WORKERS' COMPENSATION ACT

Act of Jun. 2, 1915, P.L. 736, No. 338 Cl. 77

Reenacted and Amended June 21, 1939, P.L.520, No.281

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. (Title reenacted and amended June 4, 1937, P.L.1552, No.323)

Compiler's Note: Section 15 of Act 57 of 1997 provided that Act 338 is repealed insofar as it is inconsistent with section 2218 of the act of April 9, 1929 (P.L.117, No.175), known as The Administrative Code of 1929.

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ARTICLE I.
INTERPRETATION AND DEFINITIONS

Section 101. That this act shall be called and cited as the Workers' Compensation Act, and shall apply to all injuries occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and extraterritorially as provided by section 305.2.

(101 amended July 2, 1993, P.L.190, No.44)

Section 102. Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Section 103. The term "employer," as used in this act, is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.

Section 104. The term "employe," as used in this act is declared to be synonymous with servant, and includes--

All natural persons who perform services for another for a valuable consideration, exclusive of persons subject to coverage under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) or the Merchant Marine Act

of 1920 (41 Stat. 988, 46 U.S.C. § 861 et seq.) or persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in the worker's own home, or on other premises, not under the control or management of the employer. Except as hereinafter provided in clause (c) of section 302 and sections 305 and 321, every executive officer of a corporation elected or appointed in accordance with the charter and by-laws of the corporation, except elected officers of the Commonwealth or any of its political subdivisions, shall be an employe of the corporation. An executive officer of a for-profit corporation or an executive officer of a nonprofit corporation who serves voluntarily and without remuneration may, however, elect not to be an employe of the corporation for the purposes of this act. For purposes of this section, an executive officer of a for-profit corporation is an individual who has an ownership interest in the corporation, in the case of a Subchapter S corporation as defined by the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," or an ownership interest in the corporation of at least five per centum, in the case of a Subchapter C corporation as defined by the Tax Reform Code of 1971.

(104 amended June 18, 2014, P.L.762, No.63)

Section 105. The term "contractor," as used in article two, section two hundred and three, and article three, section three hundred and two (b), shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the injury occurs, but shall include a sub-contractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken.

(105 amended Mar. 29, 1972, P.L.159, No.61)

Section 105.1. The term "the Statewide average weekly wage," as used in this act, means that amount which shall be determined annually by the department for each calendar year on the basis of employment covered by the Pennsylvania Unemployment Compensation Law for the twelve-month period ending June 30 preceding the calendar year.

(105.1 added Mar. 29, 1972, P.L.159, No.61)

Section 105.2. The terms "the maximum weekly compensation payable" and "the maximum compensation payable per week," as used in this act, mean sixty-six and two-thirds per centum of "the Statewide average weekly wage" as defined in section 105.1. Effective July 1, 1975, the terms "the maximum weekly compensation payable" and "the maximum compensation payable per week" as used in this act for injuries or death after the effective date of this amendatory act shall mean the Statewide average weekly wage as defined in section 105.

(105.2 amended Dec. 5, 1974, P.L.782, No.263)

Section 105.3. The term "construction design professional," as used in this act, means a professional engineer or land surveyor licensed by the State Registration Board for Professional Engineers, Land Surveyors and Geologists under the act of May 23, 1945 (P.L.913, No.367), known as the "Engineer, Land Surveyor and Geologist Registration Law," a landscape architect who is licensed by the State Board of Landscape Architects under the act of January 24, 1966 (1965 P.L.1527, No.535), known as the "Landscape Architects' Registration Law," an architect who is licensed by the Architects Licensure Board under the act of December 14, 1982 (P.L.1227, No.281), known

as the "Architects Licensure Law," or any corporation or association, including professional corporations, organized or registered under the act of December 21, 1988 (P.L.1444, No.177), known as the "General Association Act of 1988," practicing engineering, architecture, landscape architecture or surveying in this Commonwealth.

(105.3 added July 2, 1993, P.L.190, No.44)

Section 105.4. The term "hazardous occupational noise," as used in this act, means noise levels exceeding permissible noise exposures as defined in Table G-16 of OSHA Occupational Noise Exposure Standards, 29 CFR 1910.95 (relating to occupational noise exposure) (July 1, 1994).

(105.4 added Feb. 22, 1995, P.L.1, No.1)

Compiler's Note: Section 3 of Act 1 of 1995, which added section 105.4, provided that section 105.4 shall apply to claims filed on or after the effective date of Act 1.

Section 105.5. The term "Impairment Guides," as used in this act, means the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition (June 1993).

(105.5 added Feb. 22, 1995, P.L.1, No.1)

Compiler's Note: Section 3 of Act 1 of 1995, which added section 105.5, provided that section 105.5 shall apply to claims filed on or after the effective date of Act 1 and shall apply retroactively to all claims existing as of the effective date of Act 1 for which compensation has not been paid or awarded.

Section 105.6. The term "long-term exposure," as used in this act, means exposure to noise exceeding the permissible daily exposure for at least three days each week for forty weeks of one year.

(105.6 added Feb. 22, 1995, P.L.1, No.1)

Compiler's Note: Section 3 of Act 1 of 1995, which added section 105.6, provided that section 105.6 shall apply to claims filed on or after the effective date of Act 1.

Section 106. The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

Section 107. The term "Department," when used in this act, shall mean the Department of Labor and Industry of this Commonwealth.

The term "Board," when used in this act shall mean The Workers' Compensation Appeal Board of this Commonwealth.

(107 amended June 24, 1996, P.L.350, No.57)

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases.

(a) Poisoning by arsenic, lead, mercury, manganese, or beryllium, their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(b) Poisoning by phosphorus, its preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(c) Poisoning by methanol, carbon bisulfide, carbon monoxide, hydrocarbon distillates (naphthas and others) or halogenated hydrocarbons, toluene diisocyanate (T.D.1.) or any preparations containing these chemicals or any of them, in any occupation involving direct contact with, handling thereof, or exposure thereto. ((c) amended Apr. 4, 1974, P.L.239, No.56)

(d) Poisoning by benzol, or by nitro, amido, or amino derivatives of benzol (dinitro-benzol, aniline, and others), or their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(e) Caisson disease (compressed air illness) resulting from engaging in any occupation carried on in compressed air.

(f) Radium poisoning or disability, due to radioactive properties of substances or to Roentgen-ray (X-rays) in any occupation involving direct contact with, handling thereof, or exposure thereto.

(g) Poisoning by, or ulceration from chronic acid, or bichromate of ammonium, bichromate of potassium, or bichromate of sodium, or their preparations, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(h) Epitheliomatous cancer or ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of those substances, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(i) Infection or inflammation of the skin due to oils, cutting compounds, lubricants, dust, liquids, fumes, gasses, or vapor, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(j) Anthrax occurring in any occupation involving the handling of, or exposure to wool, hair, bristles, hides, or skins, or bodies of animals either alive or dead.

(k) Silicosis in any occupation involving direct contact with, handling of, or exposure to the dust of silicon dioxide. ((k) amended Dec. 6, 1972, P.L.1627, No.337)

(l) Asbestosis and cancer resulting from direct contact with, handling of, or exposure to the dust of asbestos in any occupation involving such contact, handling or exposure. July 9, 1976, P.L.935, No.180)

(m) Tuberculosis, serum hepatitis, infectious hepatitis or hepatitis C in the occupations of blood processors, fractionators, nursing, or auxiliary services involving exposure to such diseases. ((m) amended Dec. 20, 2001, P.L.967, No.115)

(m.1) Hepatitis C in the occupations of professional and volunteer firefighters, volunteer ambulance corps personnel, volunteer rescue and lifesaving squad personnel, emergency medical services personnel and paramedics, Pennsylvania State Police officers, police officers requiring certification under 53 Pa.C.S. Ch. 21 (relating to employees), and Commonwealth and county correctional employes, and forensic security employes of the Department of Public Welfare, having duties including care, custody and control of inmates involving exposure to such disease. Hepatitis C in any of these occupations shall establish a presumption that such disease is an occupational disease within the meaning of this act, but this presumption shall not be conclusive and may be rebutted. This presumption shall be rebutted if the employer has established an employment screening program, in accordance with guidelines established by the department in coordination with the Department of Health and the Pennsylvania Emergency Management Agency and published in the Pennsylvania Bulletin, and testing pursuant to that program establishes that the employe incurred the Hepatitis C virus prior to any job-related exposure. ((m.1) added Dec. 20, 2001, P.L.967, No.115)

(n) All other diseases (1) to which the claimant is exposed by reason of his employment, and (2) which are causally related to the industry or occupation, and (3) the incidence of which is substantially greater in that industry or occupation than in the general population. For the purposes of this clause,

partial loss of hearing in one or both ears due to noise; and the diseases silicosis, anthraco-silicosis and coal workers' pneumoconiosis resulting from employment in and around a coal mine, shall not be considered occupational diseases.

(o) Diseases of the heart and lungs, resulting in either temporary or permanent total or partial disability or death, after four years or more of service in fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gasses, arising directly out of the employment of any such firemen.

(p) Byssinosis in any occupation involving direct contact with, handling of, or exposure to cotton dust, cotton materials, or cotton fibers.

(q) Coal worker's pneumoconiosis, anthraco-silicosis and silicosis (also known as miner's asthma or black lung) in any occupation involving direct contact with, handling of, or exposure to the dust of anthracite or bituminous coal. ((q) added Dec. 6, 1972, P.L.1627, No.337)

(r) Cancer suffered by a firefighter which is caused by exposure to a known carcinogen which is recognized as a Group 1 carcinogen by the International Agency for Research on Cancer. ((r) added July 7, 2011, P.L.251, No.46)

(108 added Oct. 17, 1972, P.L.930, No.223)

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Compiler's Note: Section 4 of Act 46 of 2011, which added clause (r), provided that the provisions of Act 46 shall apply to all claims filed on or after the effective date of section 4.

Section 109. In addition to the definitions set forth in this article, the following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adjudication" shall have the meaning given in 2 Pa.C.S. § 101 (relating to definitions). (Def. added June 24, 1996, P.L.350, No.57)

"Bill" means a statement or invoice for payment of services under subsection (f.1) of section 306 which identifies the claimant, the date of injury, the payment codes referred to in subsection (f.1) of section 306 and a description of the services provided on or in standard form prescribed by the Department of Labor and Industry.

"Burn facility" means a facility which meets the service standards of the American Burn Association.

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Coordinated care organization" or "CCO" means an organization licensed in Pennsylvania and certified by the Secretary of Labor and Industry on the basis of established criteria possessing the capacity to provide medical services to an injured worker. (Def. amended June 24, 1996, P.L.350, No.57)

"DRG" means diagnosis-related groups.

"HCFA" means the Health Care Financing Administration.

"Health care provider" means any person, corporation, facility or institution licensed or otherwise authorized by the Commonwealth to provide health care services, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist,

podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employe or agent of such person acting in the course and scope of employment or agency related to health care services.

"Health maintenance organization" means an entity defined in and subject to the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."

"Hospital plan corporation" means an entity defined in and subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

"Insurance Company Law of 1921" means the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

"Insurer" means an entity subject to the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," including the State Workmen's Insurance Fund, with which an employer has insured liability under this act pursuant to section 305 or a self-insured employer or fund exempted by the Department of Labor and Industry pursuant to section 305.

"Intermediary" means an organization with a contractual relationship with the Health Care Financing Administration to process Medicare Part A or Part B claims.

"Life-threatening injury" shall be as defined by the American College of Surgeons' triage guidelines regarding use of trauma centers for the region where the services are provided.

"Occupational Disease Act" means the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania Occupational Disease Act."

"Pass-through costs" means Medicare-reimbursed costs to a hospital that "pass through" the prospective payment system and are not included in the diagnosis-related group payments. The term includes medical education, capital expenditures, insurance and interest expense on fixed assets.

"Peer review," for the purpose of undertaking reviews and reports pursuant to section 420, means review by:

(1) an impartial physician or other health care provider selected by the Secretary of Labor and Industry upon recommendation of the deans of the medical colleges located in this Commonwealth;

(2) a panel of such professionals and providers selected by the Secretary of Labor and Industry upon recommendation of the deans of the medical colleges located in this Commonwealth or recommendation of professional associations representing such professionals and providers; or

(3) a Peer Review Organization approved by the commissioner and selected by the Secretary of Labor and Industry.

"Professional health service corporation" means an entity defined in and subject to 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations).

"Provider" means a health care provider.

"Referee" means a workers' compensation judge, as designated under section 401.

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

"Trauma center" means a facility accredited by the Pennsylvania Trauma Systems Foundation under the act of July 3, 1985 (P.L.164, No.45), known as the "Emergency Medical Services Act."

"Urgent injury" shall be as defined by the American College of Surgeons' triage guidelines regarding use of trauma centers for the region where the services are provided.

"Usual and customary charge" means the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided.

"Utilization review organizations" shall be those organizations consisting of an impartial physician, surgeon or other health care provider or a panel of such professionals and providers as authorized by the Secretary of Labor and Industry and published as a list in the form of a notice in the Pennsylvania Bulletin for the purpose of reviewing the reasonableness and necessity of treatment by a health care provider pursuant to section 306(f.1)(6).

(109 added July 2, 1993, P.L.190, No.44)

ARTICLE II.
DAMAGES BY ACTION AT LAW

Section 201. That in any action brought to recover damages for personal injury to an employe in the course of his employment, or for death resulting from such injury, it shall not be a defense---

(a) That the injury was caused in whole or in part by the negligence of a fellow employe; or

(b) That the employe had assumed the risk of the injury; or

(c) That the injury was caused in any degree by the negligence of such employe, unless it be established that the injury was caused by such employe's intoxication or by his reckless indifference to danger. The burden of proving such intoxication or reckless indifference to danger shall be upon the defendant, and the question shall be one of fact to be determined by the jury.

Section 202. The employer shall be liable for the negligence of all employes, while acting within the scope of their employment, including engineers, chauffeurs, miners, mine-foremen, fire-bosses, mine superintendents, plumbers, officers of vessels, and all other employes licensed by the Commonwealth or other governmental authority, if the employer be allowed by law the right of free selection of such employes from the class of persons thus licensed; and such employes shall be the agents and representatives of their employers and their employers shall be responsible for the acts and neglects of such employes, as in the case of other agents and employes of their employers; and, notwithstanding the employment of such employes, the property in and about which they are employed, and the use and operation thereof, shall at all times be under the supervision, management and control of their employers.

Section 203. An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to such employe or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employe.

Section 204. (a) No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action

at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of sections 108 and 306, except for benefits payable under section 306(c) or 307. Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall also be credited against the amount of the payments made under sections 108 and 306, except for benefits payable under section 306(c): Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior to the compensable injury. The severance benefits paid by the employer directly liable for the payment of compensation and the benefits from a pension plan to the extent funded by the employer directly liable for the payment of compensation which are received by an employe shall also be credited against the amount of the award made under sections 108 and 306, except for benefits payable under section 306(c). The employe shall provide the insurer with proper authorization to secure the amount which the employe is receiving under the Social Security Act.

(b) For the exclusive purpose of determining eligibility for compensation under the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," any employe who does not meet the monetary and credit week requirements under section 401(a) of that act due to a work-related injury compensable under this act may elect to have his base year consist of the four complete calendar quarters immediately preceding the date of the work-related injury.

(c) The employe is required to report regularly to the insurer the receipt of unemployment compensation benefits, wages received in employment or self-employment, benefits commonly characterized as "old age" benefits under the Social Security Act, severance benefits and pension benefits, which post-date the compensable injury under this act, subject to the fraud provisions of Article XI.

(d) The department shall prepare the forms necessary for the enforcement of this section and issue rules and regulations as appropriate.

(204 amended June 24, 1996, P.L.350, No.57)

Compiler's Note: Section 32.1 of Act 57 of 1996, which amended section 204, provided that the amendment of subsec. (a) shall apply only to claims for injuries which are suffered on or after the effective date of section 32.1.

Section 205. If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.

(205 added Aug. 24, 1963, P.L.1175, No.496)

ARTICLE III.
LIABILITY AND COMPENSATION

(Hdg. amended Dec. 5, 1974, P.L.782, No.263)

Section 301. (a) Every employer shall be liable for compensation for personal injury to, or for the death of each employe, by an injury in the course of his employment, and such compensation shall be paid in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article: Provided, That no compensation shall be paid when the injury or death is intentionally self inflicted, or is caused by the employe's violation of law, including, but not limited to, the illegal use of drugs, but the burden of proof of such fact shall be upon the employer, and no compensation shall be paid if, during hostile attacks on the United States, injury or death of employes results solely from military activities of the armed forces of the United States or from military activities or enemy sabotage of a foreign power. In cases where the injury or death is caused by intoxication, no compensation shall be paid if the injury or death would not have occurred but for the employe's intoxication, but the burden of proof of such fact shall be upon the employer. ((a) amended July 2, 1993, P.L.190, No.44)

(b) The right to receive compensation under this act shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this Commonwealth relating to the employment of minors, or that he obtained his employment by misrepresenting his age.

(c) (1) The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employe, regardless of his previous physical condition, except as provided under subsection (f), arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury or is aggravated, reactivated or accelerated by the injury; and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury. The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe because of reasons personal to him, and not directed against him as an employe or because of his employment; nor shall it include injuries sustained while the employe is operating a motor vehicle provided by the employer if the employe is not otherwise in the course of employment at the time of injury; but shall include all other injuries sustained while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employe, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe's presence thereon being required by the nature of his employment.

(2) The terms "injury," "personal injury," and "injury arising in the course of his employment," as used in this act, shall include, unless the context clearly requires otherwise, occupational disease as defined in section 108 of this act: Provided, That whenever occupational disease is the basis for compensation, for disability or death under this act, it shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date

of employment in an occupation or industry to which he was exposed to hazards of such disease: And provided further, That if the employe's compensable disability has occurred within such period, his subsequent death as a result of the disease shall likewise be compensable. The provisions of this paragraph (2) shall apply only with respect to the disability or death of an employe which results in whole or in part from the employe's exposure to the hazard of occupational disease after June 30, 1973 in employment covered by The Pennsylvania Workmen's Compensation Act. The employer liable for compensation provided by section 305.1 or section 108, subsections (k), (l), (m), (o), (p), (q) or (r), shall be the employer in whose employment the employe was last exposed for a period of not less than one year to the hazard of the occupational disease claimed. In the event the employe did not work in an exposure at least one year for any employer during the three hundred week period prior to disability or death, the employer liable for the compensation shall be that employer giving the longest period of employment in which the employe was exposed to the hazards of the disease claimed.

((c) amended July 7, 2011, P.L.251, No.46)

(d) Compensation for silicosis, anthraco-silicosis, coal worker's pneumoconiosis or asbestosis, shall be paid only when it is shown that the employe has had an aggregate employment of at least two years in the Commonwealth of Pennsylvania, during a period of ten years next preceding the date of disability, in an occupation having a silica, coal or asbestos hazard. ((d) added Oct. 17, 1972, P.L.930, No.223 and amended Dec. 6, 1972, P.L.1627, No.337)

(e) If it be shown that the employe, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard, it shall be presumed that the employe's occupational disease arose out of and in the course of his employment, but this presumption shall not be conclusive. ((e) added Oct. 17, 1972, P.L.930, No.223)

(f) Compensation pursuant to cancer suffered by a firefighter shall only be to those firefighters who have served four or more years in continuous firefighting duties, who can establish direct exposure to a carcinogen referred to in section 108(r) relating to cancer by a firefighter and have successfully passed a physical examination prior to asserting a claim under this subsection or prior to engaging in firefighting duties and the examination failed to reveal any evidence of the condition of cancer. The presumption of this subsection may be rebutted by substantial competent evidence that shows that the firefighter's cancer was not caused by the occupation of firefighting. Any claim made by a member of a volunteer fire company shall be based on evidence of direct exposure to a carcinogen referred to in section 108(r) as documented by reports filed pursuant to the Pennsylvania Fire Information Reporting System and provided that the member's claim is based on direct exposure to a carcinogen referred to in section 108(r). Notwithstanding the limitation under subsection (c)(2) with respect to disability or death resulting from an occupational disease having to occur within three hundred weeks after the last date of employment in an occupation or industry to which a claimant was exposed to the hazards of disease, claims filed pursuant to cancer suffered by the firefighter under section 108(r) may be made within six hundred weeks after the last date of employment in an occupation or industry to which a claimant was exposed to the hazards of disease. The

presumption provided for under this subsection shall only apply to claims made within the first three hundred weeks. ((f) added July 7, 2011, P.L.251, No.46)

Compiler's Note: See section 3 of Act 46 of 2011 in the appendix to this act for special provisions relating to submission of data on amount of successful claims. Section 4 of Act 46, which added clause (r), provided that the provisions of Act 46 shall apply to all claims filed on or after the effective date of section 4.

Section 302. (a) A contractor who subcontracts all or any part of a contract and his insurer shall be liable for the payment of compensation to the employes of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided for in this act. Any contractor or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from the subcontractor primarily liable therefor.

For purposes of this subsection, a person who contracts with another (1) to have work performed consisting of (i) the removal, excavation or drilling of soil, rock or minerals, or (ii) the cutting or removal of timber from lands, or (2) to have work performed of a kind which is a regular or recurrent part of the business, occupation, profession or trade of such person shall be deemed a contractor, and such other person a subcontractor. This subsection shall not apply, however, to an owner or lessee of land principally used for agriculture who is not a covered employer under this act and who contracts for the removal of timber from such land.

(b) Any employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of such employer's regular business entrusted to that employe or contractor, shall be liable for the payment of compensation to such laborer or assistant unless such hiring employe or contractor, if primarily liable for the payment of such compensation, has secured the payment thereof as provided for in this act. Any employer or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefor.

For purposes of this subsection (b), the term "contractor" shall have the meaning ascribed in section 105 of this act.

(c) Any employer employing persons in agricultural labor shall be required to provide workmen's compensation coverage for such employes according to the provisions of this act, if such employer is otherwise covered by the provisions of this act or if during the calendar year such employer pays wages to one employe for agricultural labor totaling one thousand two hundred dollars ($1,200) or more or furnishes employment to one employe in agricultural labor on thirty or more days in any of which events the employer shall be required to provide coverage for all employes. For purposes of this clause, a spouse or a child of the employer under eighteen years of age shall not be deemed an employe unless the services of such spouse or child are engaged by the employer under an express written contract of hire which is filed with the department. ((c) amended June 24, 1996, P.L.350, No.57)

(d) A contractor shall not subcontract all or any part of a contract unless the subcontractor has presented proof of insurance under this act.

(e) (1) Prior to issuing a building permit to a contractor, a municipality shall require the contractor to present proof of workers' compensation insurance or an affidavit that the contractor does not employ other individuals and is not required to carry workers' compensation insurance.

(2) Every building permit issued by a municipality to a contractor shall clearly set forth the name and workers' compensation policy and the contractor's Federal or State Employer Identification Number. This information shall be in addition to any information required by municipal ordinance. If the building permit is issued to an applicant which affirms it is not obligated to maintain workers' compensation insurance under this act, the permit shall clearly set forth the contractor's Federal or State Employer Identification Number and the substance of the affirmation and that the applicant is not permitted to employ any individual to perform work pursuant to the building permit.

(3) Every municipality issuing a building permit shall be named as a workers' compensation policy certificate holder of a contractor-issued building permit. This certificate shall be filed with the municipality's copy of the building permit. An insurer issuing a policy which names a municipality as a workers' compensation policy certificate holder pursuant to this section shall be required to notify that municipality of the expiration or cancellation of any such policy of insurance or policy certificate within three working days of such cancellation or expiration.

(4) A municipality shall issue a stop-work order to a contractor who is performing work pursuant to a building permit, upon receiving actual notice that the contractor's workers' compensation insurance or State-approved self-insured status has been cancelled. Also, if the municipality receives actual notice that a permittee, having filed an affidavit of exemption from workers' compensation insurance, has hired persons to perform work pursuant to a building permit and does not maintain required workers' compensation insurance, the municipality shall issue a stop-work order. This order shall remain in effect until proper workers' compensation coverage is obtained for all work performed pursuant to the building permit.

(f) (1) Where a contractor is performing work for a public body or political subdivision, all contractors and subcontractors shall provide proof of workers' compensation insurance to the public body or political subdivision effective for the duration of the work.

(2) The public body or political subdivision shall issue a stop-work order to any contractor who is performing work for that public body or political subdivision upon receiving notice that any public contractor's workers' compensation insurance, or State-approved self-insurance status, has expired or has been cancelled. If the public body or political subdivision receives actual notice that a contractor, having filed an affidavit of exemption from workers' compensation insurance, has hired persons to perform work for a public body or political subdivision and does not maintain the required workers' compensation insurance or self-insurance, the public body or political subdivision shall issue a stop-work order, which order shall remain in effect until proper workers' compensation coverage is obtained for all work performed pursuant to the contract of work for the public body or political subdivision.

(g) Should such policy of workers' compensation insurance be cancelled or expire during the duration of the work or should the workers' compensation self-insurance status change during

the said period, the contractor shall immediately notify, in writing, the municipality, public body or political subdivision of such cancellation, expiration or change in status.

(h) Nothing in this act shall be the basis of any liability on part of the municipality.

(i) For purposes of subsections (d), (e) and (f), "proof of insurance" shall include a certificate of insurance or self-insurance, demonstrating current coverage and compliance with the requirements of this act, the Occupational Disease Act and the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.), its amendments and supplements, where applicable.

(j) For purposes of subsections (d), (e) and (f), "proof of insurance" shall not be required when the employer has been exempted pursuant to section 304.2.

(302 amended July 2, 1993, P.L.190, No. 44)

Section 303. (a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301 (c)(1) and (2) or occupational disease as defined in section 108.

(b) In the event injury or death to an employe is caused by a third party, then such employe, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to receive damages by reason thereof, may bring their action at law against such third party, but the employer, his insurance carrier, their servants and agents, employes, representatives acting on their behalf or at their request shall not be liable to a third party for damages, contribution, or indemnity in any action at law, or otherwise, unless liability for such damages, contributions or indemnity shall be expressly provided for in a written contract entered into by the party alleged to be liable prior to the date of the occurrence which gave rise to the action.

(303 amended Dec. 5, 1974, P.L.782, No.263)

Section 304. (304 repealed Dec. 5, 1974, P.L.782, No.263)

Section 304.1. (304.1 repealed Mar. 29, 1972, P.L.159, No.61)

Section 304.2. (a) An employer may file an application with the Department of Labor and Industry to be excepted from the provisions of this act in respect to certain employes. The application shall include a written waiver by the employe of all benefits under the act and an affidavit by the employe that he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any public or private insurance which makes payments in the event of death, disability, old age or retirement or makes payments toward the cost of, or provides services for medical bills (including the benefits of any insurance system established by the Federal Social Security Act 42 U.S.C. 301 et seq.).

(b) The waiver and affidavit required by subsection (a) shall be made upon a form to be provided by the Department of Labor and Industry.

(c) Such application shall be granted if the Department of Labor and Industry shall find that (i) the employe is a member of a sect or division having the established tenets or teachings referred to in subsection (a); (ii) it is the practice, and has been for a substantial number of years, for members of such

sect or division thereof to make provision for their dependent members which in its judgment is reasonable in view of their general level of living. Receipt of a form required by subsection (b) shall be considered prima facie proof that this subsection has been complied with.

(d) When an employe is a minor, the waiver and affidavit required by subsection (a) may be made by guardian of the minor.

(e) An exception granted in regard to a specific employe shall be valid for all future years unless such employe or sect ceases to meet the requirements of subsection (a).

