

8 (F) If there are six or more children, sixty-six and two-
9 thirds per centum of wages of the deceased.

10 (ii) The amounts payable under subparagraph (i) (B), (C),
11 (D), (E) and (F) shall be divided equally among the children if
12 those children are with different guardians.

13 (2) If there are no children, fifty-one per centum of wages
14 of the deceased shall be paid to the widow or widower.

15 (3) Compensation shall be paid to the widow or widower who
16 is the guardian of all of the deceased's children as follows:

17 (i) If there is one child, sixty per centum of wages.

18 (ii) If there are two or more children, sixty-six and two-
19 thirds per centum of wages.

20 (4) If there is a widow or widower who is not the guardian
21 of all of the deceased's children, compensation shall be paid to
22 the widow or widower and to the respective guardians as follows:

23 (i) If there is one child, a total of sixty per centum of
24 wages, to be divided equally between the widow or widower and
25 the child.

26 (ii) If there are two or more children, a total of sixty-six
27 and two-thirds per centum of wages, to be divided as follows:

28 (A) thirty-three and one-third per centum to the widow or
29 widower; and

30 (B) the remainder to be divided equally among the children.

1 (5) If there is not a widow, widower or child entitled to
2 compensation, compensation shall be paid to the father or
3 mother, if dependent to any extent upon the employe at the time
4 of the injury, in the amount of thirty-two per centum of wages,
5 subject to the following:

6 (i) In the case of a minor child who has been contributing
7 to the minor child's parents, the dependency of the parents
8 shall be presumed.

9 (ii) If the father or mother was totally dependent upon the
10 deceased employe at the time of the injury, the compensation
11 payable to the father or mother shall be fifty-two per centum of
12 wages.

13 (6) If there is not a widow, widower, child or dependent
14 parent entitled to compensation, compensation shall be paid to
15 the brothers and sisters, if actually dependent upon the
16 decedent for support at the time of the decedent's death, in the
17 amount of twenty-two per centum of wages for one brother or
18 sister and five per centum additional for each additional
19 brother or sister, with a maximum of thirty-two per centum of
20 wages of the deceased, with the compensation to be paid to their
21 guardian or, if there is no guardian, to other persons as may be
22 designated by the board, as further provided in this section.

23 (7) Whether or not there are dependents as described in
24 paragraph (5) or (6), the reasonable expense of burial, not
25 exceeding three thousand dollars (\$3,000), which shall be paid
26 by the employer or insurer directly to the undertaker without
27 deduction of any amount paid for compensation under this section
28 or for medical expenses.

29 (b) In no case shall the wages of the deceased be taken to
30 be less than fifty per centum of the Statewide average weekly

1 wage for purposes of this section.

2 (c) Compensation under this section may not be paid in
3 excess of the Statewide average weekly wage.

4 (d) The following shall also apply regarding compensation
5 under this section:

6 (1) Compensation shall be payable under this section to or
7 on account of a child, brother or sister, only if the child,
8 brother or sister is under the age of eighteen years unless:

9 (i) the child, brother or sister is dependent because of
10 disability, in which case compensation shall continue or be paid
11 during the disability of the child, brother or sister who is
12 over eighteen years of age; or

13 (ii) the child is enrolled as a full-time student in an
14 accredited educational institution, in which case compensation
15 shall continue until the student reaches twenty-three years of
16 age.

17 (2) No compensation shall be payable under this section to a
18 widow or widower unless that individual was living with that
19 individual's deceased spouse at the time of the spouse's death
20 or was then actually dependent upon the spouse and receiving
21 from the spouse a substantial portion of support.

22 (3) No compensation shall be payable under this section to a
23 widow or widower, unless that individual is incapable of self-
24 support at the time of the death of that individual's spouse and
25 at the time was dependent upon the spouse for support.

26 (4) If members of the decedent's household at the time of
27 that individual's death, the terms "child" and "children" shall
28 include step-children, adopted children and children to whom
29 that individual stood in loco parentis. Children of the deceased
30 shall include posthumous children.

1 (5) Except as provided in paragraph (6), if a dependent of a
2 deceased employe dies or remarries, or if the widow or widower
3 becomes capable of self-support, the right of the dependent,
4 widow or widower to compensation under this section shall cease.

5 (6) Subject to paragraph (7), if a widow or widower
6 remarries, that individual shall receive one hundred four weeks
7 compensation at a rate computed in accordance with paragraph (2)
8 in a lump sum after which compensation shall cease.

9 (7) If a widow or widower of a first responder remarries,
10 compensation under this section for that individual shall not
11 cease solely as the result of the remarriage. As used in this
12 paragraph, the term "first responder" shall mean a law
13 enforcement officer, a firefighter, rescue personnel or another
14 individual who provides emergency response, first aid or other
15 medically related assistance either in the course of the
16 individual's occupational duties or as a volunteer.

17 (8) If the compensation payable under this section to any
18 person shall cease for any cause, the compensation to the
19 remaining persons entitled under this section shall be the same
20 as would have been payable to them had they been the only
21 persons entitled to compensation at the time of the death of the
22 deceased.