(304.2 added Nov. 26, 1978, P.L.1422, No.336)

Section 305. (a) (1) Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the department from such insurance. Such insurer shall assume the employer's liability hereunder and shall be entitled to all of the employer's immunities and protection hereunder except, that whenever any employer shall have purchased insurance to provide benefits under this act to persons engaged in domestic service, neither the employer nor the insurer may invoke the provisions of section 321 as a defense. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the department, showing his financial ability to pay such compensation, whereupon the department, if satisfied of the applicant's financial ability, shall, upon the payment of a fee of five hundred dollars ($500), issue to the applicant a permit authorizing such exemption.

(2) In securing the payment of benefits, the department shall require an employer wishing to self-insure its liability and a group of employers approved to pool their liabilities under Article VIII to establish sufficient security by posting a bond or other security, including letters of credit drawn on commercial banks with a Thomson Bank Watch rating of B/C or better or a Thomson Bank Watch score of 2.5 or better for the bank or its holding company or with a CD rating of BBB or better by Standard and Poor's. This paragraph shall not apply to the Commonwealth or its political subdivisions. ((2) amended June 24, 1996, P.L.350, No.57)

(3) The department shall establish a period of twelve (12) calendar months, to begin and end at such times as the department shall prescribe, which shall be known as the annual exemption period. Unless previously revoked, all permits issued under this section shall expire and terminate on the last day of the annual exemption period for which they were issued. Permits issued under this act shall be renewed upon the filing of an application, and the payment of a renewal fee of one hundred dollars ($100.00). The department may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no longer able to pay compensation, shall revoke its permit granting exemption, in which case the employer shall immediately subscribe to the State Workmen's Insurance Fund, or insure his liability in any insurance company or mutual association or company, as aforesaid.

(b) Any employer who fails to comply with the provisions of this section for every such failure, shall, upon conviction in the court of common pleas, be guilty of a misdemeanor of the third degree. If the failure to comply with this section is found by the court to be intentional, the employer shall be

guilty of a felony of the third degree. Every day's violation shall constitute a separate offense. A judge of the court of common pleas may, in addition to imposing fines and imprisonment, include restitution in his order: Provided, That there is an injured employe who has obtained an award of compensation. The amount of restitution shall be limited to that specified in the award of compensation. It shall be the duty of the department to enforce the provisions of this section; and it shall investigate all violations that are brought to its notice and shall institute prosecutions for violations thereof. All fines recovered under the provisions of this section shall be paid to the department, and by it paid into the State Treasury and appropriated to the Office of Attorney General if the prosecutor is the Attorney General and paid to the operating fund of the county in which the district attorney is elected if the prosecutor is a district attorney. ((b) amended June 24, 1996, P.L.350, No.57)

(c) In any proceeding against an employer under this section, a certificate of non-insurance issued by the official Workmen's Compensation Rating and Inspection Bureau and a certificate of the department showing that the defendant has not been exempted from obtaining insurance under this section, shall be prima facie evidence of the facts therein stated.

(d) When any employer fails to secure the payment of compensation under this act as provided in sections 305 and 305.2, the injured employe or his dependents may proceed either under this act or in a suit for damages at law as provided by article II.

(e) Every employer shall post a notice at its primary place of business and at its sites of employment in a prominent and easily accessible place, including, without limitation, areas used for the treatment of injured employes or for the administration of first aid, containing:

(1) Either the name of the employer's carrier and the address and telephone number of such carrier or insurer or, if the employer is self-insured, the name, address and telephone number of the person to whom claims or requests for information are to be addressed.

(2) The following statement: "Remember, it is important to tell your employer about your injury."

The notice shall be posted in prominent and easily accessible places at the site of employment, including such places as are used for treatment and first aid of injured employes. Such a listing shall contain the information as specified in this section, typed or printed on eight and one-half inch by eleven inch or eight and one-half inch by thirteen inch paper in standard size type or larger.

(305 amended July 2, 1993, P.L.190, No.44)

Section 305.1. Any compensation payable under this act for silicosis, anthraco-silicosis or coal-worker's pneumoconiosis as defined in section 108 (q) for disability occurring on or after July 1, 1973 or for death resulting therefrom shall be paid as follows: if the disability begins between July 1, 1973 and June 30, 1974, inclusive, the employer shall pay twenty-five per centum and the Commonwealth seventy-five per centum; if the disability begins between July 1, 1974, and June 30, 1975, inclusive, the employer shall pay fifty per centum and the Commonwealth fifty per centum; if the disability begins between July 1, 1975 and June 30, 1976, inclusive, the employer shall pay seventy-five per centum and the Commonwealth twenty-five per centum; and if the disability begins on or after July 1, 1976, all compensation shall be payable by the employer. The

procedures for payment of compensation in such cases shall be as prescribed in the rules and regulations of the department.

(305.1 added Dec. 6, 1972, P.L.1627, No.337)

Section 305.2. (a) If an employe, while working outside the territorial limits of this State, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this act had such injury occurred within this State, such employe, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this act, provided that at the time of such injury:

(1) His employment is principally localized in this State, or

(2) He is working under a contract of hire made in this State in employment not principally localized in any state, or

(3) He is working under a contract of hire made in this State in employment principally localized in another state whose workmen's compensation law is not applicable to his employer, or

(4) He is working under a contract of hire made in this State for employment outside the United States and Canada.

(b) The payment or award of benefits under the workmen's compensation law of another state, territory, province or foreign nation to an employe or his dependents otherwise entitled on account of such injury or death to the benefits of this act shall not be a bar to a claim for benefits under this act; provided that claim under this act is filed within three years after such injury or death. If compensation is paid or awarded under this act:

(1) The medical and related benefits furnished or paid for by the employer under such other workmen's compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employe would have been entitled under this act had claim been made solely under this act.

(2) The total amount of all income benefits paid or awarded the employe under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employe under this act, had claim been made solely under this act.

(3) The total amount of death benefits paid or awarded under such other workmen's compensation law shall be credited against the total amount of death benefits due under this act.

Nothing in this act shall be construed to mean that coverage under this act excludes coverage under another law or that an employe's election to claim compensation under this act is exclusive of coverage under another state act or is binding on the employe or dependent, except, perhaps to the extent of an agreement between the employe and the employer or where employment is localized to the extent that an employe's duties require him to travel regularly in this State and another state or states.

(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 department may verify with the commission or agency of such other state having jurisdiction over workers' compensation claims that such employer has secured the payment of compensation under the workers' 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) deleted by amendment)

(2) ((2) deleted by amendment)

(3) The following shall apply:

(i) If such employer is a qualified self-insurer under the workers' compensation law of such other state, such employer shall be deemed, for the purposes of such employe, to be a qualified self-insurer under this act.

(ii) 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) If the total amount for which such employer's insurance is liable under clause (3) above is less than the total of the compensation benefits to which such employe is entitled under this act, the department may, if necessary, require the employer to file security to guarantee the payment of benefits due such employe or his dependents under this act.

(5) 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.

((c) amended Oct. 24, 2018, P.L.804, No.132)

(c.1) If an employe alleges an injury that is incurred with an employer which is domiciled in another state and which has not secured the payment of compensation as required by this act, such employe shall provide to the Uninsured Employers Guaranty Fund, and to any workers' compensation judge hearing a petition against the fund, a written notice, denial, citation of law or court or administrative ruling from such other state or an insurer licensed to write insurance in that state as to that employer, indicating that the employe is not entitled to workers' compensation benefits in that state. No compensation shall be payable from the Uninsured Employers Guaranty Fund until the employe submits the notice, denial, citation or ruling; however, the employe may file a notice or petition against the fund under Article XVI prior to the submission.

((c.1) added Oct. 24, 2018, P.L.804, No.132)

(d) 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."

(305.2 added Dec. 5, 1974, P.L.782, No.263)

Compiler's Note: Section 4(2)(i) of Act 132 of 2018, which amended section 305.2(c), provided that the amendment shall apply retroactively to claims existing as of the effective date of section 4(2) for which compensation has not been paid or awarded.

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

(a) (1) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section 309 beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than the maximum compensation payable as defined in section 105.2. Nothing in this clause shall require payment of compensation after disability shall cease. If the benefit so calculated is less than fifty per centum of the Statewide average weekly wage, then the benefit payable shall be the lower of fifty per centum of the Statewide average weekly wage or ninety per centum of the worker's average weekly wage.

(2) Nothing in this act shall require payment of total disability compensation benefits under this clause for any period during which the employe is employed or receiving wages.

((a) amended June 24, 1996, P.L.350, No.57)

(a.1) Nothing in this act shall require payment of compensation under clause (a) or (b) for any period during which the employe is incarcerated after a conviction or during which the employe is employed and receiving wages equal to or greater than the employe's prior earnings. ((a.1) added June 24, 1996, P.L.350, No.57)

(a.2) ((a.2) repealed Oct. 24, 2018, P.L.714, No.111)

(a.3) (1) When an employe has received total disability compensation pursuant to clause (a) for a period of one hundred and four weeks, unless otherwise agreed to, the employe shall be required to submit to a medical examination which shall be requested by the insurer within sixty days upon the expiration of the one hundred and four weeks to determine the degree of impairment due to the compensable injury, if any. The degree of impairment shall be determined based upon an evaluation by a physician who is licensed in this Commonwealth, who is certified by an American Board of Medical Specialties-approved board or its osteopathic equivalent and who is active in clinical practice for at least twenty hours per week, chosen by agreement of the parties, or as designated by the department, pursuant to the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).

(2) If such determination results in an impairment rating that meets a threshold impairment rating that is equal to or greater than thirty-five per centum impairment under the

American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), the employe shall be presumed to be totally disabled and shall continue to receive total disability compensation benefits under clause (a). If such determination results in an impairment rating less than thirty-five per centum impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), the employe shall then receive partial disability benefits under clause (b): Provided, however, That no reduction shall be made until sixty days' notice of modification is given.

(3) Unless otherwise adjudicated or agreed to based upon a determination of earning power under clause (b)(2), the amount of compensation shall not be affected as a result of the change in disability status and shall remain the same. An insurer or employe may, at any time prior to or during the five hundred-week period of partial disability, show that the employe's earning power has changed.

(4) An employe may appeal the change to partial disability at any time during the five hundred-week period of partial disability; Provided, That there is a determination that the employe meets the threshold impairment rating that is equal to or greater than thirty-five per centum impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).

(5) Total disability shall continue until it is adjudicated or agreed under clause (b) that total disability has ceased or the employe's condition improves to an impairment rating that is less than thirty-five per centum of the degree of impairment defined under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).

(6) Upon request of the insurer, the employe shall submit to an independent medical examination in accordance with the provisions of section 314 to determine the status of impairment: Provided, however, That for purposes of this clause, the employe shall not be required to submit to more than two independent medical examinations under this clause during a twelve-month period.

(7) In no event shall the total number of weeks of partial disability exceed five hundred weeks for any injury or recurrence thereof, regardless of the changes in status in disability that may occur. In no event shall the total number of weeks of total disability exceed one hundred and four weeks for any employe who does not meet a threshold impairment rating that is equal to or greater than thirty-five per centum impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), for any injury or recurrence thereof.

(8) (i) For purposes of this clause, the term "impairment" shall mean an anatomic or functional abnormality or loss that results from the compensable injury and is reasonably presumed to be permanent.

(ii) For purposes of this clause, the term "impairment rating" shall mean the percentage of permanent impairment of the whole body resulting from the compensable injury. The percentage rating for impairment under this clause shall represent only that impairment that is the result of the compensable injury and not for any preexisting work-related or nonwork-related impairment.

((a.3) added Oct. 24, 2018, P.L.714, No.111)

(b) (1) For disability partial in character caused by the compensable injury or disease (except the particular cases mentioned in clause (c)) sixty-six and two-thirds per centum of the difference between the wages of the injured employe, as defined in section 309, and the earning power of the employe thereafter; but such compensation shall not be more than the maximum compensation payable. This compensation shall be paid during the period of such partial disability except as provided in clause (e) of this section, but for not more than five hundred weeks. Should total disability be followed by partial disability, the period of five hundred weeks shall not be reduced by the number of weeks during which compensation was paid for total disability. The term "earning power," as used in this section, shall in no case be less than the weekly amount which the employe receives after the injury; and in no instance shall an employe receiving compensation under this section receive more in compensation and wages combined than the current wages of a fellow employe in employment similar to that in which the injured employe was engaged at the time of the injury.

(2) "Earning power" shall be determined by the work the employe is capable of performing and shall be based upon expert opinion evidence which includes job listings with agencies of the department, private job placement agencies and advertisements in the usual employment area. Disability partial in character shall apply if the employe is able to perform his previous work or can, considering the employe's residual productive skill, education, age and work experience, engage in any other kind of substantial gainful employment which exists in the usual employment area in which the employe lives within this Commonwealth. If the employe does not live in this Commonwealth, then the usual employment area where the injury occurred shall apply. If the employer has a specific job vacancy the employe is capable of performing, the employer shall offer such job to the employe. In order to accurately assess the earning power of the employe, the insurer may require the employe to submit to an interview by a vocational expert who is selected by the insurer and who meets the minimum qualifications established by the department through regulation. The vocational expert shall comply with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses.

(2.1) If an insurer refers an employe for an earning power assessment and the insurer has a financial interest with the person or in the entity that receives the referral, the insurer shall disclose that financial interest to the employe prior to the referral.

(3) If the insurer receives medical evidence that the claimant is able to return to work in any capacity, then the insurer must provide prompt written notice, on a form prescribed by the department, to the claimant, which states all of the following:

(i) The nature of the employe's physical condition or change of condition.

(ii) That the employe has an obligation to look for available employment.

(iii) That proof of available employment opportunities may jeopardize the employe's right to receipt of ongoing benefits.

(iv) That the employe has the right to consult with an attorney in order to obtain evidence to challenge the insurer's contentions.

((b) amended Dec. 23, 2003, P.L.371, No.53)

(c) For all disability resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows:

(1) For the loss of a hand, sixty-six and two-thirds per centum of wages during three hundred thirty-five weeks.

(2) For the loss of a forearm, sixty-six and two-thirds per centum of wages during three hundred seventy weeks.

(3) For the loss of an arm, sixty-six and two-thirds per centum of wages during four hundred ten weeks.

(4) For the loss of a foot, sixty-six and two-thirds per centum of wages during two hundred fifty weeks.

(5) For the loss of a lower leg, sixty-six and two-thirds per centum of wages during three hundred fifty weeks.

(6) For the loss of a leg, sixty-six and two-thirds per centum of wages during four hundred ten weeks.

(7) For the loss of an eye, sixty-six and two-thirds per centum of wages during two hundred seventy-five weeks.

(8) (i) For permanent loss of hearing which is medically established as an occupational hearing loss caused by long-term exposure to hazardous occupational noise, the percentage of impairment shall be calculated by using the binaural formula provided in the Impairment Guides. The number of weeks for which compensation shall be payable shall be determined by multiplying the percentage of binaural hearing impairment as calculated under the Impairment Guides by two hundred sixty weeks. Compensation payable shall be sixty-six and two-thirds per centum of wages during this number of weeks, subject to the provisions of clause (1) of subsection (a) of this section.

(ii) For permanent loss of hearing not caused by long-term exposure to hazardous occupational noise which is medically established to be due to other occupational causes such as acoustic trauma or head injury, the percentage of hearing impairment shall be calculated by using the formulas as provided in the Impairment Guides. The number of weeks for which compensation shall be payable for such loss of hearing in one ear shall be determined by multiplying the percentage of impairment by sixty weeks. The number of weeks for which compensation shall be payable for such loss of hearing in both ears shall be determined by multiplying the percentage of impairment by two hundred sixty weeks. Compensation payable shall be sixty-six and two-thirds per centum of wages during this number of weeks, subject to the provisions of clause (1) of subsection (a) of this section.

(iii) Notwithstanding the provisions of subclauses (i) and (ii) of this clause, if there is a level of binaural hearing impairment as calculated under the Impairment Guides which is equal to or less than ten per centum, no benefits shall be payable. Notwithstanding the provisions of subclauses (i) and (ii) of this clause, if there is a level of binaural hearing impairment as calculated under the Impairment Guides which is equal to or more than seventy-five per centum, there shall be a presumption that the hearing impairment is total and complete, and benefits shall be payable for two hundred sixty weeks.

(iv) The percentage of hearing impairment for which compensation may be payable shall be established solely by audiogram. The audiometric testing must conform to OSHA Occupational Noise Exposure Standards, 29 CFR 1910.95 (relating to occupational noise exposure) and Appendices C, D and E to Part 1910.95 (July 1, 1994).

(v) If an employe has previously received compensation under subclause (i) or (ii) of this clause, he may receive additional compensation under subclause (i) or (ii) of this clause for any

work-related increase in hearing impairment which occurred after the date of any previous award of or agreement for compensation and only if the increase in hearing impairment is ten percentage points greater than the previous compensated impairment. Any employe who has claimed a complete loss of hearing prior to the effective date of this clause and has received an award or payment for hearing loss shall be barred from claiming compensation for hearing loss or receiving payment therefor pursuant to subclause (i) or (ii) of this clause.

(vi) An employer shall be liable only for the hearing impairment caused by such employer. If previous occupational hearing impairment or hearing impairment from nonoccupational causes is established at or prior to the time of employment, the employer shall not be liable for the hearing impairment so established whether or not compensation has previously been paid or awarded.

(vii) An employer may require an employe to undergo audiometric testing at the expense of the employer from time to time. If an employer chooses to require an employe to undergo audiometric testing, the employer shall be required to notify the employe in writing that unless the employe submits to audiometric testing at the expense of and at the request of the employer the employe shall lose the right to pursue a claim for occupational hearing loss against that employer. Any employe who undergoes audiometric testing at the direction of an employer may request a copy and a brief explanation of the results which shall be provided to the employe within thirty days of the date they are available.

(viii) Whenever an occupational hearing loss caused by long-term exposure to hazardous occupational noise is the basis for compensation or additional compensation, the claim shall be barred unless a petition is filed within three years after the date of last exposure to hazardous occupational noise in the employ of the employer against whom benefits are sought.

(ix) The date of injury for occupational hearing loss under subclause (i) of this clause shall be the earlier of the date on which the claim is filed or the last date of long-term exposure to hazardous occupational noise while in the employ of the employer against whom the claim is filed.

(x) Whether the employe has been exposed to hazardous occupational noise or has long-term exposure to such noise shall be affirmative defenses to a claim for occupational hearing loss and not a part of the claimant's burden of proof in a claim.

(xi) The healing period provided for under clause (25) of this subsection shall not be applicable to any hearing loss under subclause (i) or (ii) of this clause.

((8) amended Feb. 22, 1995, P.L.1, No.1)

(9) For the loss of a thumb, sixty-six and two-thirds per centum of wages during one hundred weeks.

(10) For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of wages during fifty weeks.

(11) For the loss of a second finger, sixty-six and two-thirds per centum of wages during forty weeks.

(12) For the loss of a third finger, sixty-six and two-thirds per centum of wages during thirty weeks.

(13) For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds per centum of wages during twenty-eight weeks.

(14) The loss of the first phalange of the thumb shall be considered the loss of the thumb. The loss of a substantial

part of the first phalange of the thumb shall be considered the loss of one-half of the thumb.

(15) The loss of any substantial part of the first phalange of a finger, or an amputation immediately below the first phalange for the purpose of providing an optimum surgical result, shall be considered loss of one-half of the finger. Any greater loss shall be considered the loss of the entire finger.

(16) The loss of one-half of the thumb, or a finger, shall be compensated at the same rate as for the loss of a thumb or finger but for one-half of the period provided for the loss of a thumb or finger.

For the loss of, or permanent loss of the use of, any two or more such members, not constituting total disability, sixty-six and two-thirds per centum of wages during the aggregate of the periods specified for each.

(17) For the loss of a great toe, sixty-six and two-thirds per centum of wages during forty weeks.

(18) For the loss of any other toe, sixty-six and two-thirds per centum of wages during sixteen weeks.

(19) The loss of the first phalange of the great toe, or of any toe, shall be considered equivalent to the loss of one-half of such great toe, or other toe, and shall be compensated at the same rate as for the loss of a great toe, or other toe, but for one-half of the period provided for the loss of a great toe or other toe.

(20) The loss of more than one phalange of a great toe, or any toe, shall be considered equivalent to the loss of the entire great toe or other toe.

(21) For the loss of, or permanent loss of the use of any two or more such members, not constituting total disability, sixty-six and two-thirds per centum of wages during the aggregate of the periods specified for each.

(22) For serious and permanent disfigurement of the head, neck or face, of such a character as to produce an unsightly appearance, and such as is not usually incident to the employment, sixty-six and two-thirds per centum of wages not to exceed two hundred seventy-five weeks.

(23) Unless the board shall otherwise determine, the loss of both hands or both arms or both feet or both legs or both eyes shall constitute total disability, to be compensated according to the provisions of clause (a).

(24) Amputation at the wrist shall be considered as the equivalent of the loss of a hand, and amputation at the ankle shall be considered as the equivalent of the loss of a foot. Amputation between the wrist and the elbow shall be considered as the loss of a forearm, and amputation between the ankle and the knee shall be considered as the loss of a lower leg. Amputation at or above the elbow shall be considered as the loss of an arm and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg, eye, finger, or thumb, great toe or other toe, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, finger, or thumb, great toe or other toe.

(25) In addition to the payments hereinbefore provided for permanent injuries of the classes specified, any period of disability necessary and required as a healing period shall be compensated in accordance with the provisions of this subsection. The healing period shall end (I) when the claimant returns to employment without impairment in earnings, or (II) on the last day of the period specified in the following table, whichever is the earlier:

For the loss of a hand, twenty weeks.
For the loss of a forearm, twenty weeks.
For the loss of an arm, twenty weeks.
For the loss of a foot, twenty-five weeks.
For the loss of the lower leg, twenty-five weeks.
For the loss of a leg, twenty-five weeks.
For the loss of an eye, ten weeks.
For the loss of hearing, ten weeks.
For the loss of a thumb or any part thereof, ten weeks.
For the loss of any other finger or any part thereof, six weeks.
For the loss of a great toe or any part thereof, twelve weeks.
For the loss of any other toe or any part thereof, six weeks.

Compensation under paragraphs (1) through (24) of this clause shall not be more than the maximum compensation payable nor less than fifty per centum of the maximum compensation payable per week for total disability as provided in subsection (a) of this section, but in no event more than the Statewide average weekly wage. (Par. amended Dec. 5, 1974, P.L.782, No.263)

Compensation for the healing period under paragraph (25) of this clause shall be computed as provided in clause (a) of this section. When an employe works during the healing period, his wages and earning power shall be as defined in this act and he shall not receive more in wages and compensation combined than his wages at the time of the injury as defined in section three hundred and nine. Where any such permanent injury or injuries shall require an amputation at any time after the end of the healing period hereinbefore provided, the employe shall be entitled to receive compensation for the second healing period, and in the case of a second injury or amputation to the same limb prior to the expiration of the first healing period a new healing period shall commence for the period hereinbefore provided, and no further compensation shall be payable for the first healing period. (Par. amended Dec. 5, 1974, P.L.782, No.263)

(d) Where, at the time of the injury the employe receives other injuries, separate from these which result in permanent injuries enumerated in clause (c) of this section, the number of weeks for which compensation is specified for the permanent injuries shall begin at the end of the period of temporary total disability which results from the other separate injuries, but in that event the employe shall not receive compensation provided in clause (c) of this section for the specific healing period. In the event the employe suffers two or more permanent injuries of the above enumerated classes compensable under clause (c) of this section, he shall be compensated for the largest single healing period rather than the aggregate of the healing periods.

(e) No compensation shall be allowed for the first seven days after disability begins, except as provided in this clause (e) and clause (f) of this section. If the period of disability lasts fourteen days or more, the employe shall also receive compensation for the first seven days of disability. ((e) amended Dec. 5, 1974, P.L.782, No.263)

(f) ((f) deleted by amendment July 2, 1993, P.L.190, No.44)

(f.1) (1) (i) The employer shall provide payment in accordance with this section for reasonable surgical and medical services, services rendered by physicians or other health care providers, including an additional opinion when invasive surgery may be necessary, medicines and supplies, as and when needed. Provided an employer establishes a list of at least six

designated health care providers, no more than four of whom may be a coordinated care organization and no fewer than three of whom shall be physicians, the employe shall be required to visit one of the physicians or other health care providers so designated and shall continue to visit the same or another designated physician or health care provider for a period of ninety (90) days from the date of the first visit: Provided, however, That the employer shall not include on the list a physician or other health care provider who is employed, owned or controlled by the employer or the employer's insurer unless employment, ownership or control is disclosed on the list. Should invasive surgery for an employe be prescribed by a physician or other health care provider so designated by the employer, the employe shall be permitted to receive an additional opinion from any health care provider of the employe's own choice. If the additional opinion differs from the opinion provided by the physician or health care provider so designated by the employer, the employe shall determine which course of treatment to follow: Provided, That the second opinion provides a specific and detailed course of treatment. If the employe chooses to follow the procedures designated in the second opinion, such procedures shall be performed by one of the physicians or other health care providers so designated by the employer for a period of ninety (90) days from the date of the visit to the physician or other health care provider of the employe's own choice. Should the employe not comply with the foregoing, the employer will be relieved from liability for the payment for the services rendered during such applicable period. It shall be the duty of the employer to provide a clearly written notification of the employe's rights and duties under this section to the employe. The employer shall further ensure that the employe has been informed and that he understands these rights and duties. This duty shall be evidenced only by the employe's written acknowledgment of having been informed and having understood his rights and duties. Any failure of the employer to provide and evidence such notification shall relieve the employe from any notification duty owed, notwithstanding any provision of this act to the contrary, and the employer shall remain liable for all rendered treatment. Subsequent treatment may be provided by any health care provider of the employe's own choice. Any employe who, next following termination of the applicable period, is provided treatment from a nondesignated health care provider shall notify the employer within five (5) days of the first visit to said health care provider. Failure to so notify the employer will relieve the employer from liability for the payment for the services rendered prior to appropriate notice if such services are determined pursuant to paragraph (6) to have been unreasonable or unnecessary.

(ii) In addition to the above service, the employer shall provide payment for medicines and supplies, hospital treatment, services and supplies and orthopedic appliances, and prostheses in accordance with this section. Whenever an employe shall have suffered the loss of a limb, part of a limb, or an eye, the employer shall also provide for an artificial limb or eye or other prostheses of a type and kind recommended by the doctor attending such employe in connection with such injury and any replacements for an artificial limb or eye which the employe may require at any time thereafter, together with such continued medical care as may be prescribed by the doctor attending such employe in connection with such injury as well as such training as may be required in the proper use of such prostheses. The

provisions of this section shall apply to injuries whether or not loss of earning power occurs. If hospital confinement is required, the employe shall be entitled to semiprivate accommodations, but, if no such facilities are available, regardless of the patient's condition, the employer, not the patient, shall be liable for the additional costs for the facilities in a private room.

(iii) Nothing in this section shall prohibit an insurer or an employer from contracting with any individual, partnership, association or corporation to provide case management and coordination of services with regard to injured employes.

(2) Any provider who treats an injured employe shall be required to file periodic reports with the employer on a form prescribed by the department which shall include, where pertinent, history, diagnosis, treatment, prognosis and physical findings. The report shall be filed within ten (10) days of commencing treatment and at least once a month thereafter as long as treatment continues. The employer shall not be liable to pay for such treatment until a report has been filed.

(3) (i) For purposes of this clause, a provider shall not require, request or accept payment for the treatment, accommodations, products or services in excess of one hundred thirteen per centum of the prevailing charge at the seventy-fifth percentile; one hundred thirteen per centum of the applicable fee schedule, the recommended fee or the inflation index charge; one hundred thirteen per centum of the DRG payment plus pass-through costs and applicable cost or day outliers; or one hundred thirteen per centum of any other Medicare reimbursement mechanism, as determined by the Medicare carrier or intermediary, whichever pertains to the specialty service involved, determined to be applicable in this Commonwealth under the Medicare program for comparable services rendered. If the commissioner determines that an allowance for a particular provider group or service under the Medicare program is not reasonable, it may adopt, by regulation, a new allowance. If the prevailing charge, fee schedule, recommended fee, inflation index charge, DRG payment or any other reimbursement has not been calculated under the Medicare program for a particular treatment, accommodation, product or service, the amount of the payment may not exceed eighty per centum of the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided.

(ii) Commencing on January 1, 1995, the maximum allowance for a health care service covered by subparagraph (i) shall be updated as of the first day of January of each year. The update, which shall be applied to all services performed after January 1 of each year, shall be equal to the percentage change in the Statewide average weekly wage. Such updates shall be cumulative.

(iii) Notwithstanding any other provision of law, it is unlawful for a provider to refer a person for laboratory, physical therapy, rehabilitation, chiropractic, radiation oncology, psychometric, home infusion therapy or diagnostic imaging, goods or services pursuant to this section if the provider has a financial interest with the person or in the entity that receives the referral. It is unlawful for a provider to enter into an arrangement or scheme such as a cross-referral arrangement, which the provider knows or should know has a principal purpose of assuring referrals by the provider to a particular entity which, if the provider directly made referrals to such entity, would be in violation of this section. No claim

for payment shall be presented by an entity to any individual, third-party payer or other entity for a service furnished pursuant to a referral prohibited under this section.

(iv) The secretary shall retain the services of an independent consulting firm to perform an annual accessibility study of health care provided under this act. The study shall include information as to whether there is adequate access to quality health care and products for injured workers and a review of the information that is provided. If the secretary determines based on this study that as a result of the health care fee schedule there is not sufficient access to quality health care or products for persons suffering injuries covered by this act, the secretary may recommend to the commissioner the adoption of regulations providing for a new allowance.

(v) An allowance shall be reviewed for reasonableness whenever the commissioner determines that the use of the allowance would result in payments more than ten per centum lower than the average level of reimbursement the provider would receive from coordinated care insurers, including those entities subject to the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act," and those entities known as preferred provider organizations which are subject to section 630 of the Insurance Company Law of 1921 for like treatments, accommodations, products or services. In making this determination, the commissioner shall consider the extent to which allowances applicable to other providers under this section deviate from the reimbursement such providers would receive from coordinated care insurers. Any information received as a result of this subparagraph shall be confidential.

(vi) (A) The reimbursement for drugs and professional pharmaceutical services shall be limited to one hundred ten per centum of the average wholesale price (AWP) of the product, calculated on a per unit basis, as of the date of dispensing.

(B) A physician seeking reimbursement for drugs dispensed by a physician shall include the original manufacturer's National Drug Code (NDC) number, as assigned by the Food and Drug Administration, on the bills and reports required under this section.

(C) In no event may a physician seek reimbursement in excess of one hundred ten per centum of the AWP of the drugs dispensed by a physician as determined by reference to the original manufacturer's NDC number.

(D) A repackaged NDC number may not be used and will not be considered the original manufacturer's NDC number. If a physician seeking reimbursement for drugs dispensed by a physician does not include the original manufacturer's NDC number on the bills and reports required by this section, reimbursement shall be limited to one hundred ten per centum of the AWP of the least expensive clinically equivalent drug, calculated on a per unit basis.

(E) No outpatient provider, other than a pharmacy licensed in this Commonwealth or another state, may do any of the following:

(I) Seek reimbursement for a drug listed on Schedule II in section 4(2) of the act of April 14, 1972 (P.L.233, No.64), known as the "Controlled Substance, Drug, Device and Cosmetic Act," dispensed in excess of one initial seven-day supply, commencing upon the employe's initial treatment by a health care provider for an injury related to a specific workers' compensation claim. Should the employe require a medical procedure, including surgery, one additional fifteen-day supply

can be dispensed commencing on the date of the medical procedure.

(II) Seek reimbursement for a drug listed on Schedule III in section 4(3) of the "Controlled Substance, Drug, Device and Cosmetic Act," which contains hydrocodone dispensed in excess of one initial seven-day supply, commencing upon the employe's initial treatment by a health care provider for an injury related to a specific workers' compensation claim. Should the employe require a medical procedure, including surgery, one additional fifteen-day supply can be dispensed commencing on the date of the medical procedure.

(III) Seek reimbursement for any other drug dispensed in excess of one initial thirty-day supply, commencing upon the employe's initial treatment by a health care provider under the particular workers' compensation claim.

(IV) Seek reimbursement for any drugs dispensed within any period of time in excess of the limitations under subprovision (I), (II) and (III). If one health care provider has dispensed drugs under subprovision (I), (II) or (III), no other health care provider may submit for reimbursement for drugs dispensed to that employe under the same workers' compensation claim.

(F) Reimbursement for all drugs dispensed in accordance with this subsection shall be made at the rates set forth in this section.

(G) No outpatient provider, other than a pharmacy licensed in this Commonwealth or another state, may seek reimbursement for an over-the-counter drug.

(H) The Workers' Compensation Advisory Council shall annually conduct a study of the impact of this subclause, including calculation of the savings achieved in the dispensing of pharmaceuticals.

(I) For purposes of this subclause, clinical equivalence, in reference to a drug, means the drug has chemical equivalents which, when administered in the same amounts, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease.

((vi) amended Oct. 27, 2014, P.L.2894, No.184)

(vii) The applicable Medicare fee schedule shall include fees associated with all permissible procedure codes. If the Medicare fee schedule also includes a larger grouping of procedure codes and corresponding charges than are specifically reimbursed by Medicare, a provider may use these codes, and corresponding charges shall be paid by insurers or employers. If a Medicare code exists for application to a specific provider specialty, that code shall be used.

(viii) A provider shall not fragment or unbundle charges imposed for specific care except as consistent with Medicare. Changes to a provider's codes by an insurer shall be made only as consistent with Medicare and when the insurer has sufficient information to make the changes and following consultation with the provider.

(4) Nothing in this act shall prohibit the self-insured employer, employer or insurer from contracting with a coordinated care organization for reimbursement levels different from those identified above.

(5) The employer or insurer shall make payment and providers shall submit bills and records in accordance with the provisions of this section. All payments to providers for treatment provided pursuant to this act shall be made within thirty (30) days of receipt of such bills and records unless the employer or insurer disputes the reasonableness or necessity of the treatment provided pursuant to paragraph (6). The nonpayment

to providers within thirty (30) days for treatment for which a bill and records have been submitted shall only apply to that particular treatment or portion thereof in dispute; payment must be made timely for any treatment or portion thereof not in dispute. A provider who has submitted the reports and bills required by this section and who disputes the amount or timeliness of the payment from the employer or insurer shall file an application for fee review with the department no more than thirty (30) days following notification of a disputed treatment or ninety (90) days following the original billing date of treatment. If the insurer disputes the reasonableness and necessity of the treatment pursuant to paragraph (6), the period for filing an application for fee review shall be tolled as long as the insurer has the right to suspend payment to the provider pursuant to the provisions of this paragraph. Within thirty (30) days of the filing of such an application, the department shall render an administrative decision.

(6) Except in those cases in which a workers' compensation judge asks for an opinion from peer review under section 420, disputes as to reasonableness or necessity of treatment by a health care provider shall be resolved in accordance with the following provisions:

(i) The reasonableness or necessity of all treatment provided by a health care provider under this act may be subject to prospective, concurrent or retrospective utilization review at the request of an employe, employer or insurer. The department shall authorize utilization review organizations to perform utilization review under this act. Utilization review of all treatment rendered by a health care provider shall be performed by a provider licensed in the same profession and having the same or similar specialty as that of the provider of the treatment under review. Organizations not authorized by the department may not engage in such utilization review.

(ii) The utilization review organization shall issue a written report of its findings and conclusions within thirty (30) days of a request.

(iii) The employer or the insurer shall pay the cost of the utilization review.

(iv) If the provider, employer, employe or insurer disagrees with the finding of the utilization review organization, a petition for review by the department must be filed within thirty (30) days after receipt of the report. The department shall assign the petition to a workers' compensation judge for a hearing or for an informal conference under section 402.1. The utilization review report shall be part of the record before the workers' compensation judge. The workers' compensation judge shall consider the utilization review report as evidence but shall not be bound by the report.

(7) A provider shall not hold an employe liable for costs related to care or service rendered in connection with a compensable injury under this act. A provider shall not bill or otherwise attempt to recover from the employe the difference between the provider's charge and the amount paid by the employer or the insurer.

(8) If the employe shall refuse reasonable services of health care providers, surgical, medical and hospital services, treatment, medicines and supplies, he shall forfeit all rights to compensation for any injury or increase in his incapacity shown to have resulted from such refusal.

(9) The payment by an insurer or employer for any medical, surgical or hospital services or supplies after any statute of limitations provided for in this act shall have expired shall

not act to reopen or revive the compensation rights for purposes of such limitations.

(10) If acute care is provided in an acute care facility to a patient with an immediately life threatening or urgent injury by a Level I or Level II trauma center accredited by the Pennsylvania Trauma Systems Foundation under the act of July 3, 1985 (P.L.164, No.45), known as the "Emergency Medical Services Act," or to a burn injury patient by a burn facility which meets all the service standards of the American Burn Association, or if basic or advanced life support services, as defined and licensed under the "Emergency Medical Services Act," are provided, the amount of payment shall be the usual and customary charge.

((f.1) amended June 24, 1996, P.L.350, No.57)

(f.2) (1) Medical services required by the act may be provided through a coordinated care organization which is certified by the secretary subject to the following:

(i) Each application for certification shall be accompanied by a reasonable fee prescribed by the department. A certificate is valid for such period as the department may prescribe unless sooner revoked or suspended.

(ii) Application for certification shall be made in such form and manner as the department shall require and shall set forth information regarding the proposed plan for providing services.

(iii) Where the secretary certifies that the coordinated care organization within which all of the designated physicians or other health care providers referred to in clause (f.1)(1)(i) are members, the secretary shall ensure that all the requirements of this clause are met.

((1) amended June 24, 1996, P.L.350, No.57)

(2) The coordinated care organization shall include an adequate number and specialty distribution of licensed health care providers in order to assure appropriate and timely delivery of services required under the act and an appropriate flexibility to workers in selecting providers. Services may be provided directly, through affiliates or through contractual referral arrangements with other health care providers.

(3) The secretary shall certify an entity as a coordinated care organization if the secretary finds that the entity:

(i) Possesses the capacity to provide all primary medical services as designated by the secretary in a manner that is timely and effective. ((i) amended June 24, 1996, P.L.350, No.57)

(ii) Maintains a referral capacity to treat other injuries and illnesses not covered by primary services but which are covered by this act.

(iii) Provides a case management and evaluation system which includes continuous monitoring of treatment from onset of injury or illness until final resolution.

(iv) Provides a case communication system which relates necessary and appropriate information among the employe, employer, health care providers and insurer.

(v) Provides appropriate peer and utilization review and a care dispute resolution system.

(vi) Meets quality of care and cost-effectiveness standards based upon accepted standards in the profession, including health care effectiveness measures of the Pennsylvania Health Care Cost Containment Council and recommendations on quality of care by the Workers' Compensation Advisory Council.

(vii) Complies with any other requirements of law regarding delivery of health care services.

(viii) Establishes a written grievance procedure for prompt and effective resolution of patient grievances.

(4) The secretary shall refuse to certify or may revoke or suspend certification of any coordinated care organization if the secretary finds that:

(i) the plan for providing health care services fails to meet the requirements of this section;

(ii) service under the plan is not being provided in accordance with terms of the plan as certified; or

(iii) services under the plan do not meet accepted professional standards for quality, cost-effective health care.

((4) amended June 24, 1996, P.L.350, No.57)

(5) A person participating in utilization review, quality assurance or peer review activities pursuant to this section shall not be examined as to any communication made in the course of such activities or the findings thereof, nor shall any person be subject to an action for civil damages for actions taken or statements made in good faith.

(6) Health care providers designated as rural by HCFA or located in a county with a rural Health Professional Shortage Area who are attempting to form or operate a coordinated care organization may be excluded from meeting some or all of the minimum requirements set forth in paragraphs (2) and (3), as shall be determined in rules or regulations promulgated by the department. ((6) amended June 24, 1996, P.L.350, No.57)

(7) The department shall have the power and authority to promulgate, adopt, publish and use regulations for the implementation of this section. ((7) amended June 24, 1996, P.L.350, No.57)

((f.2) added July 2, 1993, P.L.190, No.44)

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

(1) To the surviving widow or widower if there are no children under the age of eighteen.

(2) To a surviving widow or widower and a surviving child or children in which event the widow or widower shall receive one-half and the surviving child or children shall receive the other half.

(3) To a surviving child or children if there is no surviving widow or widower.

(4) If there is no surviving widow or widower and no surviving child or children of the deceased then to that dependent or those dependents named in clause 5 of section 307.

(5) If there are no persons eligible as named above or in those classes then to those persons who are named in clause 6 of section 307.

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

(7) If there be no dependents eligible to receive payments under this section then the payments shall be made to the estate of the deceased but in an amount not exceeding reasonable funeral expenses as provided in this act or if there be no estate, to the person or persons paying the funeral expenses of such deceased in an amount not exceeding reasonable funeral expenses as provided in this act.

(h) Any person receiving compensation under section 306(a) or (c)(23) or 307 as a result of an injury which occurred prior to August 31, 1993, shall, beginning January 1, 2007, receive a minimum amount of one hundred dollars ($100) per week. The additional compensation shall be paid by the self-insured employer or insurance carrier making payment and shall be reimbursed in advance by the Commonwealth on a quarterly basis as provided in rules and regulations of the department. The payment of additional compensation shall be made by the carrier or self-insured employer only during those fiscal years for which appropriations are made to cover reimbursement. ((h) amended Nov. 9, 2006, P.L.1362, No.147)

(306 amended Mar. 29, 1972, P.L.159, No.61)

Compiler's Note: See section 3 of Act 111 of 2018, which repealed 306(a.2) and added 306(a.3) for special provisions relating to applicability.

Compiler's Note: Section 1.1 of Act 184 of 2014, which amended section 306(f.1)(3)(vi), provided that within 18 months following the effective date of section 1.1, the Pennsylvania Compensation Rating Bureau shall calculate the savings achieved through the implementation of the amendment of section 306(f.1)(3)(vi). For calendar year 2016, the amount of the savings shall be used to provide an immediate reduction in rates, equal to the savings, applicable to employers' workers compensation policies.

Compiler's Note: Section 3 of Act 53 of 2003, which amended section 306(b), provided that all regulations and parts of regulations which are inconsistent with the amendment of subsec. (b) are abrogated.

Compiler's Note: Section 31.2 of Act 57 of 1996, which amended section 306(a), (b), (f.1) and (f.2)(7) and added (a.1) and (a.2), provided that regulations of the Department of Health promulgated under subsec. (f.2)(7) shall be deemed regulations of the Department of Labor and Industry. The Legislative Reference Bureau shall recodify the regulations. Section 32.1 of Act 57 provided that the addition of subsecs. (a.2) and (b)(2) shall apply only to claims for injuries which are suffered on or after the effective date of section 32.1.

Compiler's Note: Section 3 of Act 1 of 1995, which amended section 306(c)(8), provided that the amendment of subsection (c)(8) shall apply to claims filed on or after the effective date of Act 1 and the amendment of subsection (c)(8)(i), (ii) and (iv) shall apply retroactively to all claims existing as of the effective date of Act 1 for which compensation has not been paid or awarded.

Section 306.1. If an employe, who has incurred (through injury or otherwise) permanent partial disability, through the loss, or loss of use of, one hand, one arm, one foot, one leg or one eye, incurs total disability through a subsequent injury, causing loss, or loss of use of, another hand, arm, foot, leg or eye, he shall be entitled to additional compensation as follows:

After the cessation of payments by the employer for the period of weeks prescribed in Clause (c) of section 306, for the subsequent injury, additional compensation shall be paid during the continuance of total disability, at the weekly compensation rate applicable for total disability. This additional compensation shall be paid by the department out of

the Subsequent Injury Fund created pursuant to section 306.2. All claims for such additional compensation shall be forever barred unless the employe shall have filed a petition therefor with the department in the same manner and within the same time as provided in section 315 with respect to other injuries. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period in which parties must file a petition for additional compensation, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act.

The Department of Labor and Industry shall be charged with the conservation of the assets of said appropriation. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the Subsequent Injury Fund in all proceedings brought to enforce claims against such fund. In its award the Department of Labor and Industry shall specifically find the amount the injured employe shall be paid weekly, the number of weeks compensation which shall be paid by the employer, the date upon which payments shall begin, and if possible the length of time such payments shall continue.

Any benefits received by any employe, or to which he may be entitled, by reason of such increased disability, from any State or Federal fund or agency to which said employe has not directly contributed, shall be regarded as a credit to any award made against the Commonwealth as aforesaid, excepting those benefits received by an employe by reason of service connected physical injuries, incurred during any war between the United States of America and any foreign country.

(306.1 amended Apr. 4, 1974, P.L.239, No.56)

Section 306.2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated to the Department of Labor and Industry for the Subsequent Injury Fund by the Commonwealth for the 1971-1972 fiscal year and this fund shall be maintained at one hundred thousand dollars ($100,000) by assessing each insurer a proportion of the amount expended from the fund during the preceding year, that the total compensation paid by such insurers during such year bore to the total compensation paid by all insurers that year: Provided, however, That in the first year in which assessments are made under this provision, the total amount assessed and collected shall be two hundred per centum of the amount paid in such cases during the preceding year.

(306.2 added Mar. 29, 1972, P.L.159, No.61)

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

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

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

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

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

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

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

(f) If there be six or more children, sixty-six and two-thirds per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

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

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

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

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

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

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

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

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

4 1/2. (4 1/2 deleted by amendment July 7, 2006, P.L.330, No.68)

(5) If there be neither widow, widower, nor children entitled to compensation, then to the father or mother, if dependent to any extent upon the employe at the time of the injury, thirty-two per centum of wages but not in excess of the Statewide average weekly wage: Provided, however, That in the case of a minor child who has been contributing to his parents, the dependency of said parents shall be presumed: And provided further, That if the father or mother was totally dependent upon the deceased employe at the time of the injury, the compensation payable to such father or mother shall be fifty-two per centum of wages, but not in excess of the Statewide average weekly wage.

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

(7) Whether or not there be dependents as aforesaid, the reasonable expense of burial, not exceeding seven thousand dollars ($7,000), which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts theretofore paid for compensation or for medical expenses). ((7) amended Oct. 24, 2018, P.L.714, No.111)

Compensation shall be payable under this section to or on account of any child, brother, or sister, only if and while such child, brother, or sister, is under the age of eighteen unless such child, brother or sister is dependent because of disability when compensation shall continue or be paid during such disability of a child, brother or sister over eighteen years of age or unless such child is enrolled as a full-time student in any accredited educational institution when compensation shall continue until such student becomes twenty-three. No compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death, or was then actually dependent upon him and receiving from him a substantial portion of her support. No compensation shall be payable under this section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support. If members of decedent's household at the time of his death, the terms "child" and "children" shall include step-children, adopted children and children to whom he stood in loco parentis, and children of the deceased and shall include posthumous children. Should any dependent of a deceased employe die or remarry, or should the widower become capable of self-support, the right of such dependent or widower to compensation under this section shall cease except that if a widow remarries, she shall receive one hundred four weeks compensation at a rate computed in accordance with clause (2) in a lump sum after which compensation shall cease: Provided, however, That if, upon investigation and hearing, it shall be ascertained that the widow or widower is living with a man or woman, as the case may be, in meretricious relationship and not married, or the widow living a life of prostitution, the board may order the termination of compensation payable to such widow or widower. If the compensation payable under this section to any person shall, for any cause, cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

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

(307 amended July 7, 2006, P.L.330, No.68)

Compiler's Note: Section 2 of Act 68 of 2006, which amended section 207, provided that Act 68 shall apply to all claims arising on or after the effective date of Act 68.

Section 308. Except as hereinafter provided, all compensation payable under this article shall be payable in periodical installments, as the wages of the employe were payable before the injury.

(308 amended Mar. 29, 1972, P.L.159, No.61)

Section 308.1. (a) The eligibility of professional athletes for compensation under this act shall be limited as provided in this section.

(b) The term "professional athlete," as used in this section, shall mean a natural person employed as a professional athlete by a franchise of the National Football League, the National Basketball Association, the National Hockey League, the National League of Professional Baseball Clubs or the American League of Professional Baseball Clubs, under a contract for hire or a collective bargaining agreement, whose wages as defined in section 309 are more than eight times the Statewide average weekly wage.

(c) In the case of a professional athlete, any compensation payable under this act with respect to partial disability shall be reduced by the after-tax amount of any:

(1) Wages payable by the employer during the period of disability under a contract for hire or collective bargaining agreement.

(2) Payments under a self-insurance, wage continuation, disability insurance or similar plan funded by the employer.

(3) Injury protection or other injury benefits payable by the employer under a contract for hire or collective bargaining agreement.

(d) No reduction shall be made pursuant to clause (c) against any compensation payable under this act which becomes due and payable on a date after the expiration or termination of the professional athlete's employment contract, except for any amounts paid by the employer pursuant to the contract.

(e) In the case of a professional athlete, the term "wages of the injured employe" as used in section 306(b) for the purpose of computing compensation for partial disability shall mean two times the Statewide average weekly wage.

(308.1 added July 2, 1993, P.L.190, No.44)

Section 309. Wherever in this article the term "wages" is used, it shall be construed to mean the average weekly wages of the employe, ascertained as follows:

(a) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(b) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(c) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two;

(d) If at the time of the injury the wages are fixed by any manner not enumerated in clause (a), (b) or (c), the average weekly wage shall be calculated by dividing by thirteen the total wages earned in the employ of the employer in each of the highest three of the last four consecutive periods of thirteen calendar weeks in the fifty-two weeks immediately preceding the injury and by averaging the total amounts earned during these three periods.

(d.1) If the employe has not been employed by the employer for at least three consecutive periods of thirteen calendar weeks in the fifty-two weeks immediately preceding the injury, the average weekly wage shall be calculated by dividing by thirteen the total wages earned in the employ of the employer for any completed period of thirteen calendar weeks immediately preceding the injury and by averaging the total amounts earned during such periods.

(d.2) If the employe has worked less than a complete period of thirteen calendar weeks and does not have fixed weekly wages, the average weekly wage shall be the hourly wage rate multiplied by the number of hours the employe was expected to work per week under the terms of employment.

(e) Except as provided in clause (d.1) or (d.2), in occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth of the total wages which the employe has earned from all occupations during the twelve calendar months immediately preceding the injury, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employe, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings.

The terms "average weekly wage" and "total wages," as used in this section, shall include board and lodging received from the employer, and gratuities reported to the United States Internal Revenue Service by or for the employe for Federal income tax purposes, but such terms shall not include amounts deducted by the employer under the contract of hiring for labor furnished or paid for by the employer and necessary for the performance of such contract by the employe, nor shall such terms include deductions from wages due the employer for rent and supplies necessary for the employe's use in the performance of his labor, nor shall such terms include fringe benefits, including, but not limited to, employer payments for or contributions to a retirement, pension, health and welfare, life insurance, social security or any other plan for the benefit of the employe or his dependents: Provided, however, That the amount of any bonus, incentive or vacation payment earned on an annual basis shall be excluded from the calculations under clauses (a) through (d.2). Such payments if any shall instead be divided by fifty-two and the amount shall be added to the average weekly wage otherwise calculated under clauses (a) through (d.2).

Where the employe is working under concurrent contracts with two or more employers, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

(309 amended June 24, 1996, P.L.350, No.57)

Compiler's Note: Section 32.1 of Act 57 of 1996, which amended section 309, provided that the amendment of section 309 shall apply only to claims for injuries which are suffered on or after the effective date of section 32.1.

Section 310. Alien widows, children and parents, not residents of the United States, shall be entitled to compensation, but only to the amount of fifty per centum of the compensation which would have been payable if they were residents of the United States: Provided, That compensation benefits are granted residents of the United States under the

laws of the foreign country in which the widow, children or parents reside. Alien widowers, brothers and sisters who are not residents of the United States shall not be entitled to receive any compensation. In no event shall any nonresident alien widow or parent be entitled to compensation in the absence of proof that the alien widow or parent has actually been receiving a substantial portion of his or her support from the decedent. Where transmission of funds in payment of any such compensation is prohibited by any law of the Commonwealth or of the United States to residents of such foreign country, then no compensation shall accrue or be payable while such prohibition remains in effect and, unless such prohibition is removed within six years from the date of death, all obligation to pay compensation under this section shall be forever extinguished.

In every instance where an award is made to alien widows, children or parents, not residents in the United States, the referee or the board shall, in the award, fix the amount of any fee allowed to any person for services in connection with presenting the claim, and it shall be a misdemeanor punishable by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both, to accept any remuneration for the services other than that provided by the referee or board.

(310 amended Feb. 28, 1956 (1955), P.L.1120, No.356)

Section 311. Unless the employer shall have knowledge of the occurrence of the injury, or unless the employe or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice thereof to the employer within twenty-one days after the injury, no compensation shall be due until such notice be given, and, unless such notice be given within one hundred and twenty days after the occurrence of the injury, no compensation shall be allowed. However, in cases of injury resulting from ionizing radiation or any other cause in which the nature of the injury or its relationship to the employment is not known to the employe, the time for giving notice shall not begin to run until the employe knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment. The term "injury" in this section means, in cases of occupational disease, disability resulting from occupational disease.

(311 amended Oct. 17, 1972, P.L.930, No.223)

Section 311.1. (a) If an employe files a petition seeking compensation under section 306(a) or (b) or is receiving compensation under section 306(a) or (b), the employe shall report, in writing, to the insurer the following:

(1) If the employe has become or is employed or self-employed in any capacity.

(2) Any wages from such employment or self-employment.

(3) The name and address of the employer.

(4) The amount of wages from such employment or self-employment.

(5) The dates of such employment or self-employment.

(6) The nature and scope of such employment or self-employment.

(7) Any other information which is relevant in determining the entitlement to or amount of compensation.

(b) The report referred to in clause (a) must be made as soon as possible but no later than thirty days after such employment or self-employment occurs.

(c) An employe is obligated to cooperate with the insurer in an investigation of employment, self-employment, wages and physical condition.

(d) If an employe files a petition seeking compensation under section 306(a) or (b) or is receiving compensation under section 306(a) or (b), the insurer may submit a verification form to the employe either by mail or in person. The form shall request verification by the employe that the employe's status regarding the entitlement to receive compensation has not changed and a notation of any changes of which the employe is aware at the time the employe completes the verification, including employment, self-employment, wages and change in physical condition. Such verification shall not require any evaluation by a third party; however, it shall include a certification evidenced by the employe's signature that the statement is true and correct and that the claimant is aware of the penalties provided by law for making false statements for the purpose of obtaining compensation.

(e) The employe is obligated to complete accurately the verification form and return it to the insurer within thirty days of receipt by the employe of the form. However, the use of the verification form by the insurer and the employe's completion of such form do not relieve the employe of obligations under clauses (a), (b) and (c).

(f) The insurer may require the employe to complete the verification form at intervals of no less than six months.

(g) If the employe fails to return the completed verification form within thirty days, the insurer is permitted to suspend compensation until the completed verification form is returned. The verification form utilized by the insurer shall clearly provide notice to the employe that failure to complete the form within thirty days may result in a suspension of compensation payments.

(311.1 added June 24, 1996, P.L.350, No.57)

Section 312. The notice referred to in section 311 shall inform the employer that a certain employe received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified.

(312 amended June 24, 1996, P.L.350, No.57)

Section 313. The notice referred to in sections 311 and 312 may be given to the immediate or other superior of the employe, to the employer, or any agent of the employer regularly employed at the place of employment of the injured employe. Knowledge of the occurrence of the injury on the part of any such agents shall be the knowledge of the employer.