23 (d) If the best interest of a child or children shall so
24 require, the board may at any time order and direct the
25 compensation payable to a child or children, or to a widow or
26 widower on account of a child or children, to be paid to the
27 guardian of the child or children, or, if there is no guardian,
28 to other persons as the board may direct, subject to the
29 following:

30 (1) If there is no guardian or committee of a minor, a

1 dependent or an incapacitated employe or dependent on whose
2 account compensation is payable, the amount payable on account
3 of the minor, dependent or incapacitated employe or dependent
4 may be paid to a surviving parent or other persons as the board
5 may order and direct.

6 (2) The board may require a person, other than a guardian or
7 committee, to whom it has directed compensation for a minor, a
8 dependent or an incapacitated employe or dependent to be paid,
9 to render, as and when it shall so order, accounts of the
10 receipts and disbursements of the person and to file with it a
11 satisfactory bond in a sum sufficient to secure the proper
12 application of the money received by the person.

13 Section 4. Sections 449(c) (8) (v), 450 (a) (1), 451 and 601 (b)
14 of the act are amended to read:

15 Section 449. * * *

16 (c) Every compromise and release by stipulation shall be in
17 writing and duly executed, and the signature of the employe,
18 widow or widower or dependent shall be attested by two witnesses
19 or acknowledged before a notary public. The document shall
20 specify:

21 * * *

22 (8) in the case of death:

23 * * *

24 (v) the amount paid or to be paid under section [307] 307.1
25 and to whom payment is to be made;

26 * * *

27 Section 450. (a) Any employer and the recognized or
28 certified and exclusive representative of its employe may agree
29 by collective bargaining to establish certain binding
30 obligations and procedures relating to workers' compensation:

1 Provided, however, That the scope of the agreement shall be
2 limited to:

3 (1) benefits supplemental to those provided in sections 306
4 and [307] 307.1;

5 * * *

6 Section 451. Insurers, including the State Workers'
7 Insurance Fund, are authorized to provide, on a voluntary basis,
8 to sole proprietors, partners of a partnership or members of a
9 limited liability company, workers' compensation insurance
10 equivalent to that which employers provide to employes which
11 insure their liability under Article III. For the purposes of
12 computing the premium charge, the wages of a sole proprietor,
13 partner or member shall be at least equal to the minimum payroll
14 for a corporate officer, and no more than the maximum payroll
15 for a corporate officer, as established by underwriting rules
16 approved by the Insurance Department. If an injury is
17 compensable under the terms of this coverage, it shall be a
18 rebuttable presumption that the wages of the injured individual
19 are at least equal to minimum payroll for a corporate officer
20 for the purposes of calculating his average weekly wage and
21 paying benefits under sections 306 and [307] 307.1.

22 Section 601. * * *

23 (b) In all cases where an injury which is compensable under
24 the terms of this act is received by an employe as defined in
25 this section, there is an irrebuttable presumption that his
26 wages shall be at least equal to the Statewide average weekly
27 wage for the purpose of computing his compensation under
28 sections 306 and [307] 307.1.

29 * * *

30 Section 5. The definition of "compensation" in section 901

1 of the act is amended to read:

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

5 * * *

6 "Compensation" means benefits paid pursuant to sections 306
7 and [307] 307.1.

8 * * *

9 Section 6. Section 909(c) introductory paragraph and (e)(1)
10 of the act are amended to read:

11 Section 909. * * *

12 (c) Transfers to the account pursuant to subsection (a)
13 shall be used to pay claims for loss of wages occurring or
14 medical treatment provided after the effective date of this
15 section under sections 306(a), (b), (c) and (f.1) and [307]
16 307.1 of this act or under sections 306(a), (b) and (c) and 307
17 of the act of June 21, 1939 (P.L.566, No.284), known as "The
18 Pennsylvania Occupational Disease Act," to a prefund claimant
19 upon exhaustion of the security posted by the liable defaulted
20 self-insurer: Provided, That:

21 * * *

22 (e) The following shall apply:

23 (1) If the department projects that the aggregate payments
24 to prefund claimants pursuant to this section during any one
25 fiscal year may exceed the transfer to the account for that
26 year, the secretary shall order the payment of benefits under
27 sections 306(a), (b) and (c) and [307] 307.1 at a percentage of
28 the full amounts payable under this act and "The Pennsylvania
29 Occupational Disease Act." The percentage shall be uniformly
30 applied to all benefits under those sections paid during that

1 fiscal year. The secretary shall adjust that percentage from
2 time to time as is necessary based on updated projections on
3 payment of benefits.

4 * * *

5 Section 7. The definition of "compensation" in section 1601
6 of the act is amended to read:

7 Section 1601. Definitions.

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

11 "Compensation." Benefits paid pursuant to sections 306 and
12 [307] 307.1.

13 * * *

14 Section 8. This act shall take effect in 60 days.