(313 amended June 24, 1996, P.L.350, No.57)

Section 314. (a) At any time after an injury the employe, if so requested by his employer, must submit himself at some reasonable time and place for a physical examination or expert interview by an appropriate health care provider or other expert, who shall be selected and paid for by the employer. If the employe shall refuse upon the request of the employer, to submit to the examination or expert interview by the health care provider or other expert selected by the employer, a workers' compensation judge assigned by the department may, upon petition of the employer, order the employe to submit to such examination or expert interview at a time and place set by the workers' compensation judge and by the health care provider or other expert selected and paid for by the employer or by a health care provider or other expert designated by the workers' compensation judge and paid for by the employer. The workers' compensation judge may at any time after such first

examination or expert interview, upon petition of the employer, order the employe to submit himself to such further physical examinations or expert interviews as the workers' compensation judge shall deem reasonable and necessary, at such times and places and by such health care provider or other expert as the workers' compensation judge may designate; and in such case, the employer shall pay the fees and expenses of the examining health care provider or other expert, and the reasonable traveling expenses and loss of wages incurred by the employe in order to submit himself to such examination or expert interview. The refusal or neglect, without reasonable cause or excuse, of the employe to submit to such examination or expert interview ordered by the workers' compensation judge, either before or after an agreement or award, shall deprive him of the right to compensation, under this article, during the continuance of such refusal or neglect, and the period of such neglect or refusal shall be deducted from the period during which compensation would otherwise be payable.

(b) In the case of a physical examination, the employe shall be entitled to have a health care provider of his own selection, to be paid by him, participate in such examination requested by his employer or ordered by the workers' compensation judge. In instances where an examination is requested in relation to section 306(a.3)(1), such examination shall be performed by a physician who is licensed in this Commonwealth, who is certified by an American Board of Medical Specialties approved board or its osteopathic equivalent and who is in active clinical practice for at least twenty (20) hours per week. ((b) amended Oct. 24, 2018, P.L.714, No.111)

(314 amended June 24, 1996, P.L.350, No.57)

Section 315. In cases of personal injury all claims for compensation shall be forever barred, unless, within three years after the injury, the parties shall have agreed upon the compensation payable under this article; or unless within three years after the injury, one of the parties shall have filed a petition as provided in article four hereof. In cases of death all claims for compensation shall be forever barred, unless within three years after the death, the parties shall have agreed upon the compensation under this article; or unless, within three years after the death, one of the parties shall have filed a petition as provided in article four hereof. Where, however, in the case of any person receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period in which parties must agree upon the compensation or file a petition for compensation in cases of personal injury or in death, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of three years from the time of the making of the most recent payment prior to date of filing such petition: Provided, That any payment made under an established plan or policy of insurance for the payment of benefits on account of non-occupational illness or injury and which payment is identified as not being workmen's compensation shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations. However, in cases of injury resulting from ionizing radiation in which the nature of the injury or its relationship to the employment is not known to the employe, the time for filing a claim shall not begin to run until the employe knows, or by the exercise of reasonable

diligence should know, of the existence of the injury and its possible relationship to his employment. The term "injury" in this section means, in cases of occupational disease, disability resulting from occupational disease.

(315 amended Apr. 4, 1974, P.L.239, No.56 and Dec. 5, 1974, P.L.782, No.263)

Section 316. The compensation contemplated by this article may at any time be commuted by the board, at its then value when discounted at five per centum interest, with annual rests, upon application of either party, with due notice to the other, if it appear that such commutation will be for the best interest of the employe or the dependents of the deceased employe, and that it will avoid undue expense or undue hardship to either party, or that such employe or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the whole or the greater part of his business or assets: Provided, however, That unless the employer agrees to make such commutation, the board may require the employe or the dependents of the deceased employe to furnish proper indemnity safeguarding the employer's rights. Nothing in this section shall prohibit, restrict or impair the right of the parties to enter into a compromise and release by stipulation in accord with section 449.

(316 amended June 24, 1996, P.L.350, No.57)

Section 317. At any time after the approval of an agreement or after the entry of the award, a sum equal to all future instalments of compensation may (where death or the nature of the injury renders the amount of future payments certain), with the approval of the board, be paid by the employer to any savings bank, trust company, or life insurance company, in good standing and authorized to do business in this Commonwealth, and such sum, together with all interest thereon, shall thereafter be held in trust for the employe or the dependents of the employe, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee noted upon the prothonotary's docket, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same periods as are herein required of the employer, until said fund and interest shall be exhausted. In the appointment of the trustee preference shall be given in the discretion of the board, to the choice of the employe or the dependents of the deceased employe. Should, however, there remain any unexpended balance of any fund after the payment of all sums due under this act, such balance shall be repaid to the employer who made the original payment, or to his legal representatives.

Section 318. The right of compensation granted by this article of this act shall have the same preference (without limit of amount) against the assets of an employer, liable for such compensation, as is now or may hereafter be allowed by law for a claim for unpaid wages for labor: Provided, however, That no claim for compensation shall have priority over any judgment, mortgage, or conveyance of land recorded prior to the filing of the petition, award, or agreement as to compensation in the office of the prothonotary of the county in which the land is situated. Claims for payments due under this article of this act and compensation payments made by virtue thereof shall not be assignable.

(318 amended Dec. 28, 1959, P.L.2034, No.747; repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 319. Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under this article by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employe, his personal representative, his estate or his dependents. The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employe, his personal representative, his estate or his dependents, and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

Where an employe has received payments for the disability or medical expense resulting from an injury in the course of his employment paid by the employer or an insurance company on the basis that the injury and disability were not compensable under this act in the event of an agreement or award for that injury the employer or insurance company who made the payments shall be subrogated out of the agreement or award to the amount so paid, if the right to subrogation is agreed to by the parties or is established at the time of hearing before the referee or the board.

(319 amended Mar. 29, 1972, P.L.159, No.61)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Compiler's Note: Section 23 of Act 44 of 1993 provided that the Commonwealth, its political subdivisions, their officials and employees acting within the scope of their duties shall enjoy and benefit from sovereign and official immunity from claims of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits.

Section 320. (a) If the employe at the time of the injury is a minor, under the age of eighteen years, employed or permitted to work in violation of any provision of the laws of this Commonwealth relating to minors of such age, compensation, either in the case of injury or death of such employe, shall be one hundred and fifty per centum of the amount that would be payable to such minor if legally employed. The amount by which such compensation shall exceed that provided for in case of legal employment may be referred to as "additional compensation." ((a) amended Mar. 29, 1972, P.L.159, No.61)

(b) The employer and not the insurance carrier shall be liable for the additional compensation. Any provision in an insurance policy undertaking to relieve an employer from such liability shall be void.

(c) Where death or the nature of the injury renders the amount of future payments certain, the total amount of the additional compensation, subject to discount as in the case of commutation, shall be immediately due and payable. It shall be deposited, subject to the approval of the board, in any savings bank, trust company, or life insurance company in good standing and authorized to do business in this state.

Where the amount of the future payments of compensation is uncertain, the board shall, upon the approval of the agreement or the entry of an award, determine as nearly as may be the total amount of payments to be made, and the additional compensation so calculated shall, immediately upon such determination, become due and payable by the employer. The amount may be redetermined by the board and any increase shall then become due and payable, and any excess, which shall be shown to have been paid, shall be returned to the person paying the same. Upon determination of the amount due, it shall be deposited as above provided. Payments of compensation out of deposits shall be made to the employe or dependents as payments of other compensation are made: Provided, however, That the board may, in its discretion and upon inquiry as in cases of commutation, accelerate such payments.

(d) The provisions of the foregoing paragraph (c) shall not apply to employers who are exempted by the department from the necessity of carrying insurance.

(e) Possession of an employment certificate, duly issued and transmitted to the employer in accordance with the provisions of the child labor law and receipt thereof duly acknowledged by him, shall be conclusive evidence to such employer of his legal right to employ the minor for whose employment such certificate has been issued.

(f) The possession of an age certificate, duly issued and transmitted to the employer by the school authorities of the school district in which a minor resides, shall be conclusive evidence to the employer of the minor's age as certified therein.

(g) If neither party has elected not to be bound by the provisions of article three of the act to which this act is an amendment, in the manner prescribed by section three hundred and two of said act, they shall be held to have agreed to be bound by the provisions of this act and to have waived any other right or remedy at law or in equity, for the recovery of damages for injuries occurring under the circumstances herein described. ((g) added May 18, 1945, P.L.671, No.287)

Section 321. Nothing contained in this act shall apply to or in any way affect:

(1) Any person who at the time of injury is engaged in domestic service: Provided, however, That in cases where the employer of any such person shall have, prior to such injury, by application to the department and approved by the department, elected to come within the provisions of the act, such exemption shall not apply.

(2) Any person who is a licensed real estate salesperson or an associate real estate broker affiliated with a licensed real estate broker or a licensed insurance agent affiliated with a licensed insurance agency, under a written agreement, remunerated on a commission-only basis and who qualifies as an independent contractor for State tax purposes or for Federal tax purposes under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(321 amended June 24, 1996, P.L.350, No.57)

Section 322. It shall be unlawful for any employe to receive compensation under this act if he is at the same time receiving workers' compensation under the laws of the Federal Government or any other state for the same injury. Further, it shall be unlawful for an employe receiving compensation under this act simultaneously from two or more employers or insurers during any period of total disability to receive total compensation in excess of the maximum benefit under this act. Nothing in

this section shall be deemed to prohibit payment of workers' compensation on a pro-rata basis, where an employe suffers from more than one injury while in the employ of more than one employer: Provided, however, That the total compensation paid shall not exceed the maximum weekly compensation payable under this act: And, Provided further, That any such pro rata calculation shall be based upon the earnings by such an employe in the employ of each such employer and that all wage losses suffered as a result of any injury which is compensable under this act shall be used as the basis for calculating the total compensation to be paid on a pro rata basis.

(322 added July 2, 1993, P.L.190, No.44)

Section 323. (a) A construction design professional who is retained to perform professional services on a construction project or any employe of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall not be liable under this act for any injury or death of a worker not an employe of such design professional on the construction project for which workers' compensation is payable under the provisions of this act.

(b) Notwithstanding any provisions to the contrary, this section shall apply to claims for compensation based on injuries or death which occurred after the effective date of this section.

(323 added July 2, 1993, P.L.190, No.44)

ARTICLE IV.
PROCEDURE

Section 401. The term "referee," when used in this act, shall mean a Workers' Compensation Judge of the Department of Labor and Industry, appointed by and subject to the general supervision of the Secretary of Labor and Industry for the purpose of conducting departmental hearings under this act. The secretary may establish different classes of these judges. Any reference in any statute to a workmen's compensation referee shall be deemed to be a reference to a workers' compensation judge.

The term "board," when used in this article, shall mean the Workers' Compensation Appeal Board, a departmental administrative board as provided in sections 202, 207, 503 and 2208 of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," exercising its powers and performing its duties as an appellate board independently of the Secretary of Labor and Industry and any other official of the department.

The term "fund," when used in this article, shall mean the State Workmen's Insurance Fund of this Commonwealth, the State-operated insurance carrier from which workmen's compensation insurance policies may be purchased by employers to cover all risks of liability under this act including those declined by private carriers.

The terms "insurer" and "carrier," when used in this article, shall mean the State Workmen's Insurance Fund or other insurance carrier which has insured the employer's liability under this act, or the employer in cases of self-insurance.

The term "employer," when used in this article, shall mean the employer as defined in article one of this act, or his duly authorized agent, or his insurer if such insurer has assumed

the employer's liability or the fund if the employer be insured therein.

The term "resolution hearing," when used in this article, shall mean a procedure established by the Office of Adjudication with the sole purpose of providing a venue to present a compromise and release to a workers' compensation judge in an expedited fashion.

The term "mediation," when used in this article, shall mean a conference conducted by a workers' compensation judge, but not necessarily the judge assigned to the actual case involving the parties, and shall require the attendance in person or by teleconference of all parties, including the claimant and employer, and their respective counsel, if any. All parties shall have requisite authority to accept, modify or reject settlement proposals offered at a mediation, either at the mediation or within a reasonable time period after the mediation as established by the workers' compensation judge.

(401 amended Nov. 9, 2006, P.L.1362, No.147)

Compiler's Note: Section 21 of Act 44 of 1993 provided that, no later than December 31, 1993, the Secretary of Labor and Industry shall submit to the General Assembly an analysis of the average workload per workers' compensation judge and a plan to reduce the delays in deciding workers' compensation petitions, including any necessary increases in the number of judges and supporting staff.

Section 401.1. The department shall, in fulfillment of its responsibilities under this act, enforce the time standards and other performance standards herein provided for the prompt processing of injury cases and payment of compensation when due by employers and insurers both upon petition by a party or on its own motion. In any case in which compensation has not been timely paid, or in which notice of denial of compensation has been given, the department shall hear and determine all claim petitions for compensation filed by employes or their dependents. The department shall also hear and determine all petitions by employers or insurers to suspend, terminate, reduce or otherwise modify compensation payments, awards, or agreements and petitions by employes or their dependents to increase, modify or reinstate compensation payments, awards, or agreements. Hearings shall be scheduled forthwith upon receipt of the claim petition or other petition, as the case may be, and determinations thereon shall be made promptly and in conformity with time standards herein or hereunder established. Such hearings shall be conducted by a workers' compensation judge or other hearing officer designated by the secretary.

Each workers' compensation judge assigned to conduct hearings shall set forth a mandatory trial schedule at the first hearing. This trial schedule shall include specific deadlines for the presentation of evidence by the parties and dates for future hearings. Judges shall strictly enforce their schedules, and no party will be excused from honoring the schedule absent good cause shown. Every trial schedule shall include a specific date and time for a mediation conference. Mediations shall take place no later than thirty (30) days prior to the date set for filing proposed findings of fact and conclusions of law or legal briefs or memoranda unless, upon good cause shown, the workers' compensation judge determines mediation would be futile. Within one hundred twenty (120) days of the effective date of this paragraph, the Office of Adjudication shall create a resolution hearing procedure to hear compromise and release agreements in an expedited manner. The hearing shall be held within fourteen

(14) business days of notice of a commutation or compromise and release.

The workers' compensation judge conducting a resolution hearing will not be required to have received formal assignment by the Workers' Compensation Bureau of the compromise and release petition prior to conducting the resolution hearing. At the time of hearing, the parties shall submit proof of filing a petition to the workers' compensation judge hearing the compromise and release matter. A workers' compensation judge shall render a decision within five (5) business days of the hearing.

Delays in hearings will be granted according to rules established by the department, and any party who unreasonably delays a hearing will be subject to a penalty as provided in section 435. Subject to the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law," the department shall adopt such rules and regulations as it finds necessary or desirable for the enforcement of this act.

(401.1 amended Nov. 9, 2006, P.L.1362, No.147)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 401.2. (a) The Workers' Compensation Appeal Board shall consist of at least three, and not more than fifteen, members appointed by the Governor, of whom the Governor shall designate one as chairman. An en banc board shall consist of all the appointed members on the board, a majority of which shall constitute a quorum, and no action of the board shall be valid unless it shall have the concurrence of such number of members and that number constitutes a majority of the votes cast. Where there are more than three appointed members, the board may sit in panels of three, all three members shall constitute a quorum and no action taken by a panel shall be valid unless it shall have the concurrence of a majority of the panel members. When a majority of any such panel has reached a decision, the chair of the panel shall assign the writing of an opinion and order to a panel member. The panel member shall prepare a draft opinion and award and transmit it to the secretary of the board for circulation and review to all members of the Workers' Compensation Appeal Board. Each member of the Workers' Compensation Appeal Board shall be entitled to a period of thirty (30) days from the date a draft opinion on behalf of a majority of a panel is placed in circulation by the secretary of the board in which to concur in, comment on, object to or dissent from the proposed draft opinion and award. Concurrences, comments, objections and dissents shall be transmitted to the chairman of the board, the secretary of the board and the board member responsible for writing the draft opinion. A board member who does not submit a written response to a proposed draft opinion and order circulated shall be deemed to concur in the opinion and order as drafted and initially placed in circulation in conformity with the procedure set forth in subsection (a). If, at the conclusion of the thirty-day period, a majority of the members of the board have failed to concur in the draft opinion and order as circulated, the Chairman of the Workers' Compensation Appeal Board, in consultation with the chair of the panel that heard the case in question, shall reassign the opinion to a board member for the purpose of redrafting and circulating a draft opinion and order in conformity with the procedures articulated in this subsection. A vacancy on the

board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board. The Secretary of Labor and Industry, with the approval of the Governor, shall appoint a secretary to the Workers' Compensation Appeal Board, who shall receive such salary as the Secretary of Labor and Industry, with the approval of the Governor, shall determine.

(b) Members of the board shall be required to annually attend and participate in a minimum of eight (8) hours of workers' compensation-related education approved by the Pennsylvania Supreme Court Continuing Legal Education Board or a similar reputable agency approved by the department.

(c) A member of the Workers' Compensation Appeal Board shall conform to the following code of ethics:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform duties impartially and diligently.

(3) Avoid ex parte communications in any contested, on-the-record matter pending before the department.

(4) Abstain from expressing publicly, except in administrative disposition or adjudication, personal views on the merits of an adjudication pending before the department and require similar abstention on the part of department personnel subject to the member's direction and control.

(5) Require staff and personnel subject to the member's direction and control to observe the standards of fidelity and diligence that apply to a member.

(6) Refer to the Secretary of Labor and Industry disciplinary measures against department personnel subject to the member's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. A member may speak, write or lecture, and reimbursed expenses, honoraria, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the Secretary of Labor and Industry and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the member.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes: Provided, however, That a member may be an officer, a director or a trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. A member may hold and manage investments which are not incompatible with the duties of office.

(12) Uphold the integrity and independence of the workers' compensation system.

(d) The secretary shall ensure that there are at least two opinion writers assigned to each member of the board. Opinion writers employed by or on behalf of the board whose duties involve, in whole or in part, the writing or drafting of proposed opinions, decisions or orders for the board or any member of the board shall be required to annually attend and participate in a minimum of eight (8) hours of continuing legal education in the field of workers' compensation practice and

procedure in courses approved by the Pennsylvania Supreme Court Continuing Legal Education Board.

(401.2 added Nov. 9, 2006, P.L.1362, No.147)

Section 402. All proceedings before any workers' compensation judge, except those for which an informal conference has been applied for as provided by section 402.1, shall be instituted by claim petition or other petition as the case may be or on the department's own motion, and all appeals to the board, shall be instituted by appeal addressed to the board. All claim petitions, requests for informal conferences and other petitions and appeals shall be in writing and in the form prescribed by the department.

(402 amended June 24, 1996, P.L.350, No.57)

Section 402.1. (a) In any action for which a petition has been filed under this act, the parties by joint agreement may file a notice of request with the department for an informal conference pursuant to this act. The department shall assign the matter to a workers' compensation judge or hearing officer for an informal conference. Unless the parties jointly agree to a time extension, all proceedings within an informal conference shall be completed within thirty-five days of the filing of the request for informal conference. Joint agreement to a time extension shall stay the adjudication proceedings for the time agreed upon.

(b) At any informal conference held pursuant to this section:

(i) the workers' compensation judge or hearing officer may accept the statements of both parties, together with any medical reports, witnesses' statements or other documents which the parties would like to present;

(ii) all communications, verbal or written, from the parties to the workers' compensation judge or hearing officer and any information and evidence presented to the workers' compensation judge or hearing officer during the informal conference proceedings are confidential and shall not be a part of the record of testimony; and

(iii) each party may be represented, but the employer may only be represented by an attorney at the informal conference if the employe is also represented by an attorney at the informal conference.

(c) The workers' compensation judge or hearing officer shall attempt to resolve the issues in dispute between the parties, but in no event shall any recommendations or findings made by the workers' compensation judge or hearing officer be binding upon the parties unless accepted in writing by both parties. If the parties come to agreement, the workers' compensation judge or hearing officer shall reduce such agreement to writing, which shall be signed by all parties and filed with the department.

(d) In the event that the parties cannot resolve their dispute, the petition will be reassigned to a different workers' compensation judge for adjudication of the dispute, or, by joint agreement of the parties, the workers' compensation judge who was originally assigned the matter will proceed with the adjudication of the petition.

(e) The information provided at the informal conference does not constitute established evidence for any subsequent proceeding on the petition.

(f) No workers' compensation judge or hearing officer who participates in an informal conference conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any

other proceeding pursuant to this act, except matters involving fraud.

(402.1 added June 24, 1996, P.L.350, No.57)

Section 403. All petitions, all copies of notices of compensation payable and agreements for compensation, and all papers requiring action by the department and its referees or the board, shall be mailed or delivered to the department at its principal office.

(403 amended Feb. 8, 1972, P.L.25, No.12)

Section 404. The department shall, immediately upon their receipt, properly file and docket all claim petitions and other petitions, notices of compensation payable, agreements for compensation, findings of fact, awards or disallowances of compensation, or modifications thereof, and all other decisions, reports or papers filed with it under the provisions of this act or the rules and regulations of the department or the board.

(404 amended Feb. 8, 1972, P.L.25, No.12)

Section 405. Immediately upon making or receiving any award or disallowance of compensation, or any modification thereof, or any other decision, the department shall serve a copy thereof on all parties in interest.

(405 amended Feb. 8, 1972, P.L.25, No.12)

Section 406. All notices and copies to which any parties shall be entitled under the provisions of this article shall be served by mail, or in such manner as the department shall direct. For the purposes of this article any notice or copy shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any notice or copy was not received, or that there was an unusual or unreasonable delay in its transmission through the mails. In any such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this act.

The department, the secretary of the board, and every referee shall keep a careful record of the date of mailing every notice and copy required by this act to be served on the parties in interest.

(406 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 406.1. (a) The employer and insurer shall promptly investigate each injury reported or known to the employer and shall proceed promptly to commence the payment of compensation due either pursuant to an agreement upon the compensation payable or a notice of compensation payable as provided in section 407 or pursuant to a notice of temporary compensation payable as set forth in subsection (d), on forms prescribed by the department and furnished by the insurer. The first installment of compensation shall be paid not later than the twenty-first day after the employer has notice or knowledge of the employe's disability. Interest shall accrue on all due and unpaid compensation at the rate of ten per centum per annum. Any payment of compensation prior or subsequent to an agreement or notice of compensation payable or a notice of temporary compensation payable or greater in amount than provided therein shall, to the extent of the amount of such payment or payments, discharge the liability of the employer with respect to such case.

(b) Payments of compensation pursuant to an agreement or notice of compensation payable may be suspended, terminated, reduced or otherwise modified by petition and subject to right of hearing as provided in section 413.

(c) If the insurer controverts the right to compensation it shall promptly notify the employe or his dependent, on a form prescribed by the department, stating the grounds upon which the right to compensation is controverted and shall forthwith furnish a copy or copies to the department.

(d) (1) In any instance where an employer is uncertain whether a claim is compensable under this act or is uncertain of the extent of its liability under this act, the employer may initiate compensation payments without prejudice and without admitting liability pursuant to a notice of temporary compensation payable as prescribed by the department.

(2) The notice of temporary compensation payable shall be sent to the claimant and a copy filed with the department and shall notify the claimant that the payment of temporary compensation is not an admission of liability of the employer with respect to the injury which is the subject of the notice of temporary compensation payable. The department shall, upon receipt of a notice of temporary compensation payable, send a notice to the claimant informing the claimant that:

(i) the payment of temporary compensation and the claimant's acceptance of that compensation does not mean the claimant's employer is accepting responsibility for the injury or that a compensation claim has been filed or commenced;

(ii) the payment of temporary compensation entitles the claimant to a maximum of ninety (90) days of compensation; and

(iii) the claimant may need to file a claim petition in a timely fashion under section 315, enter into an agreement with his employer or receive a notice of compensation payable from his employer to ensure continuation of compensation payments.

(3) Payments of temporary compensation shall commence and the notice of temporary compensation payable shall be sent within the time set forth in clause (a).

(4) Payments of temporary compensation may continue until such time as the employer decides to controvert the claim.

(5) (i) If the employer ceases making payments pursuant to a notice of temporary compensation payable, a notice in the form prescribed by the department shall be sent to the claimant and a copy filed with the department, but in no event shall this notice be sent or filed later than five (5) days after the last payment.

(ii) This notice shall advise the claimant, that if the employer is ceasing payment of temporary compensation, that the payment of temporary compensation was not an admission of liability of the employer with respect to the injury subject to the notice of temporary compensation payable, and the employe must file a claim to establish the liability of the employer.

(iii) If the employer ceases making payments pursuant to a notice of temporary compensation payable, after complying with this clause, the employer and employe retain all the rights, defenses and obligations with regard to the claim subject to the notice of temporary compensation payable, and the payment of temporary compensation may not be used to support a claim for compensation.

(iv) Payment of temporary compensation shall be considered compensation for purposes of tolling the statute of limitations under section 315.

(6) If the employer does not file a notice under paragraph (5) within the ninety-day period during which temporary

compensation is paid or payable, the employer shall be deemed to have admitted liability and the notice of temporary compensation payable shall be converted to a notice of compensation payable.

((d) amended June 24, 1996, P.L.350, No.57)

(406.1 amended July 2, 1993, P.L.190, No.44)

Section 407. On or after the seventh day after any injury shall have occurred, the employer or insurer and employe or his dependents may agree upon the compensation payable to the employe or his dependents under this act; but any agreement made prior to the seventh day after the injury shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void. It shall be unlawful for any employer to accept a receipt showing the payment of compensation when in fact no such payment has been made.

Where payment of compensation is commenced without an agreement, the employer or insurer shall simultaneously give notice of compensation payable to the employe or his dependent, on a form prescribed by the department, identifying such payments as compensation under this act and shall forthwith furnish a copy or copies to the department as required by rules and regulations. It shall be the duty of the department to examine the notice to determine whether it conforms to the provisions of this act and rules and regulations hereunder.

All agreements made in accordance with the provisions of this section shall be on a form prescribed by the department, signed by all parties in interest, and a copy or copies thereof forwarded to the department as required by rules and regulations. It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of this act and rules and regulations hereunder.

All notices of compensation payable and agreements for compensation and all supplemental agreements for the modification, suspension, reinstatement, or termination thereof, and all receipts executed by any injured employe of whatever age, or by any dependent to whom compensation is payable under section three hundred and seven, and who has attained the age of sixteen years, shall be valid and binding unless modified or set aside as hereinafter provided.

(407 amended Mar. 29, 1972, P.L.159, No.61)

Section 408. All notices of compensation payable and agreements for compensation may be modified, suspended, reinstated, or terminated at any time by an agreement or supplemental agreement as the case may be with notice to the department, if the incapacity of an injured employe has increased, decreased, recurred, or temporarily or finally terminated, or if the status of any dependent has changed.

(408 amended Feb. 8, 1972, P.L.25, No.12)

Section 409. Whenever an agreement or supplemental agreement shall be executed between an employer or his insurer and an employe or his dependents as provided by this act, such agreement shall be executed in triplicate. It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of this act and rules and regulations hereunder. The employer or the insurer as the case may be shall immediately furnish one copy of the agreement to the employe or his dependents and forward another copy or copies to the department as required by rules and regulations. If

compensation payments have not already been made, compensation shall be commenced forthwith upon execution of the agreement.

(409 amended Feb. 8, 1972, P.L.25, No.12)

Section 410. If, after any injury, the employer or his insurer and the employe or his dependent, concerned in any injury, shall fail to agree upon the facts thereof or the compensation due under this act, the employe or his dependents may present a claim petition for compensation to the department.

In case any claimant shall die before the final adjudication of his claim, the amount of compensation due such claimant to the date of death shall be paid to the dependents entitled to compensation, or, if there be no dependents, then to the estate of the decedent.

Whenever any claim for compensation is presented and the only issue involved is the liability as between the defendant or the carrier or two or more defendants or carriers, the referee of the department to whom the claim in such case is presented shall forthwith order payments to be immediately made by the defendants or the carriers in said case. After the department's referee or the board on appeal, render a final decision, the payments made by the defendant or carrier not liable in the case shall be awarded or assessed against the defendant or carrier liable in the case, as costs in the proceedings, in favor of the defendant or carrier not liable in the case.

(410 amended Mar. 29, 1972, P.L.159, No.61)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 411. Whenever the employer or his insurer and the employe or his dependent shall, on or after the seventh day after any injury, agree on all of the facts on which a claim for compensation depends, but shall fail to agree on the compensation payable, they may petition the department to determine the compensation payable. Such petition shall contain the agreed facts, and shall be signed by all parties in interest. The department or its referee shall fix a time and place for hearing the petition, and shall notify all parties in interest. As soon as may be after such hearing, the department or its referee shall award or disallow compensation in accordance with the provisions of this act.

(411 amended Mar. 29, 1972, P.L.159, No.61)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 412. If any party shall desire the commutation of future installments of compensation, he shall present a petition therefor to the department to be heard and determined by a workers' compensation judge: Provided, That where there are no more than fifty-two weeks of compensation to be commuted, the insurer or self-insurer may commute such future installments without discount upon furnishing the employe written notice of the commutation on a form prescribed by the department, a copy of which shall be filed immediately with the department. Nothing in this section shall prohibit, restrict or impair the right of the parties to enter into a compromise and release by stipulation in accord with section 449.

(412 amended June 24, 1996, P.L.350, No.57)

Section 413. (a) A workers' compensation judge may, at any time, review and modify or set aside a notice of compensation payable and an original or supplemental agreement or upon petition filed by either party with the department, or in the course of the proceedings under any petition pending before such workers' compensation judge, if it be proved that such notice of compensation payable or agreement was in any material respect incorrect.

A workers' compensation judge designated by the department may, at any time, modify, reinstate, suspend, or terminate a notice of compensation payable, an original or supplemental agreement or an award of the department or its workers' compensation judge, upon petition filed by either party with the department, upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed: Provided, That, except in the case of eye injuries, no notice of compensation payable, agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the department within three years after the date of the most recent payment of compensation made prior to the filing of such petition. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period in which a petition to review, modify, or reinstate a notice of compensation, agreement or award must be filed, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act: And provided further, That any payment made under an established plan or policy of insurance for the payment of benefits on account of nonoccupational illness or injury and which payment is identified as not being workmen's compensation shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations: And provided further, That where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the injury that payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable, unless it be shown that the loss in earnings does not result from the disability due to the injury.

The workers' compensation judge to whom any such petition has been assigned may subpoena witnesses, hear evidence, make findings of fact, and award or disallow compensation, in the same manner and with the same effect and subject to the same right of appeal, as if such petition were an original claim petition.

(a.1) The filing of a petition to terminate, suspend or modify a notice of compensation payable or a compensation agreement or award as provided in this section shall automatically operate as a request for a supersedeas to suspend the payment of compensation fixed in the agreement or the award where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect, which is based upon an examination made within twenty-one days of the filing of the petition. A special supersedeas hearing before a workers'

compensation judge shall be held within twenty-one days of the assignment of such petition. All parties to the special supersedeas hearing shall have the right to submit, and the workers' compensation judge may consider testimony of any party or witness; the record of any physician; the records of any physician, hospital, clinic or similar entity; the written statements or reports of any other person expected to be called by any party at the hearing of the case; and any other relevant materials. The workers' compensation judge shall rule on the request for supersedeas within seven days of the hearing and shall approve the request if prima facia evidence of a change in the medical status or of any other fact which would serve to modify or terminate payment of compensation is submitted at the hearing, unless the employe establishes, by a preponderance of the evidence, a likelihood of prevailing on the merits of his defense. The workers' compensation judge's decision on supersedeas shall be interlocutory and shall not be appealable. The determination of full recovery with respect to either the petition to terminate or modify or the request for supersedeas shall be made without consideration of whether a specific job vacancy exists for the employe for work which the employe is capable of performing or whether the employe would be hired if the employe applied for work which the employe is capable of performing.

(a.2) In any other case, a petition to terminate, suspend or modify a compensation agreement or other payment arrangement or award as provided in this section shall not automatically operate as a supersedeas but may be designated as a request for a supersedeas, which may then be granted at the discretion of the workers' compensation judge hearing the case. A supersedeas shall serve to suspend the payment of compensation in whole or to such extent as the facts alleged in the petition would, if proved, require. The workers' compensation judge hearing the case shall rule on the request for a supersedeas as soon as possible and may approve the request if proof of a change in medical status, or proof of any other fact which would serve to modify or terminate payment of compensation is submitted with the petition. The workers' compensation judge hearing the case may consider any other fact which he deems to be relevant when making the decision on the supersedeas request and the decision shall not be appealable.

(b) Any insurer who suspends, terminates or decreases payments of compensation without submitting an agreement or supplemental agreement therefor as provided in section 408, or a final receipt as provided in section 434, or without filing a petition and either alleging that the employe has returned to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within twenty-one days of the filing of the petition or having requested and been granted a supersedeas as provided in this section, shall be subject to penalty as provided in section 435.

(c) Notwithstanding any provision of this act, an insurer may suspend the compensation during the time the employe has returned to work at his prior or increased earnings upon written notification of suspension by the insurer to the employe and the department, on a form prescribed by the department for this purpose. The notification of suspension shall include a verification by the insurer that compensation has been suspended because the employe has returned to work at prior or increased

earnings. The insurer must mail the notification of suspension to the employe and the department within seven days of the insurer suspending compensation.

(1) If the employe contests the averments of the insurer's verification, a special supersedeas hearing before a workers' compensation judge may be requested by the employe indicating by a checkoff on the notification form that the suspension of benefits is being challenged and filing the notification of challenge with the department within twenty days of receipt of the notification of suspension from the insurer. The special supersedeas hearing shall be held within twenty-one days of the employe's filing of the notification of challenge.

(2) If the employe does not challenge the insurer's notification of suspension within twenty days under paragraph (1), the employe shall be deemed to have admitted to the return to work and receipt of wages at prior or increased earnings. The insurer's notification of suspension shall be deemed to have the same binding effect as a fully executed supplemental agreement for the suspension of benefits.

((c) amended Dec. 22, 2021, P.L.456, No.95)

(d) Notwithstanding any provision of this act, an insurer may modify the compensation payments made during the time the employe has returned to work at earnings less than the employe earned at the time of the work-related injury, upon written notification of modification by the insurer to the employe and the department, on a form prescribed by the department for this purpose. The notification of modification shall include a verification by the insurer that compensation has been modified because the employe has returned to work at lesser earnings. The insurer must mail the notification of modification to the employe and the department within seven days of the insurer's modifying compensation.

(1) If the employe contests the averments of the insurer's verification, a special supersedeas hearing before a workers' compensation judge may be requested by the employe indicating by a checkoff on the notification form that the modification of benefits is being challenged and filing the notification of challenge with the department within twenty days of receipt of the notification of modification from the insurer. The special supersedeas hearing shall be held within twenty-one days of the employe's filing of the notification of challenge.

(2) If the employe does not challenge the insurer's notification of modification within twenty days under paragraph (1), the employe shall be deemed to have admitted to the return to work and receipt of wages at lesser earnings as alleged by the insurer. The insurer's notification of modification shall be deemed to have the same binding effect as a fully executed supplemental agreement for the modification of benefits.

((d) amended Dec. 22, 2021, P.L.456, No.95)

(413 amended June 24, 1996, P.L.350, No.57)

Section 414. Whenever a claim petition or other petition is presented to the department, the department shall, by general rules or special order, assign it to a workers' compensation judge for hearing. When assigning petitions, including those for resolution hearings, the department shall not assign to a particular workers' compensation judge more than seventy-five per centum of the petitions from a particular county.

The department shall serve upon each adverse party a copy of the petition, together with a notice that such petition will be heard by the workers' compensation judge to whom it has been assigned (giving his name and address) as the case may be, and shall mail the original petition to such workers' compensation

judge, together with copies of the notices served upon the adverse parties.

(414 amended Nov. 9, 2006, P.L.1362, No.147)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 415. At any time before an award or disallowance of compensation or order has been made by a referee to whom a petition has been assigned, the department may order such petition heard before any other referee. Unless the department shall otherwise order, the testimony taken before the original referee shall be considered as though taken before the substituted referee.

(415 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 416. Within twenty days after a copy of any claim petition or other petition has been served upon an adverse party, he may file with the department or its workers' compensation judge an answer in the form prescribed by the department.

Every fact alleged in a claim petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any party or of all of them to deny a fact alleged in any other petition shall not preclude the workers' compensation judge before whom the petition is heard from requiring, of his own motion, proof of such fact. If a party fails to file an answer and/or fails to appear in person or by counsel at the hearing without adequate excuse, the workers' compensation judge hearing the petition shall decide the matter on the basis of the petition and evidence presented.

(416 amended June 24, 1996, P.L.350, No.57)

Section 417. Within fifteen days after notice that a petition has been directed to be heard by a referee has been served upon the adverse parties thereof, the referee shall fix a time and place for hearing the petition. The referee shall as soon as practicable within the limitations prescribed herein fix a time and a place for hearing the petition and serve upon all parties in interest a notice of the time and place of hearing, and shall serve upon the petitioner a copy of any answer of any adverse party. The hearing on any such petition shall be held within thirty-five days of the filing of the petition.

(417 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 418. The referee to whom a petition is assigned for hearing, may subpoena witnesses, order the production of books and other writings, and hear evidence, shall make a record of hearings, and shall make, in writing and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the petition and answers and the evidence produced before him and the provisions of this act shall, in his judgment, require. The findings of fact made by a referee to whom a petition has been assigned or any question of fact

has been referred under the provisions of section four hundred and nineteen shall be final, unless an appeal is taken as provided in this act.

(418 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 419. The board may remand any case involving any question of fact arising under any appeal to a referee to hear evidence and report to the board the testimony taken before him or such testimony and findings of fact thereon as the board may order. The department may refer any question of fact arising out of any petition assigned to a referee, to any other referee to hear evidence, and report the testimony so taken thereon to the original referee.

(419 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 420. (a) The board, the department or a workers' compensation judge, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make or cause to be made an investigation of the facts set forth in the petition or answer or facts pertinent in any injury under this act. The board, department or workers' compensation judge may appoint one or more impartial physicians or surgeons to examine the injuries of the plaintiff and report thereon, or may employ the services of such other experts as shall appear necessary to ascertain the facts. The workers' compensation judge when necessary or appropriate or upon request of a party in order to rule on requests for review filed under section 306(f.1), or under other provisions of this act, may ask for an opinion from peer review about the necessity or frequency of treatment under section 306(f.1). The peer review report or the peer report of any physician, surgeon, or expert appointed by the department or by a workers' compensation judge, including the report of a peer review organization, shall be filed with the board or workers' compensation judge, as the case may be, and shall be a part of the record and open to inspection as such. The workers' compensation judge shall consider the report as evidence but shall not be bound by such report.

(b) The board or workers' compensation judge, as the case may be, shall fix the compensation of such physicians, surgeons, and experts, and other peer review organizations which, when so fixed, shall be paid out of the Workmen's Compensation Administration Fund.

(420 amended June 24, 1996, P.L.350, No.57)

Section 421. All hearings before the board, or one or more members thereof, or before a referee shall be public.

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 422. (a) Neither the board nor any of its members nor any workers' compensation judge shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify same. All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon

the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

(b) If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a workers' compensation judge, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the department may, by special order or general rule, prescribe. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein.

(c) Where any claim for compensation at issue before a workers' compensation judge involves fifty-two weeks or less of disability, either the employe or the employer may submit a certificate by any health care provider as to the history, examination, treatment, diagnosis, cause of the condition and extent of disability, if any, and sworn reports by other witnesses as to any other facts and such statements shall be admissible as evidence of medical and surgical or other matters therein stated and findings of fact may be based upon such certificates or such reports. Where any claim for compensation at issue before a workers' compensation judge exceeds fifty-two weeks of disability, a medical report shall be admissible as evidence unless the party that the report is offered against objects to its admission.

(d) Where an employer shall have furnished surgical and medical services or hospitalization in accordance with the provisions of section 306(f.1), or where the employe has himself procured them, the employer or employe shall, upon request, in any pending proceeding, be furnished with, or have made available, a true and complete record of the medical and surgical services and hospital treatment, including X rays, laboratory tests, and all other medical and surgical data in the possession or under the control of the party requested to furnish or make available such data.

(e) The department may adopt rules and regulations governing the conduct of all hearings held pursuant to any provisions of this act, and hearings shall be conducted in accordance therewith, and in such manner as best to ascertain the substantial rights of the parties.

(422 amended June 24, 1996, P.L.350, No.57)

Section 423. (a) Any party in interest may, within twenty days after notice of a workers' compensation judge's adjudication shall have been served upon him, take an appeal to the board on the ground: (1) that the adjudication is not in conformity with the terms of this act, or that the workers' compensation judge committed any other error of law; (2) that the findings of fact and adjudication was unwarranted by sufficient, competent evidence or was procured by fraud,

coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

(b) If a timely appeal is filed by a party in interest pursuant to clause (a), any other party may file a cross-appeal within fourteen days of the date on which the first appeal was filed or within the time prescribed by clause (a), whichever period last expires.

(c) The board shall hear the appeal on the record certified by the workers' compensation judge's office. The board shall affirm the workers' compensation judge adjudication, unless it shall find that the adjudication is not in compliance with section 422(a) and the other provisions of this act.

Section 424. Whenever an appeal shall be based upon an alleged error of law, it shall be the duty of the board to grant a hearing thereon. The board shall fix a time and place for such hearing, and shall serve notice thereof on all parties in interest.

As soon as may be after such hearing, the board shall either sustain or reverse the referee's award or disallowance of compensation, or make such modification thereof as it shall deem proper.

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 425. If on appeal it appears that the referee's award or disallowance of compensation was capricious or caused by fraud, coercion, or other improper conduct by any party in interest, the board may, grant a hearing de novo before the board, or one or more of its members or remand the case for rehearing to any referee. If the board shall grant a hearing de novo, it shall fix a time and place for same, and shall notify all parties in interest.

As soon as may be after any hearing by the board, it shall in writing state the findings of fact, whether those of the referee or its own, which are basic to its decision and award or disallow compensation in accordance with the provisions of this act.

(425 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 426. The board, upon petition of any party and upon cause shown, may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation or other order or ruling, or upon which the board has sustained or reversed any action of a referee; but such rehearing shall not be granted more than eighteen months after the board has made such award, disallowance, or other order or ruling, or has sustained or reversed any action of the referee: Provided, however, That nothing contained in this section shall limit or restrict the right of the board, or a referee to review, modify, set aside, reinstate, suspend, or terminate, an original or supplemental agreement, or an award in accordance with the provisions of section four hundred thirteen of this article.

(426 amended Feb. 8, 1972, P.L.25, No.12; repealed in part Apr. 28, 1978, P.L.202, No.53)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act

57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Compiler's Note: Section 2(a) of Act 53 of 1978 provided that whenever the Workmen's Compensation Appeal Board shall grant a rehearing under section 426 of the act during the pendency of judicial review, the board shall file with the reviewing court a certified copy of its order granting such rehearing. A certified copy of any award or order of the board or of a referee sustained by the board, as affirmed or modified upon judicial review, may be filed with the office of the clerk of the court of common pleas of any county, and the proper officer shall enter judgment for the total amount stated by the award or order to be payable, whether then due and accrued or payable in future installments.

Section 427. (427 repealed Apr. 28, 1978, P.L.202, No.53)

Section 428. Whenever the employer, who has accepted and complied with the provisions of section three hundred five, shall be in default in compensation payments for thirty days or more, the employe or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the department approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employe or his dependents, as a judgment against the employer or insurer liable under such agreement or award. Where the compensation so payable is for a total and permanent disability, the judgment shall be in the amount of thirty thousand dollars less such amount as the employer shall have actually paid pursuant to such agreement or award. Such judgment shall be a lien against property of the employer or insurer liable under such agreement or award and execution may issue thereon forthwith.

Whenever, after an injury, any employe or his dependents shall have entered into a compensation agreement with an employer, who has not accepted or complied with the provisions of section three hundred five, or shall file a claim petition against such employer, he may file a certified copy thereof with the prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any such agreement or claimed in any such claim petition as judgment against the employer, and where the amount so stipulated or claimed is for total and permanent disability, such judgment shall be in the sum of thirty thousand dollars. If the agreement be approved by the department, or compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary. Pending the approval of the agreement or the award of compensation, no other lien which may be attached to the employer's property during such time shall gain priority over the lien of such agreement or award; but no execution shall issue on any compensation judgment before the approval of the agreement or the award of compensation on the said petition.

If the agreement be disapproved, or, after hearing, compensation shall be disallowed, the employer may file, with the prothonotary of any county in which the petition or agreement is on record as a judgment, a certified copy of the disapproval of the agreement or disallowance of compensation,

and it shall be the duty of such prothonotary to strike off the judgment.

If the amount of compensation claimed be disallowed but another amount awarded, the compensation judgment shall be a lien to the extent of the award, as of the date of filing the petition with the prothonotary, with the same effect as to other liens and the same disability to issue execution thereon as if the compensation claimed had been allowed. In such cases the prothonotary shall make such modification of the record as shall be appropriate.

If the compensation payable under any agreement or award upon which judgment has been entered under the provisions of this section shall be modified, suspended, reinstated, or terminated by a supplemental agreement executed under the provisions of section four hundred and eight, or by an award or order made under the provisions of section four hundred and thirteen, any party to such judgment, at any time after such agreement has been approved by the department or after the expiration of the time allowed for an appeal from the award or order, may file with the prothonotary of the court of common pleas of any county in which the judgment is on record a certified copy of such supplemental agreement, award, or order and it shall thereupon be the duty of the prothonotary to modify, suspend, reinstate, or satisfy such judgment in accordance with the terms of such supplemental agreement, award, or order.

Execution may issue by first filing with the prothonotary an affidavit that there has been a default in payments of compensation due on any judgment for compensation, entered prior to the approval of the compensation agreement, or an award on petition, as soon as such agreement shall have been approved by the department or such award made as evidenced by the approval of the board of the award or by a certified copy thereof.

Execution shall in all cases be for the amount of compensation and interest thereon due and payable up to the date of the issuance of said execution, with costs, and further execution may issue from time to time as further compensation shall become due and payable until full amount of the judgment with costs shall have actually been paid.

(428 amended Mar. 29, 1972, P.L.159, No.61)

Section 429. If any party against whom a compensation agreement, award, or other order fixing the compensation payable under this act has been filed of record in any county of this Commonwealth in accordance with the provisions of section four hundred and twenty-eight of this article, or against whom judgment has been entered by the prothonotary of the court of common pleas of any county on any award or order of the board or a referee, shall, at any time, present to the department receipts or copies thereof, certified by any referee, showing the payment of compensation as required by the agreement or award in full to the date of presentation to the referee, the department shall issue a certificate to such party, in the form prescribed, stating the extent to which the judgment on the agreement or award has been reduced. Upon the presentation of such certificate to the prothonotary of the court of common pleas of any county in which such agreement or award has been filed of record as a judgment, or in which judgment on an award has been entered by the prothonotary of the court of common pleas, it shall be the prothonotary's duty to mark such judgment satisfied to the extent of the payments so certified, and, upon the presentation to such prothonotary of a certificate issued

by the board under the provisions of section three hundred and seventeen of this act, it shall be the duty of the prothonotary to mark such judgment fully satisfied.

(429 amended Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 430. (a) The lien of any judgment entered upon any award shall not be divested by any appeal.

(b) Any insurer or employer who terminates, decreases or refuses to make any payment provided for in the decision without filing a petition and being granted a supersedeas shall be subject to a penalty as provided in section 435, except in the case of payments terminated as provided in section 434. ((b) repealed in part Apr. 28, 1978, P.L.202, No.53)

(430 amended Feb. 8, 1972, P.L.25, No.12 and suspended in part R.A.P. 5105(c))

Section 431. The cost of the prothonotary for entering the amount of compensation as provided in this act, or making a modification of the record, or marking the judgment satisfied, shall be allowed, taxed, and collected as upon a confession of judgment on a judgment note.

Section 432. (432 repealed Apr. 28, 1978, P.L.202, No.53)

Section 433. (433 repealed Apr. 28, 1978, P.L.202, No.53)

Section 434. A final receipt, given by an employe or dependent entitled to compensation under a compensation agreement notice or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement notice or award: Provided, however, That a referee designated by the department may, at any time within three years from the date to which payments have been made, set aside a final receipt, upon petition filed with the department, or on the department's own motion, if it be shown that all disability due to the injury in fact had not terminated. Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period within which a referee may set aside a final receipt upon petition filed with the department, or upon the department's own motion, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act.

(434 amended Apr. 4, 1974, P.L.239, No.56 and Dec. 5, 1974, P.L.782, No.263)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 435. (a) The department shall establish and promulgate rules and regulations consistent with this act, which are reasonably calculated to:

(i) expedite the reporting and processing of injury cases,

(ii) insure full payment of compensation when due,

(iii) expedite the hearing and determination of claims for compensation and petitions filed with the department under this act,

(iv) provide the disabled employe or his dependents with timely notice and information of his or their rights under this act,

(v) explain and enforce the provisions of this act.

(b) If it appears that there has not been compliance with this act or rules and regulations promulgated thereunder the

department may, on its own motion give notice to any persons involved in such apparent noncompliance and schedule a hearing for the purpose of determining whether there has been compliance. The notice of hearing shall contain a statement of the matter to be considered.

(c) The board shall establish rules of procedure, consistent with this act, which are reasonably calculated to expedite the hearing and determination of appeals to the board and to insure full payment of compensation when due.

(d) The department, the board, or any court which may hear any proceedings brought under this act shall have the power to impose penalties as provided herein for violations of the provisions of this act or such rules and regulations or rules of procedure:

(i) Employers and insurers may be penalized a sum not exceeding ten per centum of the amount awarded and interest accrued and payable: Provided, however, That such penalty may be increased to fifty per centum in cases of unreasonable or excessive delays. Such penalty shall be payable to the same persons to whom the compensation is payable.

(ii) Any penalty or interest provided for anywhere in this act shall not be considered as compensation for the purposes of any limitation on the total amount of compensation payable which is set forth in this act.

(iii) Claimants shall forfeit any interest that would normally be payable to them with respect to any period of unexcused delay which they have caused.

(e) The department shall furnish to persons adversely affected by occupational disease appropriate counseling services, vocational rehabilitation services, and other supportive services designed to promote employability to the extent that such services are available and practical.

(435 amended June 24, 1996, P.L.350, No.57)

Section 436. The secretary, any referee, and any member of the board shall have the power to issue subpoenas to require the attendance of witnesses and/or the production of books, documents, and papers pertinent to any hearing. Any witness who refuses to obey such summons or subpoenas, or who refuses to be sworn or affirmed to testify, or who is guilty of any contempt after notice to appear, may be punished as for contempt of court, and, for this purpose, an application may be made to any court of common pleas within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

(436 added Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 437. The board, department and any referee shall have the power to conduct any investigation which may be deemed necessary in any matter properly before them. Such investigations may be made by the board or referee personally, or by any officer or employe of the department, or by any inspector of the department, or by any person or persons authorized by law. Every inspector and employe of the department is hereby empowered and directed to conduct any investigation authorized by this act, at the request of the board, department or any referee, with the consent of the secretary.

(437 added Feb. 8, 1972, P.L.25, No.12)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act

57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 438. (a) An employer shall report all injuries received by employes in the course of or resulting from their employment immediately to the employer's insurer. If the employer is self-insured such injuries shall be reported to the person responsible for management of the employer's compensation program.

(b) An employer shall report such injuries to the Department of Labor and Industry by filing directly with the department on the form it prescribes a report of injury within forty-eight hours for every injury resulting in death, and mailing within seven days after the date of injury for all other injuries except those resulting in disability continuing less than the day, shift, or turn in which the injury was received. A copy of this report to the department shall be mailed to the employer's insurer forthwith.

(c) Reports of injuries filed with the department under this section shall not be evidence against the employer or the employer's insurer in any proceeding either under this act or otherwise. Such reports may be made available by the department to other State or Federal agencies for study or informational purposes.

(438 amended July 2, 1993, P.L.190, No.44)

Section 439. Every employer shall keep a record of each injury to any of his employes as reported to him or of which he otherwise has knowledge. Such record shall include a description of the injury, a statement of any time during which the injured person was unable to work because of the injury, and a description of the manner in which the injury occurred. These records shall be available for inspection by the department or by any governmental agency at reasonable times.

(439 added Feb. 8, 1972, P.L.25, No.12)

Section 440. (a) In any contested case where the insurer has contested liability in whole or in part, including contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards, agreements or other payment arrangements or to set aside final receipts, the employe or his dependent, as the case may be, in whose favor the matter at issue has been finally determined in whole or in part shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimbursed lost time to attend the proceedings: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established by the employer or the insurer.

(b) If counsel fees are awarded and assessed against the insurer or employer, then the workers' compensation judge must make a finding as to the amount and the length of time for which such counsel fee is payable based upon the complexity of the factual and legal issues involved, the skill required, the duration of the proceedings and the time and effort required and actually expended. If the insurer has paid or tendered payment of compensation and the controversy relates to the amount of compensation due, costs for attorney's fee shall be based only on the difference between the final award of compensation and the compensation paid or tendered by the insurer.

(440 amended June 24, 1996, P.L.350, No.57)

Section 441. (a) If any insurer licensed to transact the business of workmen's compensation insurance within this

Commonwealth repeatedly or unreasonably fails to pay promptly compensation for which it is liable or fails or refuses to submit any report or to pay any assessment made under this act, the secretary may recommend to the Insurance Commissioner that the license of the company to transact such business be revoked, or suspended setting forth in detail the reasons for his recommendation. The Insurance Commissioner shall thereupon furnish a copy of the secretary's report to the insurer and shall set a date for public hearing, at which both the insurer and the secretary shall be afforded an opportunity to present evidence. If, after the hearing, the commissioner is satisfied that the insurer has failed to live up to his obligations under this act, he shall promptly revoke or suspend its license. ((a) amended July 30, 1975, P.L.139, No.70)

(b) If any employer who is subject to this act as an approved self-insurer repeatedly or unreasonably fails to pay promptly compensation for which it is liable or fails or refuses to submit any report or to pay any assessment made under this act, the secretary may revoke or suspend the privilege granted to the employer to carry its own risk and require it to insure its liability. The secretary shall not take such action against any employer until the employer has been notified in writing of the charges made against it and has been given an opportunity to be heard before the secretary in answer to the charges. ((b) amended July 30, 1975, P.L.139, No.70; repealed in part Apr. 28, 1978, P.L.202, No.53)

(c) Any person, not an insurer or self-insurer, engaged in the business of adjusting or servicing injury cases for the payment of compensation under this act shall register with the Department of Labor and Industry as a condition of conducting such business and shall furnish such reports of its activities as may be required by rules and regulations of the department. If any person engaged in such business repeatedly or unreasonably fails to provide such services promptly with the result that compensation is not paid promptly, the secretary may revoke or suspend the privilege of conducting such business. The secretary shall not take such action against such person until such person has been notified in writing of the charges made against it by the secretary and has been given an opportunity to be heard before the secretary in answer to the charges. Proceedings for revocation of the privilege of conducting such service or adjustment business shall not relieve any insurer or self-insurer who has engaged in the services of such person from its responsibility under this act or from its liability to revocation under this section. ((c) repealed in part Apr. 28, 1978, P.L.202, No.53)

(441 added Feb. 8, 1972, P.L.25, No.12)

Section 442. All counsel fees, agreed upon by claimant and his attorneys, for services performed in matters before any workers' compensation judge or the board, whether or not allowed as part of a judgment, shall be approved by the workers' compensation judge or board as the case may be, providing the counsel fees do not exceed twenty per centum of the amount awarded.

In cases where the efforts of claimant's counsel produce a result favorable to the claimant but where no immediate award of compensation is made, such as in cases of termination or suspension, the hearing official shall allow or award reasonable counsel fees, as agreed upon by claimant and his attorneys, without regard to any per centum. In the case of compromise and release settlement agreements, no counsel fees shall exceed

twenty per centum of the workers' compensation settlement amount.

(442 amended Nov. 9, 2006, P.L.1362, No.147)

Section 443. (a) If, in any case in which a supersedeas has been requested and denied under the provisions of section 413 or section 430, payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not, in fact, payable, the insurer who has made such payments shall be reimbursed therefor. Application for reimbursement shall be made to the department on forms prescribed by the department and furnished by the insurer. Applications may be assigned to a workmen's compensation referee for a hearing and determination of eligibility for reimbursement pursuant to this act. An appeal shall lie in the manner and on the grounds provided in section 423 of this act, from any allowance or disallowance of reimbursement under this section.

(b) There is hereby established a special fund in the State Treasury, separate and apart from all other public moneys or funds of this Commonwealth, to be known as the Workmen's Compensation Supersedeas Fund. The purpose of this fund shall be to provide moneys for payments pursuant to subsection (a), to include reimbursement to the Commonwealth for any such payments made from general revenues. The department shall be charged with the maintenance and conservation of this fund. The fund shall be maintained by annual assessments on insurers and self-insurers under this act, including the State Workmen's Insurance Fund. The department shall make assessments and collect moneys pursuant to this section of the act. Assessments shall be based on the ratio that such insurer's or self-insurer's payments of compensation bear to the total compensation paid in the year preceding the year of assessment. The total amount to be assessed shall be one hundred percent of the amount reimbursed to insurers and self-insurers in the preceding year pursuant to this section, except that the first annual assessment made under this act shall be in the amount of two hundred fifty thousand dollars ($250,000). The department shall give notice to every insurer and self-insurer under this act, including the State Workmen's Insurance Fund, of the amount assessed against such insurer, self-insurer or the State Workmen's Insurance Fund on or before June 30 of the year following the year upon which the assessment is based: Provided, That notice of the first annual assessment under this act shall be given to every insurer and self-insurer under this act, including the State Workmen's Insurance Fund, within ninety days of the effective date of this amending act. Payment of assessments shall be made to the department within thirty days of receipt of notice of the amount assessed, unless the department specifies on the notices sent to all insurers and self-insurers an installment plan of payment, in which case each such insurer shall pay each installment on or before the date specified therefore by the department within fifteen days after the receipt of such notice, the insurer or self-insurer against which such assessment has been made may file with the department objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The department, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the department shall record its findings on the objections and shall transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with such findings, which

amount or any installment thereof then due, shall be paid by the objector within ten days after receipt of notice of the findings.

No suit or proceeding shall be maintained in any court for the purpose of restraining or in anywise delaying the collection or payment of any assessment made under this subsection but every insurer or self-insurer against which an assessment is made shall pay the same as provided in subsection (b) of this section. Any insurer or self-insurer making any such payment may, at any time within two years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, invalid, in whole or in part, provided objections, as hereinbefore provided, were filed with the department, and payment of the assessment was made under protest either as to all or part thereof. In any action for recovery of any payments made under this section, the claimant shall be entitled to raise every relevant issue of law, but the findings of fact made by the department, pursuant to this section, shall be prima facie evidence of the facts therein stated. If it is finally determined in any such action that all or any part of the assessment for which payment was made under protest was excessive, erroneous, unlawful, or invalid, the department shall make a refund to the claimant out of the appropriation specified in subsection (c) as directed by the court.

(c) The department shall keep a record of the manner in which it shall have computed the amount assessed against every insurer or self-insurer. Such records shall be open to inspection by all interested parties. The determination of such assessments and the records and data upon which the same are made, shall be considered prima facie correct; and in any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof. The fund shall be subject to audit by the Auditor General and a copy of the report of the audit furnished to assessed insurers and self-insurers upon request. The Secretary of Labor and Industry shall be the administrator of the fund and shall have the power to dispense and disburse moneys from the fund for the purpose of payments made pursuant to this section. All moneys in the fund as are required to carry out the purposes of this section are hereby specifically appropriated to the Department of Labor and Industry. The State Treasurer shall be custodian of the fund. Disbursements of moneys pursuant to this section shall be upon final adjudication of requests for payments pursuant thereto.

(443 amended July 30, 1975, P.L.139, No.70)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 444. No person who is qualified for or is receiving compensation under this act, shall, with respect to the same period, receive compensation under The Pennsylvania Occupational Disease Act: Provided, however, That any person may pursue, in the alternative, a claim for compensation under this act and a claim for compensation under The Pennsylvania Occupational Disease Act.

(444 added Oct. 17, 1972, P.L.930, No.223)

Section 445. Annual reports of compensation paid by insurers, self-insurers and the State Workmen's Insurance Fund

shall be made on a calendar year basis to the department not later than April 15 of the following year, except that for the year 1974 reports shall be filed within sixty days of the effective date of this amending act. Nothing in this act shall be construed to preclude insurers from filing its annual report required herein in substantially the same form as its annual report to the Insurance Department.

(445 added July 30, 1975, P.L.139, No.70)

Section 446. (a) There is hereby created a special fund in the State Treasury, separate and apart from all other public moneys or funds of this Commonwealth, to be known as the Workmen's Compensation Administration Fund. ((a) amended Oct. 24, 2018, P.L.804, No.132)

(a.1) The purpose of the Workmen's Compensation Administration Fund shall be to finance:

(1) the Prefund Account established in section 909(a); and

(2) the operating and administrative expenses of the Department of Labor and Industry, including the Workmen's Compensation Appeal Board and staff, but not the State Workmen's Insurance Fund, in the direct administration of The Pennsylvania Workmen's Compensation Act and The Pennsylvania Occupational Disease Act.

((a.1) added Oct. 24, 2018, P.L.804, No.132)

(a.2) The operating and administrative expenses in subsection (a.1)(2) shall include only the following:

(1) wages and salaries of employes for services performed in the administration of these acts;

(2) reasonable travel expenses for employes while engaged in official business; and

(3) moneys expended for office rental, equipment rental, supplies, equipment, repairs, services, postage, books, and periodicals.

((a.2) added Oct. 24, 2018, P.L.804, No.132)

(b) The Workmen's Compensation Administration 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 Workers' Insurance Fund, as follows:

(1) The department shall submit for approval to the General Assembly on a fiscal year basis a proposed budget sufficient to cover the Prefund Account and other operating and administrative expenses under subsection (a.1). The total amount approved by the General Assembly shall be the approved budget. The department shall 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 annual assessment is made.

(2) If on January 31, there exists in the Workmen's Compensation Administration Fund any money in excess of one hundred twenty per centum of the approved budget, the following fiscal year's assessment shall be reduced by an amount equal to that excess amount.

((b) amended Oct. 24, 2018, P.L.804, No.132)

(c) The department shall give notice to every insurer and self-insurer under this act, including the State Workmen's Insurance Fund, of the amount assessed against such insurer, self-insurer, or the State Workmen's Insurance Fund on or before November 30 of each year. Payment of assessments shall be made to the department on or before January 31 of the next year unless the department specifies on the notices sent to all insurers and self-insurers an installment plan of payment, in which case each such insurer shall pay each installment on or before the date specified therefore by the department: Provided,

That notice of the initial assessment under this act shall be given to every insurer and self-insurer under this act, including the State Workmen's Insurance Fund, within ninety days of the effective date of this amendatory act. Payment of the initial assessments shall be made within thirty days of the mailing of said assessments.

If the General Assembly fails to approve the department's budget for the purposes of this act, by the last day of November, the department shall assess insurers, self-insurers and the State Workmen's Insurance Fund on the basis of that last approved operating budget. At such time as the General Assembly approves the proposed budget the department shall have the authority to make an adjustment in the assessments to reflect the approved budget. If the General Assembly fails to approve the department's budget prior to July 1 of any fiscal year, moneys in the fund are hereby appropriated to the department for the purposes of this act.

Within fifteen days after the receipt of such notice, the insurer or self-insurer against which such assessment has been made may file with the department objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The department, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the department shall record its findings on the objections and shall transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with such findings, which amount or any installment thereof then due, shall be paid by the objector within ten days after receipt of notice of the findings. If any payment prescribed by this subsection is not made as aforesaid, the secretary of the department may recommend to the Insurance Commissioner that appropriate action be taken against the insurer or self-insurer, including revocation or suspension of the company's license to transact business in the Commonwealth.

No suit or proceeding shall be maintained in any court for the purpose of restraining or in anywise delaying the collection or payment of any assessment made under this subsection but every insurer or self-insurer against which an assessment is made shall pay the same as provided in subsection (c) of this section. Any insurer or self-insurer making any such payment may, at any time within two years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, invalid, in whole or in part, provided objections, as hereinbefore provided, were filed with the department, and payment of the assessment was made under protest either as to all or part thereof. In any action for recovery of any payments made under this section, the claimant shall be entitled to raise every relevant issue of law, but the findings of fact made by the department, pursuant to this section, shall be prima facie evidence of the facts therein stated. If it is finally determined in any such action that all or any part of the assessment for which payment was made under protest was excessive, erroneous, unlawful, or invalid, the department shall make a refund to the claimant out of the fund, as directed by the court.

The department shall keep a record of the manner in which it shall have computed the amount assessed against every insurer or self-insurer. Such records shall be open to inspection by all interested parties. The determination of such assessments and the records and data upon which the same are made, shall

be considered prima facie correct; and in any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof.

(d) The Secretary of Labor and Industry shall be the administrator of the fund and shall have power to dispense and disburse moneys from the fund for the above purposes at his discretion. All moneys in the fund as are required to carry out the purposes of this act are hereby specifically appropriated to the Department of Labor and Industry for the use in the administration of this act from July 1, 1975 until June 30, 1976. Thereafter, annual appropriations shall be made. Estimates of the amounts to be expended from time to time shall however be submitted by the Secretary of Labor and Industry to the Governor for his approval or disapproval as in the case of other appropriations made to administrative departments, boards, and commissions. The State Treasurer shall be the custodian of the fund. It shall however be unlawful for the State Treasurer to honor any requisition for the expenditure of any moneys from the fund by the Secretary of Labor and Industry in excess of estimates approved by the Governor. The fund shall be audited by the Auditor General annually and a copy of the report of the audit furnished to assessed insurers and self-insurers upon request.

(e) Annual reports of the total compensation paid by insurers, self-insurers, and the State Workmen's Insurance Fund shall be made on a calendar year basis to the department not later than April 15 of the following year: Provided, That reports for the calendar year 1974 shall be filed within sixty days of the effective date of this amending act. Nothing in this act shall be construed to preclude insurers from filing its annual report required therein in substantially the same form as its annual report to the Insurance Department.

(f) Contributions to the fund created by this act, at the rates specified by this act, shall be allowed in full by the Insurance Commissioner and the insurers shall be permitted to fund on an immediate and prospective basis for these costs.

(g) For the purposes of this section the terms "compensation" and "total compensation" shall include wage loss indemnity and payments for medical expenses under this act and under "The Pennsylvania Occupational Disease Act."

(h) Until such time as a sufficient cash balance shall exist in the Workmen's Compensation Administration Fund to meet promptly the expenses of the Commonwealth payable from such fund, the State Treasurer is hereby authorized and directed, from time to time, to transfer to the Workmen's Compensation Administration Fund, if the same be deficient, from the General Fund, such sums as the Governor shall direct. Any sums so transferred shall be available for the purposes for which the fund to which they are transferred is appropriated by law. Such transfers shall be made hereunder upon warrant of the State Treasurer upon requisition of the Governor.

(i) In order to reimburse the General Fund for such transfers, an amount equal to that transferred from the General Fund during any fiscal period shall be retransferred to the General Fund from the Workmen's Compensation Administration Fund in such amounts and at such times as the Governor shall direct, but in no event later than 30 days after the end of such fiscal period. Such transfers shall be made hereunder upon warrant of the State Treasurer upon requisition of the Governor.

(j) The moneys in the General Fund and in the Workmen's Compensation Administration Fund are hereby specifically

appropriated for transfer from time to time as provided for in this act.

(446 added Feb. 2, 1976, P.L.2, No.2)

Compiler's Note: Section 31.1 of Act 57 of 1996 provided that any reference in a statute to the Workmen's Compensation Appeal Board shall be deemed a reference to the Workers' Compensation Appeal Board. The Workmen's Compensation Appeal Board is referred to in subsec. (a).

Section 447. (a) There is hereby created an advisory council, to be known as the Pennsylvania Workers' Compensation Advisory Council. The council shall be comprised of eight members, with four members being employe representatives and four members being employer representatives. The Secretary of the Department of Labor and Industry shall be an ex officio member. The members of such council shall be appointed as follows: one employe representative and one employer representative by the President pro tempore of the Senate, one employe representative and one employer representative by the Speaker of the House of Representatives, one employe representative and one employer representative by the Minority Leader of the Senate and one employe representative and one employer representative by the Minority Leader of the House of Representatives. The members of the council shall select one of their number to be chairman.

(b) (1) The council may hold hearings, receive testimony, solicit and receive comments from interested parties and the general public and shall have full access to information relating to the administration of this act by the Department of Labor and Industry. The council shall not have access to confidential medical information pertaining to individual claimants, but may develop statistical studies and surveys concerning aspects of incidence of injuries, claims management, litigation and adherence to the provisions of this act and the Occupational Disease Act.

(2) The council shall review annually any requests for funding by the department and any assessments against employers or insurers related thereto and provide a report to the Governor, the secretary and the General Assembly regarding the appropriateness of such requests.

(3) The council shall review proposed legislation and regulations pertaining to this act and provide comment at least quarterly to the Governor, the secretary and the General Assembly on the effects of such proposals.

(4) The council shall provide to the Governor, the secretary and the General Assembly, on an annual basis, a report on the activities of the council, making recommendations concerning needed improvements in the workers' compensation system and the administration of the system. The report under this paragraph shall be made during the General Assembly's consideration of the General Appropriations Act for the succeeding fiscal year. The report shall be due no later than May 1.

(5) The council shall make recommendations to the secretary regarding quality and cost-effective health care. ((5) amended June 24, 1996, P.L.350, No.57)

(6) The council shall review the annual accessibility study required by section 306(f.1)(3)(iv) and shall make recommendations to the secretary regarding the need for new allowances for health care providers. ((6) amended June 24, 1996, P.L.350, No.57)

(7) The council shall make recommendations to the secretary regarding the certification of coordinated care organizations and the approval of utilization review organizations and persons

qualified to perform peer review. ((7) amended June 24, 1996, P.L.350, No.57)

(8) The council shall consult with health care providers and professional associations representing health care providers with regard to its recommendations under paragraphs (5), (6) and (7).

(c) The members of the advisory council, once appointed, shall serve a term of two years and until their successors have been appointed. Members shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred in the discharge of their duties. The secretary shall provide facilities and clerical and professional support as needed by the council in the performance of its duties. The compensation of such staff and the amounts allowed them and to members of the council for traveling and other council expenses shall be deemed part of the expenses incurred in connection with the administration of this act. ((c) amended June 24, 1996, P.L.350, No.57)

(447 amended July 2, 1993, P.L.190, No.44)

Section 448. (a) An insurer issuing a workers' compensation and employers' liability insurance policy shall offer, upon request, as part of the policy or by endorsement, deductibles optional to the policyholder for benefits payable under the policy, subject to approval by the commissioner and subject to underwriting by the insurer consistent with the principles in clause (b). The commissioner shall promulgate at least three (3) plans with varying deductible options, the least amount of which shall be no less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500). The commissioner's authority to promulgate any such plans shall not preclude an insurer from negotiating a deductible in excess of the largest deductible plan herein authorized, subject to approval by the commissioner and subject to underwriting by the insurer consistent with the principles in clause (b).

(b) The following standards shall govern the commissioner's promulgation and an insurer's offer of deductible plans:

(1) Claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible.

(2) Appropriate premium reductions reflect the type and level of any deductible approved by the commissioner and selected by the policyholder.

(3) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge or premium discount.

(4) Recognition is given to policyholder characteristics, including size, financial capabilities, nature of activities and number of employes.

(5) If the policyholder selects a deductible, the policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(6) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(7) Failure to reimburse deductible amounts by the policyholder to the insurer is treated under the policy in the same manner as nonpayment of premiums.

(c) An insurer issuing a workers' compensation and employers' liability insurance policy may offer an endorsement for deductible or retrospective rating plans for groups of five (5) or more employers, subject to approval by the commissioner

and subject to underwriting by the insurer consistent with the principles in clause (b).

(d) The following standards shall govern the commissioner's authorization of an insurer's offer of a group deductible or retrospective plan endorsement:

(1) Individual workers' compensation and employers' liability insurance policies will be issued for each member of the group.

(2) Each member will be held jointly and severally liable for the payment of premiums or deductible amounts with regard to benefits paid for compensable claims of the group as a whole.

(448 amended June 24, 1996, P.L.350, No.57)

Section 449. (a) Nothing in this act shall impair the right of the parties interested to compromise and release, subject to the provisions herein contained, any and all liability which is claimed to exist under this act on account of injury or death.

(b) Upon or after filing a petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. The workers' compensation judge shall consider the petition and the proposed agreement in open hearing and shall render a decision. The workers' compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement. The agreement must be explicit with regard to the payment, if any, of reasonable, necessary and related medical expenses. Hearings on the issue of a compromise and release shall be expedited by the department, and the decision shall be issued within thirty days.

(c) Every compromise and release by stipulation shall be in writing and duly executed, and the signature of the employe, widow or widower or dependent shall be attested by two witnesses or acknowledged before a notary public. However, the attestation by two witnesses or acknowledgment before a notary public shall not be required if the employe, widow or widower or dependent appears before the workers' compensation judge for the purposes of a hearing required under subsection (b) and provides a sworn oral statement that he or she understands the full legal significance of the agreement. The document shall specify:

(1) the date of the injury or occupational disease;

(2) the average weekly wage of the employe as calculated under section 309;

(3) the injury, the nature of the injury and the nature of disability, whether total or partial;

(4) the weekly compensation rate paid or payable;

(5) the amount paid or due and unpaid to the employe or dependent up to the date of the stipulation or agreement or death and the amount of the payment of disability benefits then or thereafter to be made;

(6) the length of time such payment of benefits is to continue;

(7) in the event of a lien for subrogation under section 319, the total amount of compensation paid or payable which should be allowed to the employer or insurer;

(8) in the case of death:

(i) the date of death;

(ii) the name of the widow or widower;

(iii) the names and ages of all children;

(iv) the names of all other dependents; and

(v) the amount paid or to be paid under section 307 and to whom payment is to be made;

(9) a listing of all benefits received or available to the claimant;

(10) a disclosure of the issues of the case and the reasons why the parties are agreeing to the agreement; and

(11) the fact that the claimant is represented by an attorney of his or her own choosing or that the claimant has been specifically informed of the right to representation by an attorney of his or her own choosing and has declined such representation.

((c) amended Dec. 22, 2021, P.L.456, No.95)

(d) The department shall prepare a form to be utilized by the parties for a compromise and release of any and all liability under this act in accordance with the stipulation requirements of this section, and it shall issue such rules and regulations necessary for it and the board to enforce the procedure allowed by this section. No compromise and release shall be considered for approval unless a vocational evaluation of the claimant is completed and filed with the compromise and release and made a part of the record: Provided, however, That this requirement may be waived by mutual agreement of the parties or by a determination of a workers' compensation judge as inappropriate or unnecessary. The vocational evaluation shall be completed:

(1) by a qualified vocational expert approved by the department; or

(2) by the department on a fee-for-service basis.

Nothing in this clause shall serve to impose an obligation of liability or responsibility regarding vocational rehabilitation on either party or to require the implementation of vocational rehabilitation.

(449 added June 24, 1996, P.L.350, No.57)

Section 450. (a) Any employer and the recognized or certified and exclusive representative of its employe may agree by collective bargaining to establish certain binding obligations and procedures relating to workers' compensation: Provided, however, That the scope of the agreement shall be limited to:

(1) benefits supplemental to those provided in sections 306 and 307;

(2) an alternative dispute resolution system which may include, but is not limited to, arbitration, mediation and conciliation;

(3) the use of a limited list of providers for medical treatment for any period of time agreed upon by the parties;

(4) the use of a limited list of impartial physicians;

(5) the creation of a light duty, modified job or return to work program;

(6) the adoption of twenty-four-hour medical coverage; and

(7) the establishment of safety committees; and

(8) a vocational rehabilitation or retraining program.

(b) Nothing contained in this section shall in any manner affect the rights of an employer or its employes in the event that the parties to a collective bargaining agreement refuse or fail to reach agreement concerning the matters referred to in clause (a). In the event a municipality and its police or fire employes fail to agree by collective bargaining concerning matters referred to in clause (a), nothing in this section shall be binding upon the municipality or its police or fire employes as a result of an arbitration ruling or award.

(c) Nothing in this section shall allow any agreement that diminishes an employe's entitlement to benefits as otherwise

set forth in this section. Any agreement in violation of this provision shall be null and void.

(d) (1) Determinations rendered as a result of an alternative dispute resolution procedure shall remain in force during a period in which the employer and a recognized or certified exclusive collective bargaining representative are renegotiating a collective bargaining agreement.

(2) Upon the expiration of an agreement which contains a provision for an alternative dispute resolution procedure for workers' compensation claims, the resolution of claims relating to injuries sustained as a result of a work-related accident or occupational disease may, if the agreement so provides, be subject to the terms and conditions set forth in the expired agreement until the employer and a recognized or certified exclusive bargaining representative agree to a new agreement.

(3) Upon the termination of an agreement which is not subject to renegotiation and upon severance of the employment relationship, the employer and employes shall become fully subject to the provisions of this act to the same extent that they were prior to the implementation of the agreement.

(450 added June 24, 1996, P.L.350, No.57)

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

(451 added June 30, 2011, P.L.86, No.20)

ARTICLE V.
GENERAL PROVISIONS

Section 501. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of article two of this act shall be an enforceable lien against the amount to be paid as damages, or be valid or binding in any respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by a judge of the common pleas court of the county in which the injury occurred.

No claim or agreement for legal services or disbursements in support of any claim for compensation, or in preparing any agreement for compensation, under article three of this act, shall be an enforceable lien against the amount to be paid as compensation, or be valid or binding in any other respect, unless the same be approved by the board. Any such claim or agreement shall be filed with the department, which shall, as soon as may be, notify the person by whom the same was filed of the board's approval or disapproval thereof, as the case may be.

After the approval as herein required, if the employer be notified in writing of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation: Provided, however, That where the employe's compensation is payable by the employer in periodical instalments, the board shall fix, at the time of approval the proportion of each instalment to be paid on account of legal services and disbursements, and the board may upon application made to it commute the sum awarded for legal services and disbursements.

(501 amended Mar. 29, 1972, P.L.159, No.61)

Section 502. If any provision of this act shall be held by any court to be unconstitutional, such judgment shall not affect any other section or provision of this act, except that articles two and three are hereby declared to be inseparable and as one legislative thought, and if either article be declared by such court void or inoperative in an essential part, so that the whole of such article must fall, the other article shall fall with it and not stand alone.

Section 503. Nothing in this act shall affect or impair any right of action which shall have accrued before this act shall take effect, except that, because litigation is now pending as to the constitutionality of the compensation schedules contained in the amendment of this act, approved the fourth day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand five hundred fifty-two), the department is hereby authorized to approve agreements or supplemental agreements, and the board and referees are hereby authorized to make awards effectuating agreements, compromising disputes between employers and employes or their dependents, as to the amount of compensation payable in cases arising out of injuries occurring between January first, one thousand nine hundred and thirty-eight and the effective date of this reenactment of this act, if such agreements or supplemental agreements provide for, or the parties to cases pending before the board or referees have agreed to, the payment of compensation at the rates and for the periods specified in this reenactment of this act.

(503 amended Mar. 29, 1972, P.L.159, No.61)

Compiler's Note: Section 31 of Act 57 of 1996 provided that, in a provision of Act 338 of 1915 not affected by Act 57, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 504. The following acts are hereby specifically repealed:

The act approved the third day of June, one thousand nine hundred fifteen (Pamphlet Laws, seven hundred seventy-seven), entitled "A supplement to an act, entitled 'The Workmen's Compensation Act of one thousand nine hundred and fifteen,' to exempt domestic servants and agricultural workers from the provisions thereof," and its amendments.

The act approved the fourteenth day of May, one thousand nine hundred twenty-five (Pamphlet Laws, seven hundred fourteen), entitled "A supplement to an act, approved the second day of June, one thousand nine hundred and fifteen (Pamphlet Laws, seven hundred thirty-six), entitled '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; and providing procedure for the determination of liability and compensation thereunder,' providing for the payment of compensation to volunteer firemen or their dependents."

All other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

ARTICLE VI.
ADDITIONAL COVERAGES

(Hdg. added Dec. 5, 1974, P.L.782, No.263)

Section 601. (a) In addition to those persons included within the definition of the word "employe" as defined in section 104, "employe" shall also include:

(1) members of volunteer fire departments or volunteer fire companies, including any paid fireman who is a member of a volunteer fire company and performs the services of a volunteer fireman during off-duty hours, who shall be entitled to receive compensation in case of injuries received while actively engaged as firemen or while going to or returning from a fire which the fire company or fire department attended including travel from and the direct return to a fireman's home, place of business or other place where he shall have been when he received the call or alarm or while participating in instruction fire drills in which the fire department or fire company shall have participated or while repairing or doing other work about or on the fire apparatus or buildings and grounds of the fire company or fire department upon the authorization of the chief of the fire company or fire department or other person in charge or while answering any emergency calls for any purpose or while riding upon the fire apparatus which is owned or used by the fire company or fire department or while performing any other duties of such fire company or fire department as authorized by the municipality or while performing duties imposed by section 15, act of April 27, 1927 (P.L.465, No.299), referred to as the Fire and Panic Act;

(2) all members of volunteer ambulance corps of the various municipalities who shall be and are hereby declared to be employes of such municipality for the purposes of this act who shall be entitled to receive compensation in the case of injuries received while actually engaged as ambulance corpsmen or while going to or returning from any fire, accident, or other emergency which such volunteer ambulance corps shall attend including travel from and the direct return to a corpsman's home, place of business or other place where he shall have been when he received the call or alarm; or while participating in ambulance corps of which they are members; or while repairing or doing other work about or on the ambulance apparatus or buildings and grounds of such ambulance corps upon the authorization of the corps president or other person in charge; or while answering any emergency call for any purpose or while riding in or upon the ambulance apparatus owned by the ambulance corps of which they are members at any time or while performing any other duties of such ambulance corps as are authorized by the municipality;

(3) officers, directors, rescue and lifesaving squad members or any other members of volunteer rescue and lifesaving squads of the various municipalities who shall be and are hereby declared to be employes of such municipalities for the purposes of this act and who shall be entitled to receive compensation in the case of injuries received while actually engaged as a rescue and lifesaving squad member attending to any emergency to which that squad has been called or responded including travel from and the direct return to a squad person's home,

place of business or other place where he shall have been when he received the call or alarm or while participating in rescue and lifesaving drills in which the squad is participating; while repairing or doing other work about or on the apparatus, buildings and grounds of such rescue and lifesaving squad upon the authorization of the chief or other person in charge; or while riding in or upon the apparatus of the rescue and lifesaving squad and at any time while performing any other duties authorized by the municipality;

(4) volunteer members of the State Parks and Forest Program, who shall be declared to be employes of the Commonwealth for the purposes of this act, shall be entitled to receive compensation in case of injuries received while actually engaged in performing any duties in connection with the volunteers in the State Parks and Forest Program;

(5) Pennsylvania Deputy Game Protectors are hereby defined to be employes of the Commonwealth for all the purposes of this act and shall be entitled to receive compensation in case of injuries received while actually engaged in the performance of duties as a Pennsylvania Deputy Game Protector whether employed by the Pennsylvania Game Commission or otherwise;

(6) all special waterways patrolmen are hereby declared to be employes of the Commonwealth for all purposes of this act and shall be entitled to receive compensation in case of injuries received while actually engaged in the performance of their duties as special waterways patrolmen whether actually receiving compensation from the Pennsylvania Fish and Boat Commission or not;

(7) all forest firefighters are hereby declared to be employes of the Commonwealth for the purposes of this act and shall be entitled to receive compensation in case of injuries received while actually engaged in the performance of their duties as forest firefighters or forest fire protection employes which duties shall include participation in the extinguishing of forest fires or traveling to and from forest fires or while performing any other duties relating to forest fire protection as authorized by the Secretary of Conservation and Natural Resources or his designee.

(8) All volunteer members of hazardous materials response teams who shall be and are hereby declared to be employes of the Commonwealth agency, county, municipality, regional hazardous materials organization, volunteer service organization, corporation, partnership or of any other entity which organized the hazardous materials response team for the primary purpose of responding to the release of a hazardous material. All such volunteer members of hazardous materials response teams shall be entitled, under this act, to receive compensation in the case of injuries received while actively engaged as hazardous materials response team members or while going to or returning from any emergency response incident or accident which the hazardous materials response team attended, including travel from and direct return to a team member's home, place of business or other place where the member shall have been when the member received the call or alarm to respond to the emergency incident or accident; or while participating in hazardous materials response drills or exercises in which the hazardous materials response team is participating; or while repairing or doing other work about or on the hazardous materials response team apparatus or buildings and grounds of the hazardous materials response team upon the authorization of the chief of the hazardous materials response team or other person in charge; or while answering any emergency calls for

any purpose; or while riding upon the hazardous materials response team apparatus which is owned or used by the hazardous materials response team in responding to an emergency or drill or with the express permission of the chief of the team; or while performing any other duties of such hazardous materials response team as authorized by the Commonwealth agency, county, municipality, regional hazardous materials organization, volunteer service organization, corporation, partnership or any other entity which duly organized the hazardous materials response team.

(9) All local coordinators of emergency management, as defined in 35 Pa.C.S. § 7502 (relating to local coordinator of emergency management), of the various municipalities who shall be and are hereby declared to be employes of such municipalities for the purposes of this act and who shall be entitled to receive compensation in the case of injuries received while actually engaged as local coordinator of emergency management at any emergency to which he has been called or responded, including travel from and the direct return to his home, place of business or other place where he shall have been when he received the call or alarm or while performing any other duties authorized by the municipality.

(10) An employe who, while in the course and scope of his employment, goes to the aid of a person and suffers injury or death as a direct result of any of the following:

(i) Preventing the commission of a crime, lawfully apprehending a person reasonably suspected of having committed a crime or aiding the victim of a crime. For purposes of this clause, the terms "crime" and "victim" shall have the same meanings as given to them in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the "Crime Victims Act."

(ii) Rendering emergency care, first aid or rescue at the scene of an emergency.

((a) amended Nov. 3, 2020, P.L.1080, No.108)

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

(c) Whenever any member of a volunteer fire company, volunteer fire department, volunteer ambulance corps, or rescue and lifesaving squad is injured in the performance of duties in State Parks and State Forest Land, they shall be deemed to be an employe of the Department of Conservation and Natural Resources. ((c) amended Nov. 3, 2020, P.L.1080, No.108)

(d) The term "municipality" when used in this article shall mean all cities, boroughs, incorporated towns, or townships.

(e) Whenever members of volunteer fire departments or volunteer fire companies, members of volunteer ambulance corps or rescue and lifesaving squad members are injured in the performance of duties on State game land, the members shall be deemed to be employes of the Pennsylvania Game Commission. ((e) added Nov. 3, 2020, P.L.1080, No.108)

(f) The term "members of volunteer fire departments or volunteer fire companies" when used in this article shall mean any of the following:

(1) An active volunteer firefighter who responds to emergency calls.

(2) An individual appointed as special fire police under 35 Pa.C.S. Ch. 74 Subch. D (relating to special fire police).

(3) An officer or director of a volunteer fire department or volunteer fire company.

(4) A participating member of a volunteer fire department or volunteer fire company who provides necessary operational support to the volunteer fire department or volunteer fire company but does not respond to emergency calls. Operational support includes maintaining the station and equipment, acting as trustee, organizing fundraisers, providing information technology support and assisting with recruitment and other administrative tasks, if the operational support activity is conducted on a regular basis for the benefit of a volunteer fire department or volunteer fire company as approved at the beginning of each policy year by the authority, organization or municipality purchasing workers' compensation insurance for the volunteer fire department or volunteer fire company.

The term does not include a social member of a volunteer fire department or volunteer fire company.

((f) added Nov. 3, 2020, P.L.1080, No.108)

(g) The term "members of volunteer ambulance corps" when used in this article shall mean any of the following:

(1) An active volunteer ambulance corpsman who responds to emergency calls.

(2) An officer or director of a volunteer ambulance corps.

(3) A participating member of a volunteer ambulance corps who provides necessary operational support to the volunteer ambulance corps but does not respond to emergency calls. Operational support includes maintaining the station and equipment, acting as trustee, organizing fundraisers, providing information technology support and assisting with recruitment and other administrative tasks, if the operational support activity is conducted on a regular basis for the benefit of a volunteer ambulance corps.

The term does not include a social member of a volunteer ambulance corps.

((g) added Nov. 3, 2020, P.L.1080, No.108)

(h) The term "social member" of a volunteer fire department, volunteer fire company or volunteer ambulance corps when used in this article shall mean a member of the organization whose class of membership is social in nature and is primarily intended to facilitate fraternization with other members of the organization or access to social amenities and social events offered by the organization, whether or not the member occasionally provides unpaid operational support to the organization. ((h) added Nov. 3, 2020, P.L.1080, No.108)

(601 amended July 11, 1980, P.L.577, No.121)

Compiler's Note: See sections 2 and 3 of Act 108 of 2020 in the appendix to this act for special provisions relating to review of classification codes and construction of law.

Compiler's Note: Section 302(h) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Department of Conservation and Natural Resources shall exercise the powers and duties conferred upon the Department of Environmental Resources and the Secretary of Environmental Resources by section 601.

Compiler's Note: The name of the Pennsylvania Fish Commission, referred to in subsec. (a)(6), was changed to the Pennsylvania Fish and Boat Commission by Act 39

of 1991. See 30 Pa.C.S. § 308 (relating to designation of commission).

Section 602. (a) The following shall apply:

(1) A municipality or an area of a municipality which receives emergency services pursuant to a contract, standing agreement or arrangement from a volunteer emergency service provider located in a host municipality shall reimburse the host municipality under the provisions of either clause (2) or (3).

(2) Reimbursement under clause (1) shall be for a portion of the cost of the workers' compensation premiums covering the members of the volunteer emergency service provider. The appropriate portion of the cost shall be determined as follows:

(i) Determine the population ratio of the municipality or the area of the municipality receiving emergency services to the entire population (host municipality and the municipality or the area of the municipality) receiving emergency services from the volunteer emergency service provider. The following shall apply:

(A) No segment of the population of the municipality or area of the municipality receiving emergency services may be included in more than one service area for purposes of calculating the ratio under subclause (i).

(B) If the first due area for fire protection services and the first due area for emergency medical services differ within a municipality or an area of a municipality receiving emergency services, then the ratio under subclause (i) shall be calculated using the first due area for fire protection services.

(ii) Multiply the ratio under subclause (i) by the host municipality's entire cost of the workers' compensation premium for covering members of the volunteer emergency service provider.

(3) The host municipality and the municipality receiving the emergency services may agree to share the cost on some other basis.

(b) As used in this section:

"Emergency services" shall mean any of the following:

(i) Fire protection services.

(ii) Ambulance services.

(iii) Emergency medical services.

(iv) Quick response services.

(v) Emergency management services.

(vi) Rescue and lifesaving services.

(vii) Hazardous material support services.

(viii) Certified hazardous materials response services.

"Host municipality" shall mean a municipality that is responsible for workers' compensation premiums for an emergency service provider located within its corporate boundaries.

"Volunteer emergency service provider" shall mean any of the following:

(i) A volunteer fire company.

(ii) A volunteer ambulance corps.

(iii) A volunteer quick response service.

(iv) A volunteer rescue and lifesaving squad.

(v) A volunteer hazardous materials support team.

(vi) A volunteer certified municipal emergency management coordinator.

(vii) A volunteer hazardous materials response team.

(602 added June 19, 2002, P.L.419, No. 60)

ARTICLE VII.
INSURANCE RATES
(Art. added July 2, 1993, P.L.190, No.44)

Compiler's Note: See section 30 of Act 57 of 1996 in the appendix to this act for special provisions relating to initial filings.

Compiler's Note: See section 24 of Act 44 of 1993 in the appendix to this act for special provisions relating to initial filings.

Section 701. It is the intent of the General Assembly:

(1) To protect policyholders and the public against the adverse effect of excessive, inadequate or unfairly discriminatory rates.

(2) To encourage, as the most effective way to produce rates that conform to the standards of paragraph (1), independent action by and reasonable price competition among insurers.

(3) To provide formal regulatory controls for use if price competition fails.

(4) To authorize cooperative action among insurers in the ratemaking process and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition.

(5) To provide rates that are responsive to competitive market conditions and to improve the availability of insurance in this Commonwealth.

(701 added July 2, 1993, P.L.190, No.44)

Section 702. This article applies to the classification of risks, underwriting rules, expenses, losses and profits for insurance of employers and employes under this act, for insurance under the Occupational Disease Act and for insurance with respect to the Commonwealth as to liability under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.).

(702 added July 2, 1993, P.L.190, No.44)

Section 703. As used in this article:

"Classification system" or "classification" means the plan, system or arrangement for recognizing differences in exposure to hazards among industries, occupations or operations of insurance policyholders.

"Department" means the Insurance Department of the Commonwealth.

"Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.

"Market" means the interaction in this State between buyers and sellers of workers' compensation and employers' liability insurance within this Commonwealth pursuant to the provisions of this article.

"Provision for claim payment" means historical aggregate losses projected through development to their ultimate value and through trending to a future point in time, but excluding all loss adjustment or claim management expenses, other operating expenses, assessments, taxes, and profit or contingency allowances.

"Rate" or "rates" means rate of premium, policy and membership fee or any other charge made by an insurer for or in connection with a contract or policy of insurance of the kind to which this article applies.

"Rating organization" means one or more organizations situate within this Commonwealth, subject to supervision and to

examination by the commissioner and approved by the commissioner as adequately equipped to perform the functions specified in this article on an equitable and impartial basis.

"Statistical plan" means the plan, system or arrangement used in collecting data.

"Supplementary rate information" means any manual or plan of rates, statistical plan, classification system, rating schedule, minimum premium policy fee, rating rule, rate-related underwriting rule and any other information, not otherwise inconsistent with the purposes of this article, prescribed by rule of the commissioner.

"Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, description or methods used in making the rates and any other similar information required to be filed by the commissioner.

(703 added July 2, 1993, P.L.190, No.44)

Section 704. (a) The following standards shall apply to the making and use of rates under this article:

(1) Rates may not be:

(i) excessive or inadequate as defined under this article; or

(ii) unfairly discriminatory.

(2) A rate may not be held to be excessive unless it is likely to produce a long-run profit that is unreasonably high in relation to the risk undertaken and the services to be rendered.

(3) A rate may not be held to be inadequate unless:

(i) it is unreasonably low for the insurance provided and continued use of it would endanger solvency of the insurer; or

(ii) the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has had or, if continued, will have the effect of destroying competition or of creating monopoly.

(b) In determining whether rates comply with standards under subsection (a), due consideration shall be given to:

(1) Past and prospective loss experience within and outside this Commonwealth in accordance with sound actuarial principles.

(2) Catastrophe hazards.

(3) A reasonable margin for underwriting profit and contingencies.

(4) Dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers.

(5) Past and prospective expenses, both countrywide and those specially applicable to this Commonwealth.

(6) Investment income earned or realized by insurers both from their unearned premium and from their loss reserve funds.

(7) All relevant factors within and outside this Commonwealth in accordance with sound actuarial principles.

(c) As to the kinds of insurance to which this article applies, the systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurers or groups of insurers to reflect the requirements of the operating methods of the insurer or group of insurers.

(704 added July 2, 1993, P.L.190, No.44)

Section 705. (a) Each authorized insurer shall file with the commissioner all rates and supplementary rate information and all changes and amendments thereof made by it for use in this Commonwealth by the date they become effective. Each rating

organization shall file with the commissioner a filing for the provision for claim payment and such other filings as are authorized pursuant to this article. The Secretary of Labor and Industry shall be a member of the board of directors or governing body of any rating organization.

(b) An insurer may not make or issue a contract or policy of insurance of the kind to which this article applies, except in accordance with the filings which are in effect for the insurer as provided in this article.

(705 added July 2, 1993, P.L.190, No.44)

Section 706. Each filing and any supporting information filed under this article shall, as soon as filed, be open to public inspection. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(706 added July 2, 1993, P.L.190, No.44)

Section 707. (a) Each workers' compensation insurer shall be a member of a rating organization. Each workers' compensation insurer shall adhere to the policy forms filed by the rating organization.

(b) (1) Every workers' compensation insurer shall adhere to the uniform classification system and uniform experience rating plan filed with the commissioner by the rating organization to which it belongs: Provided, That the system and plan have been approved by the commissioner as part of the approval of the rating organization's most recent filing for the provision for claim payment.

(2) (i) Subject to the conditions of this paragraph, an insurer may develop subclassifications of the uniform classification system upon which a rate may be made.

(ii) Any subclassification developed under subparagraph (i) shall be filed with the rating organization and the commissioner thirty (30) days prior to its use.

(iii) If the insurer fails to demonstrate that the data produced under a subclassification can be reported in a manner consistent with the rating organization's uniform statistical plan and classification system, the commissioner shall disapprove the subclassification.

(c) Every workers' compensation insurer shall record and report its workers' compensation experience to a rating organization as set forth in the rating organization's uniform statistical plan approved by the commissioner.

(d) (1) Subject to the approval of the commissioner, a rating organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, the uniform experience rating plan and the uniform classification system.

(2) Every workers' compensation insurer shall adhere to the approved rules and experience rating plan in writing and reporting its business.

(3) An insurer shall not agree with any other insurer or with a rating organization to adhere to rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

(e) The experience rating plan shall have as a basis:

(1) reasonable eligibility standards;

(2) adequate incentives for loss prevention;

(3) sufficient premium differential so as to encourage safety; and

(4) predictive accuracy.

(f) (1) The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment

based upon measurement of the loss producing characteristics of an individual insured.

(2) An insurer may file a rating plan that provides for retrospective premium adjustments based upon an insured's past experience.

(g) The commissioner shall promulgate a plan by which all insurers writing workers' compensation insurance in this Commonwealth shall grant premium discounts or assess premium surcharges to employers who do not qualify for the uniform experience rating plan in accordance with the following:

(1) An employer who has not experienced a compensable employe lost-time injury during the most recent two-year period for which statistics are available shall receive a discount of five per centum on the amount of the workers' compensation insurance premium.

(2) An employer who has experienced two or more compensable employe lost-time injuries during the most recent two-year period for which statistics are available shall be assessed a surcharge of five per centum on the amount of the workers' compensation insurance premium.

(3) The premium discounts or premium surcharges established under this section shall be made on an annual basis but shall not be cumulative: Provided, however, That an employer is entitled to receive the premium discount provided by this section in addition to any other reductions or deviations in the insurance premiums available to all other nonexperienced-rated employers in the same classification. For any annual workers' compensation premium, an employer shall not receive a premium discount of more than five per centum and shall not be required to pay a surcharge of more than five per centum.

(4) Insurers writing workers' compensation insurance in this Commonwealth may file a schedule rating plan based upon defined risk characteristics. Prior approval of this plan by the commissioner is required.

For purposes of this clause, "employer" shall include a municipality or a municipal pool.

((g) added June 24, 1996, P.L.350, No.57)

(707 added July 2, 1993, P.L.190, No.44)

Section 708. (a) The commissioner may investigate and determine whether or not rates in this Commonwealth under this article are excessive, inadequate or unfairly discriminatory.

(b) In any such investigation and determination the commissioner shall follow the procedures specified in sections 709 and 710.

(708 added July 2, 1993, P.L.190, No.44)

Section 709. (a) (1) Except as provided in subsection (d), the commissioner shall review each workers' compensation insurance filing made by a rating organization or an insurer as soon as reasonably possible after the filing has been made in order to determine whether it meets the requirements of this article. No filing for the provision for claim payment shall become effective prior to its approval by the commissioner unless the commissioner fails to approve or disapprove the filing within the time period described in subsection (b)(1) or any extension of that period under subsection (b)(2).

(2) Notwithstanding the provisions of paragraph (1), any insurer filing for loss adjustment or claim management expenses, other operating expenses, assessments, taxes and profits or contingency allowances filed with the commissioner with respect to the period after December 1, 1994, shall not be subject to

the commissioner's approval unless such insurer's rates are found to be in violation of sections 704 and 711.

(b) (1) The effective date of each filing under this article shall be the date specified in the filing. The effective date of the filing may not be earlier than thirty (30) days after the date the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing if such supporting information is required by the commissioner.

(2) The period during which the filing may not become effective may be extended by the commissioner for an additional period not to exceed one hundred fifty (150) days if the commissioner gives written notice within the period described in paragraph (1) to the insurer or rating organization which made the filing that the commissioner needs additional time for the consideration of the filing. No filing shall be made effective for any period prior to the later of the proposed effective date or the expiration of an extension by the commissioner pursuant to this paragraph.

(3) Upon written application by an insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the period described in paragraph (1).

(4) A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the period described in paragraph (1) or any extension thereof.

(c) (1) Subject to approval or disapproval under subsection (b), a rating organization shall file with the commissioner:

(i) On an annual basis, workers' compensation rates and rating plans that are limited to provision for claim payment.

(ii) Each workers' compensation policy form to be used by its members.

(iii) The uniform classification system.

(iv) The uniform experience rating plan and related rules.

(v) Any other information that the commissioner requests relevant to the foregoing and is otherwise entitled to receive under this article.

(2) Notwithstanding any other provisions of this article, the commissioner may approve or disapprove any filing by a rating organization without determining whether a reasonable degree of competition exists within the market.

(d) If the loss cost provision in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer does not differ from the provision for claim payment contained in the schedule of workers' compensation rates for those classifications filed by a rating organization under subsection (c) and approved pursuant to the provisions of this article, then the schedule of rates filed by the insurer shall not be subject to subsection (b) but shall become effective for the purposes of section 705.

(e) Notwithstanding subsection (d), the commissioner may investigate and evaluate all workers' compensation filings to determine whether the filings meet the requirements of this article.

(f) Notwithstanding the provisions of section 705, the commissioner may require any insurer or rating organization to comply with the requirements of subsection (b) if the commissioner has found pursuant to section 710 that a reasonable degree of competition does not exist within the workers' compensation insurance market.

(709 added July 2, 1993, P.L.190, No.44)

Section 710. (a) If the commissioner finds after a hearing that a rate is not in compliance with section 704 or that a rate had been set in violation of section 713, the commissioner shall order that its use be discontinued for any policy issued or renewed after a date specified in the order, and the order may prospectively provide for premium adjustment of any policy then in force. Except as provided in subsection (b), the order shall be issued within thirty (30) days after the close of the hearing or within a reasonable time extension as fixed by the commissioner. The order shall expire one (1) year after its effective date unless rescinded earlier by the commissioner.

(b) (1) Pending a hearing, the commissioner may order the suspension prospectively of a rate filed by an insurer and reimpose the last previous rate in effect if the commissioner has reasonable cause to believe that:

(i) an insurer is in violation of section 704;

(ii) unless the order of suspension is issued, certain insureds will suffer irreparable harm;

(iii) the hardship insureds will suffer absent the order of suspension outweighs any hardship the insurer would suffer if the order of suspension were to issue; and

(iv) the order of suspension will cause no substantial harm to the public.

(2) In the event the commissioner suspends a rate under this subsection, the commissioner must, unless waived by the insurer, hold a hearing within fifteen (15) working days after issuing the order suspending the rate. In addition, the commissioner must make a determination and issue the order as to whether or not the rate should be disapproved within fifteen (15) working days after the close of the hearing.

(c) (1) At any hearing to determine compliance with section 704, pursuant to subsection (a), the commissioner may first determine whether a reasonable degree of competition exists within the market and shall give a ruling to that effect. All insurers operating within such market shall have the burden of establishing that a reasonable degree of competition exists within that market. The commissioner shall consider all relevant factors in determining the competitiveness of the market, including:

(i) the number of insurers actively engaged in providing coverage;

(ii) market shares;

(iii) changes in market shares; and

(iv) ease of entry.

(2) If the commissioner determines that a reasonable degree of competition does not exist in the market, any insurer designated by the commissioner shall have the burden of justifying its rate in such market.

(3) All determinations made by the commissioner shall be on the basis of findings of fact and conclusions of law.

(4) If the commissioner disapproves a rate, the disapproval shall take effect not less than fifteen (15) days after his order and the last previous rate in effect for the insurer shall be reimposed for a period of one (1) year unless the commissioner approves a rate under subsection (d) or (e).

(d) Within one (1) year after the effective date of a disapproval order, no rate adopted to replace one disapproved under such order may be used until it has been filed with the commissioner and not disapproved within thirty (30) days thereafter.

(e) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates, the

commissioner shall, on the insurer's request, specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the commissioner shall order the specially reserved funds or any overcharge in the interim rates to be distributed appropriately to the insureds or insurer, as the case may be, except that refunds to policyholders that are minimal may not be required.

(710 added July 2, 1993, P.L.190, No.44)

Section 711. (a) (1) If the commissioner finds after hearing that competition is not an effective regulator of the rates charged or that a substantial number of companies are competing irresponsibly through the rates charged or that there are widespread violations of this article, the commissioner may adopt a rule requiring that any subsequent changes in the rates or supplementary rate information be filed with the commissioner at least thirty (30) working days before they become effective.

(2) In the event that the waiting period is imposed pursuant to paragraph (1), the commissioner may extend the waiting period for a period not to exceed thirty (30) additional working days by written notice to the filer before the first thirty-day period expires.

(b) In the event that the commissioner has entered an order pursuant to paragraph (1) of subsection (a), the commissioner may require the filing of supporting data as the commissioner deems necessary for the proper functioning of the rate monitoring and regulating process. The supporting data shall include:

(1) the experience and judgment of the filer and, to the extent the filer wishes or the commissioner requires, the experience and judgment of other insurers or rate service organizations;

(2) the filer's interpretation of any statistical data relied upon;

(3) a description of the actuarial and statistical methods employed in setting the rate; and

(4) any other relevant matters required by the commissioner.

(c) A rule adopted under this section shall expire not more than one year after issue. The commissioner may renew it for an additional one-year period after a hearing and appropriate findings under this section.

(d) Whenever a filing is not accompanied by the information as the commissioner has required under subsection (a), the commissioner may so inform the insurer and the filing shall be deemed to be made when the information is furnished.

(711 added July 2, 1993, P.L.190, No.44)

Section 712. (a) No rating organization shall provide any service relating to the rates of any insurance subject to this article, and no insurer shall utilize the service of such organization for those purposes unless the organization has obtained a license pursuant to this article.

(b) No rating organization shall refuse to supply services for which it is licensed in this Commonwealth to any insurer authorized to do business in this Commonwealth and offering to pay the fair and usual compensation for the services.

(712 added July 2, 1993, P.L.190, No.44)

Section 713. (a) As used in this section, the word "insurer" includes two or more affiliated insurers:

(1) under common management; or

(2) under common controlling ownership or under other common effective legal control and in fact engaged in joint or

cooperative underwriting, investment management, marketing, servicing or administration of their business and affairs as insurers.

(b) An insurer or rating organization may not:

(1) monopolize or attempt to monopolize or combine or conspire with any other person or persons or monopolize the business of insurance of any kind, subdivision or class thereof;

(2) agree with any other insurer or rating organization to charge or adhere to any rate, although insurers and rating organizations may continue to exchange statistical information;

(3) make any agreement with any other insurer, rating organization or other person to unreasonably restrain trade;

(4) make any agreement with any other insurer, rating organization or other person where the effect of the agreement may be substantially to lessen competition in the business of insurance of any kind, subdivision or class; or

(5) make any agreement with any other insurer or rating organization to refuse to deal with any person in connection with the sale of insurance.

(c) An insurer may not acquire or retain any capital stock or assets of or have any common management with any other insurer if such acquisition, retention or common management substantially lessens competition in the business of insurance of any kind, subdivision or class.

(d) A rating organization or member or subscriber thereof may not interfere with the right of any insurer to make its rates independently of that rating organization or to charge rates different from the rates made by that rating organization.

(e) Except as required under section 707, a rating organization may not have or adopt any rule or exact any agreement, formulate or engage in any program which would require any member, subscriber or other insurer to:

(1) utilize some or all of its services;

(2) adhere to its rates, rating plan, rating systems or underwriting rules; or

(3) prevent any insurer from acting independently.

(713 added July 2, 1993, P.L.190, No.44)

Section 714. Any rate in violation of section 713 shall be disapproved by the commissioner in accordance with the procedures prescribed in section 710, and each violator shall be subject to the penalties provided in section 720.

(714 added July 2, 1993, P.L.190, No.44)

Section 715. The commissioner may maintain an action to enjoin any violation of section 713.

(715 added July 2, 1993, P.L.190, No.44)

Section 716. Notwithstanding any other provision of this article, upon written application of an insurer stating its reasons therefor, accompanied by the written consent of the insured or prospective insured, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used as to any specific risk.

(716 added July 2, 1993, P.L.190, No.44)

Section 717. (a) Each rating organization and every insurer to which this article applies which makes its own rates shall provide within this Commonwealth reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by the person's authorized representative on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the aggrieved person. For the purposes of this section, "reasonable means" shall include at least the following:

(1) A committee to hear the appeals of aggrieved persons which is comprised of an equal number of representatives of employers and insurers.

(2) If travel is required for the aggrieved person to be heard in person, reimbursement to the aggrieved person for reasonable travel expenses.

((a) amended June 24, 1996, P.L.350, No.57)

(b) If the rating organization or insurer fails to grant or reject the aggrieved person's request within thirty (30) days after it is made, the applicant may proceed in the same manner as if the application had been rejected.

(c) Any party affected by the action of that rating organization or insurer on the request may, within thirty (30) days after written notice of that action, make application in writing for an appeal to the commissioner, setting forth the basis for the appeal and the grounds to be relied upon by the applicant.

(d) The commissioner shall review the application and, if the commissioner finds that the application is made in good faith and that it sets forth on its face grounds which reasonably justify holding a hearing, the commissioner shall conduct a hearing held on not less than ten (10) days' written notice to the applicant and to the rating organization or insurer. The commissioner, after hearing, shall affirm or reverse the action.

(717 added July 2, 1993, P.L.190, No.44)

Section 718. (a) Cooperation among rating organizations or among rating organizations and insurers in ratemaking or in other matters within the scope of this article is authorized if the filings resulting from that cooperation are subject to all the provisions of this article which are applicable to filings generally.

(b) The commissioner may review these cooperative activities and practices, and, if after hearing the commissioner finds that any activity or practice is unfair, unreasonable or otherwise inconsistent with this article, the commissioner may issue a written order specifying in what respects that activity or practice is unfair, unreasonable or otherwise inconsistent with this article and requiring the discontinuance of that activity or practice.

(718 added July 2, 1993, P.L.190, No.44)

Section 719. (a) A person or organization may not wilfully withhold information from or knowingly give false or misleading information which will affect the rates or premiums chargeable under this article to:

(1) the commissioner; or

(2) any rating organization or any insurer.

(b) A violation of this section shall subject the one who commits that violation to the penalties provided in section 720, and anyone who violates this section with intent to deceive commits perjury, and is subject to prosecution therefor in a court of competent jurisdiction.

(719 added July 2, 1993, P.L.190, No.44)

Section 720. (a) Any person, organization or insurer found by the commissioner after notice and hearing to be guilty of a violation of any provision of this article, including a regulation of the commissioner adopted under this article, may be ordered to pay a penalty of five hundred dollars ($500) for each violation. Upon finding such violation to be wilful, the commissioner may impose a penalty of not more than one thousand dollars ($1,000) for each such violation in addition to any other penalty provided by law. The commissioner has the right

to suspend or revoke or refuse to renew the license of any person, organization or insurer for violation of any of the provisions of this article.

(b) The commissioner may determine when a suspension or revocation of license will become effective, and the suspension or revocation shall remain in effect for the period fixed by the commissioner unless the commissioner modifies or rescinds the suspension or revocation or until the order upon which the suspension or revocation is based is modified or reversed as the result of an appeal therefrom.

(c) A fine may not be imposed nor a license suspended or revoked by the commissioner except upon written order stating the commissioner's findings made after a hearing held on not less than ten (10) days' written notice to the person, organization or insurer specifying the alleged violation.

(720 added July 2, 1993, P.L.190, No.44)

Section 721. All decisions and findings of the commissioner under this article shall be subject to judicial review in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(721 added July 2, 1993, P.L.190, No.44)

Section 722. The commissioner shall report to the General Assembly annually, beginning on December 31, 1993, on the status, operation and procedures for the determination of classification systems as they apply to this article.

(722 added July 2, 1993, P.L.190, No.44)

ARTICLE VIII.
SELF-INSURANCE POOLING
(Art. added July 2, 1993, P.L.190, No.44)

Section 801. 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:

"Actuarially appropriate loss reserves" shall mean those reserves needed to pay known claims for compensation and expenses associated therewith and claims for compensation incurred but not reported and expenses associated therewith.

"Administrator" means an individual, partnership or corporation engaged by a fund's plan committee to carry out the policies established by the plan committee and to provide day-to-day management of the fund.

"Compensation" includes compensation paid under this act or the Occupational Disease Act.

"Department" means the Department of Labor and Industry of the Commonwealth.

"Employer" means an employer as defined in section 103 of this act or as defined in section 103 of the Occupational Disease Act, where applicable.

"Excess insurance" means insurance purchased from an insurance company appropriately approved or authorized or licensed in this Commonwealth covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence or per accident or annual aggregate basis.

"Fund" means a group self-insurance fund organized by employers to pool workers' compensation liabilities and approved by the department under the authority of this act. A fund shall not be deemed to be an insurer or insurance company and shall not be subject to the provisions of the insurance laws and regulations, except as specifically otherwise provided herein.

"Homogeneous employer" means employers who have been assigned to the same classification series for at least one year or are engaged in the same or similar types of business, including political subdivisions.

"Independent actuary" means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries who has been identified by the Academy as meeting its qualification standards for signing casualty loss reserve opinions. Said actuary must not be an officer, director or employe of the fund or a member of the fund for which he or she is providing reports, certifications or services.

"Insolvent fund" means the inability of a fund to pay its outstanding liabilities as they mature as may be shown either by an excess of its required reserves and other liabilities over its assets or by not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

"Permit" means the document issued by the department to a fund which authorizes the fund to operate as a fund under the provisions of this act.

"Plan committee" means a committee composed of representatives of each employer participating in a fund.

"Political subdivision" means any county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority or other entity created by a political subdivision pursuant to law.

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

"Surplus" means that amount of moneys found in the trust to be in excess of all fixed costs and incurred losses attributed to the pool net any occurrence or aggregate excess insurance.

"Trust" means a written contract signed by the members of the fund which separates the legal and equitable rights to the moneys held by an independent trustee as a fiduciary for the benefit of employes of employers participating in the fund.

(801 added July 2, 1993, P.L.190, No.44)

Section 802. (a) Employers shall be permitted to pool their liabilities under this act and the Occupational Disease Act and their employers' liability through participation in a fund approved by the department.

(b) A group of homogeneous employers may be approved by the department to act as a fund if the proposed group:

(1) Includes five or more homogeneous employers.

(2) Is comprised of at least five members of which each have been employers for at least three years prior to the filing of the group's application.

(3) Has been created in good faith for the purpose of becoming a fund.

(4) Has, except for political subdivisions, an aggregate net worth of the employers participating calculated according to generally accepted accounting principles which equals or exceeds one million dollars ($1,000,000) or such amount as may be adjusted and promulgated annually by the department and published in the Pennsylvania Bulletin to take effect January 1 of each year.

(5) Has a combined annual payroll of fund members multiplied by the rate utilized by the State Workmen's Insurance Fund which

is equal to or greater than five hundred thousand dollars ($500,000) as adjusted annually by the percentage increase in the Statewide average weekly wage or such amount as may be adjusted and promulgated annually by the department and published in the Pennsylvania Bulletin to take effect January 1 of each year.

(6) Guarantees benefit levels equal to those required by this act and the Occupational Disease Act.

(7) Demonstrates sufficient aggregate financial strength and liquidity to assure that all obligations under this act and the Occupational Disease Act will be met as required by that act and proposes a plan for the prompt payment of such benefits. Information documenting an individual member's financial strength and liquidity shall be presented to the department upon the department's request or with the application as required by the department.

(8) Executes a trust agreement under which each member agrees to jointly and severally assume and discharge the liabilities arising under this act and the Occupational Disease Act of each and every party to such agreement.

(9) Files with the department the proposed trust agreement.

(10) Provides for excess insurance with retention amounts in such amount as the department deems acceptable on a single accident (single occurrence) and aggregate excess basis. The department may waive the requirement for one or both types of excess insurance if convinced that the fund's financial strength is sufficient to assure payment of its obligations under this act and the Occupational Disease Act.

(11) Provides security in a form and amount prescribed by the department. This paragraph shall not apply to pools created by and exclusively for political subdivisions or municipalities which self-insure. ((11) amended June 24, 1996, P.L.350, No.57)

(12) Provides letters of intent from prospective fund members and evidence that each prospective member:

(i) Has never defaulted on compensation due under this act or the Occupational Disease Act as an individual self-insurer.

(ii) Has not been delinquent in payment of or canceled for nonpayment of workers' compensation premiums for a period of at least two (2) years prior to application.

(iii) Has not been found to have violated section 305 or 435 or the Occupational Disease Act as an individual self-insurer.

(iv) Has not been and is not in default on or owes money assessed under this act or the Occupational Disease Act.

(13) Provides that the fund will initiate and maintain a loss prevention and safety program of the nature and extent that would be required of members under the provisions of this act, the Occupational Disease Act or regulations promulgated hereunder.

(14) Provides for assessment upon employers participating in the fund to establish and maintain actuarially appropriate loss reserves and a plan for payment of such assessments.

(15) Provides proof of competent personnel and ample facilities within its own organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or presents a contract with a reputable service company to provide such assistance.

(16) Meets the other criteria established by this act or by the department pursuant to regulations promulgated under this act or the Occupational Disease Act.

(c) Each application for approval of a fund shall be accompanied by a nonrefundable fee of one thousand dollars

($1,000), payable to the department, which shall be deposited in the Workmen's Compensation Administration Fund.

(802 added July 2, 1993, P.L.190, No.44)

Section 803. (a) (1) The department shall, in accordance with section 802, review, approve or disapprove fund applications under such rules and requirements relating to applications under section 305 and the Occupational Disease Act as may be applicable and such rules and regulations as are specifically adopted with regard to fund applications.

(2) During the pendency of the processing of any fund application, the group of employers shall not operate as a fund.

(b) Permits shall identify an annual reporting period for the fund as established by the department.

(803 added July 2, 1993, P.L.190, No.44)

Section 804. All permits issued under this article shall remain in effect unless terminated at the request of the fund or revoked by the department.

(804 added July 2, 1993, P.L.190, No.44)

Section 805. (a) If at any time the fund is found to be insolvent, fails to pay any required assessments under this act or the Occupational Disease Act or fails to comply with any provision of this act or the Occupational Disease Act or with any rules promulgated thereunder, the department may revoke its permit after notice and opportunity for a hearing.

(b) In the case of revocation of a permit, the department may require the fund to insure or reinsure all incurred liability with an authorized insurer. All fund members shall immediately obtain coverage required by this act.

(805 added July 2, 1993, P.L.190, No.44)

Section 806. (a) Members of said fund shall pay a minimum of twenty-five per centum of their annual assessment into the fund on or before the inception of the fund. The balance of the annual assessments shall be paid to the fund on a monthly, quarterly or semiannual basis as required by the fund's bylaws and approved by the department.

(b) Each member's annual assessment to the fund shall equal such member's annual payroll times the applicable rates utilized by the State Workmen's Insurance Fund minus the premium discount specified in Schedule Y as approved by the commissioner. Dividends may be returned to members in accordance with section 809.

(c) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in section 810.

(806 added July 2, 1993, P.L.190, No.44)

Section 807. After the final permit approval date of the fund, prospective new members of the fund shall submit an application for membership to the fund's plan committee or administrator in a form approved by the department. This application shall include an agreement of joint and several liability as required in section 803. The administrator or plan committee may approve the application for membership pursuant to the bylaws of the fund. The application approved by the fund shall be filed with the department. The fund shall retain the authority to reject any applicant.

(807 added July 2, 1993, P.L.190, No.44)

Section 808. (a) Individual members may elect to terminate their participation in a fund or be subject to cancellation by the fund pursuant to the bylaws of the fund for nonpayment of premium or other violations. Any member withdrawing from a fund or member terminated by the fund for nonpayment of assessments shall remain fully obligated for claims incurred during the

period of its membership in accord with fund bylaws, including, but not limited to, amounts owed as annual or supplemental assessments. Notice of termination of any participant shall be filed with the fund. The fund shall attach any such notices of termination to the renewal application filed with the department.

(b) The fund shall notify the department immediately if termination of a member causes the fund to fail to meet the requirements of section 802(b). Within fifteen (15) days of the notice of withdrawal or decision to expel, the fund shall advise the department of its plan to bring the fund into compliance with section 802(b). If the plan does not bring the fund into compliance with the requirements, the department shall immediately review and revoke its permit.

(c) The department shall not grant the request of any fund to terminate its permit unless the fund has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the department. These obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith. These same requirements shall apply where the department revokes a permit.

(808 added July 2, 1993, P.L.190, No.44)

Section 809. Any fund may return to its members dividends based upon the recommendation of an independent actuary. Dividends shall not be returned if the payment of such dividends would impair the fund's ability to meet its obligations under this act or the Occupational Disease Act, nor shall dividends be returned prior to the beginning of the thirteenth month following the expiration of the preceding annual reporting period. The initial dividend payment for any annual reporting period shall not exceed thirty per centum of the surplus available for the applicable annual reporting period. The fund may, however, seek annual approval for payment of dividends from the surplus remaining from any annual reporting period which has been completed for at least twenty-five months or longer and may include such dividend payments with initial dividend payments from the subsequent annual reporting period.

(809 added July 2, 1993, P.L.190, No.44)

Section 810. (a) If the assets of a fund are at any time insufficient to enable the fund to discharge its legal liabilities and other obligations and to maintain the actuarially appropriate loss reserves required of it under section 802(b)(14), the fund shall forthwith make up the deficiency or levy an assessment upon the fund members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any annual reporting period, such deficiency shall be made up immediately either from surplus from a year other than the current year, assessment of the fund members if ordered by the fund or such alternate method as the department may approve or direct.

(c) If the fund fails to assess its members or to otherwise make up such deficit within thirty (30) days, the department shall order it to do so.

(d) If the fund fails to make the required assessment of its members within thirty (30) days after the department orders it to do so or if the deficiency is not fully made up within sixty (60) days after the date on which such assessment is made or within such longer period of time as may be specified by the department, the fund shall be deemed to be insolvent.

(e) The department shall proceed against an insolvent fund in the same manner as the department would proceed against a self-insurer under Article IX.

(f) In addition, in the event of the liquidation or default of a fund, the department may levy an assessment upon the fund members for such an amount as the department determines to be necessary to discharge all liabilities of the fund, including the reasonable cost of liquidation, and shall deposit such assessments into the Self-Insurance Guaranty Fund for distribution and payment by the Guaranty Fund as provided for in Article IX.

(810 added July 2, 1993, P.L.190, No.44)

Section 811. The annual assessment of each fund member shall be based upon the annual payroll of fund members multiplied by the rates as utilized by the State Workmen's Insurance Fund for members minus any premium discounts. A fund may deviate from these rates and establish its own rates with the approval of an independent actuary and the department.

(811 added July 2, 1993, P.L.190, No.44)

Section 812. Each fund shall request classifications for its participants from the bureau or bureaus approved by the commissioner and shall utilize those classifications making assessments based upon rates as utilized by the State Workmen's Insurance Fund for such classification except as provided in section 811. The fund shall pay the appropriate bureau a reasonable charge, approved by the commissioner, for this service. The fund may appeal classifications as provided in the applicable sections of the Insurance Company Law of 1921 for other employers.

(812 added July 2, 1993, P.L.190, No.44)

Section 813. Each fund may invest any surplus moneys not needed for current obligations in United States Government obligations, United States Treasury notes, investment share accounts in any savings and loan association whose deposits are insured by a Federal agency and certificates of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations and commercial banks shall be limited to institutions in this Commonwealth and shall not exceed the federally insured amount in any one account. Investments may also be made in any permitted investments of capital or surplus of stock casualty insurance companies set forth in section 602 or 603 of the Insurance Company Law of 1921, as may be authorized by regulation approved by the commissioner.

(813 added July 2, 1993, P.L.190, No.44)

Section 814. (a) Funds approved under this article shall purchase excess insurance by reason of any single accident or any single occurrence as provided in section 653 of the Insurance Company Law of 1921 and aggregate excess insurance. The department may waive the requirement for either single accident (single occurrence) or aggregate excess insurance or the requirement for both single accident (single occurrence) and aggregate excess insurance.

(b) A policy of insurance by an insurance carrier may include provisions for aggregate excess insurance in addition to the single accident (single occurrence) excess insurance which is authorized under section 653 of the Insurance Company Law of 1921.

(814 added July 2, 1993, P.L.190, No.44)

Section 815. (a) A report shall be prepared by each fund for each annual reporting period and shall be filed with the department and made available to each fund member.

(b) The information contained in the annual report shall include, for each member of the fund and the fund itself:

(1) Summary loss reports.

(2) An annual statement of the financial condition of the fund prepared by a certified public accountant and performed in accordance with generally accepted accounting principles.

(3) Reports of outstanding liabilities showing the number of claims, amounts paid to date and current reserves as certified by an independent actuary.

(4) Such other information as required by regulation of the department as may be applicable to applicants for self-insurance under section 305 and the Occupational Disease Act or regulations in regard to fund applications.

(c) The annual report shall be accompanied by a one thousand dollar evaluation fee.

(d) The department may, at any time, examine the affairs, transactions, accounts, records and assets of a fund, and the fund shall make all such items as are needed for such examination available to the department. The department shall bill the fund for the reasonable costs associated with such examinations.

(e) If at any time there is a change in the fund during an annual reporting period other than as set forth in section 808 that affects the ability of the fund to comply with the requirements of section 802(b), the fund shall notify the department of the change within thirty (30) days after such change.

(815 added July 2, 1993, P.L.190, No.44)

Section 816. Each fund shall be assessed annually by the department in a like manner and amount as other insurers or self-insurers are now or hereafter assessed under this act and the Occupational Disease Act and shall pay such assessment in accordance with this act and the Occupational Disease Act. All contributions received in accordance with this section shall be deposited into the appropriate fund as required by the applicable provision of law.

(816 added July 2, 1993, P.L.190, No.44)

Section 817. Any group of five (5) homogeneous employers who will provide to the fund an annual volume of premium of at least five hundred thousand dollars ($500,000) may become subscribers as a group to the State Workmen's Insurance Fund for the purpose of insuring therein their liability to those of their employes. Such group shall become legally obligated to pay any employe compensation required by this act because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment. Such group shall make a written application for subscription for group insurance to the board. Such application shall designate the name of the group subscriber and shall include such information as determined by the board as will allow the board to identify the employers and to adequately assess risks and premiums to be charged to employers to be insured by the fund under the group subscription.

(817 added July 2, 1993, P.L.190, No.44)

Section 818. The department is authorized to promulgate rules and regulations for the administration and enforcement of this article.

(818 added July 2, 1993, P.L.190, No.44)

Section 819. If an association of employers establishes more than one group under this article, the association may organize a single board of trustees to oversee the operations

of the several groups: Provided, however, That each of the several groups shall be equally represented on the board.

(819 added June 24, 1996, P.L.350, No.57)

ARTICLE IX.
SELF-INSURANCE GUARANTY FUND
(Art. added July 2, 1993, P.L.190, No.44)

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, other than the Commonwealth and its political subdivisions, that is 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. (Def. amended June 22, 2001, P.L.606, No.49)

"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.

(901 amended June 22, 2000, P.L.390, No.53)

Section 902. (a) (1) There is hereby established a special fund to be known as the Self-Insurance Guaranty Fund.

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

(b) The moneys in each custodial account shall consist of security and assessments, as defined in section 907, and interest accumulated thereon.

(c) The administrator shall establish and maintain the following two distinct and separate custodial accounts. The moneys and other assets in each account are not to be commingled or used to pay claims from the other account.

(1) Custodial account for self-insured employers for the exclusive benefit of claims arising from defaulting individual self-insured employers.

(2) Custodial account for self-insurance pooling as defined under section 801 for the exclusive benefit of claims arising from defaulting members of pooling arrangements.

(d) The secretary shall be the administrator of the fund and shall have the power to collect, dispense and disperse money from the fund.

(902 added July 2, 1993, P.L.190, No.44)

Section 903. The fund shall be maintained to make payments to any claimant or his dependents upon the default of the self-insurer liable to pay compensation due under this act and the Occupational Disease Act or costs associated therewith and shall be maintained in an amount sufficient to pay such compensation and costs or reasonably anticipated to be needed by virtue of default by self-insurers.

(903 added July 2, 1993, P.L.190, No.44)

Section 904. (a) When a self-insurer fails to pay compensation when due, the department shall determine the reasons for such failure.

(b) If the department determines that the failure to pay compensation is due to the self-insurer's financial inability to pay compensation, the department shall notify the self-insurer of same and direct compensation to be paid within fifteen (15) days of such notice.

(c) If the self-insurer fails to pay the compensation as directed and within the time set forth in this section, the department shall declare the self-insurer in default.

(d) Whenever the department determines that a default has occurred, it shall:

(1) Investigate the circumstances surrounding the default, the amount of security available and the ability of the self-insured to cure the default.

(2) Determine whether the liabilities of the self-insurer for compensation exceed or are less than the security:

(i) If the liabilities are less than the security, the department shall demand the custodian of the security utilize the security to cure the default, and the department shall monitor the situation to insure that compensation is paid as due under this act or the Occupational Disease Act.

(ii) If at any time the liabilities exceed or can reasonably be expected to exceed the security, in the opinion of the department, the department may order payment of the security into the fund's appropriate custodial account and shall order payment from the Guaranty Fund, as appropriate, to cure the default and insure that compensation is paid as due under this act or the Occupational Disease Act.

(904 added July 2, 1993, P.L.190, No.44)

Section 905. (a) When payments are ordered from the Guaranty Fund's appropriate custodial account, the fund assumes the rights and obligations of the self-insurer under this act or the Occupational Disease Act with regard to the payment of compensation and shall have and may exercise the rights set forth in this section.

(b) The Guaranty Fund shall have the right to:

(1) Institute and prosecute legal action against any self-insurer and each and every member of a fund, jointly and severally, on behalf of the employes of the self-insured employer or fund members' employes and their dependents to require the payment of compensation and the performance of any

other obligations of the self-insurer under this act or the Occupational Disease Act.

(2) Appear and represent the Guaranty Fund in any proceedings in bankruptcy involving the self-insurer on whose behalf payments were made, including the ability to appear and move to lift any stay orders affecting payment of compensation.

(3) Obtain, in any manner or by the use of any process or procedure, including, but not limited to, the commencement and prosecution of legal action, reimbursement from a self-insurer and its successors, assigns and estate all moneys paid on account of the self-insurer's obligation assumed by the fund, including, but not limited to, reimbursement for all compensation paid as well as reasonable administrative and legal costs associated with such payment.

(4) Purchase reinsurance and take any and all other action which effects the purpose of the Guaranty Fund.

(905 added July 2, 1993, P.L.190, No.44)

Section 906. (a) (1) Security or funds from security demanded and paid to the department under section 904 shall be deposited into the Guaranty Fund.

(2) These funds and interest thereon shall be segregated in individual custodial accounts within the Guaranty Fund by the custodian and maintained solely for the payment of compensation or costs associated therewith upon order of the department to the employes of the defaulting self-insurer providing the security from the appropriate custodial account.

(3) If there are funds from security or interest thereon remaining in the individual account after all outstanding obligations of the insolvent self-insurer have been satisfied and the costs of administration and defense have been paid, such amount as remains shall be returned upon order of the department from the Guaranty Fund individual account to the self-insurer.

(b) Assessments made under section 907 and interest thereon shall be deposited into the Guaranty Fund's appropriate custodial account.

(906 added July 2, 1993, P.L.190, No.44)

Section 907. (a) On a date to be determined by the department following the effective date of this article, employers who are self-insurers as of that effective date shall pay an initial assessment of one-half per centum of the compensation paid by each self-insurer in the year preceding the assessment. Self-insurers who, prior to such effective date, were not self-insurers shall pay an assessment based on one-half per centum of their modified manual premium for the twelve (12) months immediately prior to becoming self-insurers.

(b) (1) The department may, in addition to the initial assessment, from time to time, assess each self-insurer a pro rata share of the amounts needed for the fund to carry out the requirements of this article.

(2) Such assessments shall be based on the ratio that each self-insurer's payments of compensation bears to the total compensation paid by all self-insurers in the year preceding the year of assessment.

(3) In no event shall a self-insurer be assessed in any one calendar year more than one per centum of the compensation paid by that self-insurer during the previous calendar year.

(c) A self-insurer which ceases to be a self-insurer shall be liable for any and all assessments made pursuant to this section during the period following the date its authority to self-insure is withdrawn, revoked or surrendered until such time as it has discharged all obligations to pay compensation

which arose during the period of time said former self-insurer was self-insured. Assessments of such a former self-insurer shall be based on the compensation paid by the former self-insurer during the preceding calendar year on claims that arose during the period of time said former self-insurer was self-insured.

(907 added July 2, 1993, P.L.190, No.44)

Section 908. The department may promulgate rules and regulations for the administration and enforcement of this article.

(908 added July 2, 1993, P.L.190, No.44)

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 from the Workmen's Compensation Administration Fund to the account an amount up to three million eight hundred thousand dollars ($3,800,000) but not exceeding the sum of all claims for benefits payable under subsection (c).

(b) ((b) deleted by amendment)

(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 of all payments from the account to its prefund claimants, including reimbursement of all claims

for 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.

(909 amended June 22, 2001, P.L.606, No.49)

Compiler's Note: The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, referred to in subsec. (h), was repealed by the act of Feb. 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

ARTICLE X.
HEALTH AND SAFETY
(Art. added July 2, 1993, P.L.190, No.44)

Section 1001. (a) Notwithstanding any other provision of law, an insurer desiring to write workers' compensation insurance in this Commonwealth shall maintain or provide accident and illness prevention services as a prerequisite for a license to write such insurance. Proof of compliance with this section shall be provided to the commissioner. Such services shall be adequate to furnish accident prevention required by the nature of its business or its policyholders' operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The insurer, pursuant to its responsibilities under this section, shall employ or otherwise make available qualified accident and illness prevention personnel. Such personnel shall meet the qualifications set forth in regulations issued by the department.

(b) A self-insured employer shall maintain an accident and illness prevention program as a prerequisite for retention of its self-insured status. Such program shall be adequate to furnish accident prevention required by the nature of its business and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services. The self-insured employer pursuant to its responsibilities under this section shall employ or otherwise make available qualified accident and illness prevention personnel. Such personnel shall meet the qualifications set forth in regulations issued by the department.

(c) The department may conduct inspections to determine the adequacy of the accident prevention services required by this section at least once every two (2) years for each insurer.

(d) Notice that services required by this section are available to the employer from an insurer must appear in no less than ten-point bold type and must accompany each workers' compensation insurance policy delivered or issued for delivery in this Commonwealth.

(e) At least once each year, each insurer must submit to the department detailed information on the type of accident prevention services offered or provided to the insurer's policyholders. The information must include:

(1) The amount of money spent by the insurer on accident prevention services.

(2) The number and qualifications of field safety representatives employed by the insurer.

(3) The number of site inspections performed.

(4) Any accident prevention services for which the insurer contracts.

(5) A breakdown of the premium size of the risks to which the insurer provided services.

(6) Evidence of the effectiveness of and accomplishments in accident prevention.

(f) Failure to maintain or provide the accident prevention services required by this section shall constitute a continuing civil violation subject to a maximum fine of two thousand dollars ($2,000) per day for each day the accident prevention services are not maintained or provided. Each day of noncompliance with this section is a separate violation. All fines recovered under this section shall be paid to the department and deposited by the department into the Workmen's Compensation Administration Fund created by section 446 of this act.

(g) The insurer, the agent, servant or employe of the insurer and the past and present employer and employe members of the safety committee established under section 1002 and any collective bargaining representative shall not be liable on any cause of action or in any proceeding, civil or criminal, arising out of or based upon allegations and pleadings relating to the performance of services under or in compliance with this article. This immunity shall not, however, affect the liability of the employer or the insurer for compensation as otherwise provided in this act. The recommendations, findings and minutes of a safety committee shall not be admissible evidence in any civil action filed on behalf of an employe against a third party regarding any injury incurred in the course and scope of employment.

(1001 added July 2, 1993, P.L.190, No.44)

Section 1002. (a) An insured employer may make application to the department for the certification of any established safety committee operative within its workplace developed for the purpose of hazard detection, accident prevention and providing information regarding the risks associated with substance abuse, including opioid painkiller use. The department shall develop such certification criteria. ((a) amended June 30, 2021, P.L.258, No.57)

(a.1) Within twenty-one (21) days, the department shall notify, develop and make available resources for employers to comply with this section. ((a.1) added June 30, 2021, P.L.258, No.57)

(b) Upon the renewal of the employer's workers' compensation policy next following receipt of department certification, the employer shall receive an annual five per centum discount in the rate or rates applicable to the policy if the employer, on a form prescribed by the department, provides annual verification to the department and to the employer's insurer that the safety committee continues to be operative and continues to meet the certification requirements.

(1002 amended Dec. 9, 2002, P.L.1555, No.202)

ARTICLE XI.
INSURANCE FRAUD
(Art. added July 2, 1993, P.L.190, No.44)

Section 1101. 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:

"Attorney" means an individual admitted by the Pennsylvania Supreme Court to practice law in this Commonwealth.

"Health care provider" means a person licensed or certified pursuant to law to perform health care activities.

"Insurance claim" means a claim for payment or other benefits pursuant to an insurance policy for workers' compensation.

"Insurance policy" means a document setting forth the terms and conditions of a contract of insurance or agreement for workers' compensation.

"Insurer" means a company, association or exchange defined by section 101 of the Insurance Company Law of 1921 and the State Workmen's Insurance Fund, an unincorporated association of underwriting members, a hospital plan corporation, a professional health services plan corporation, a health maintenance organization, a fraternal benefit society and a self-insured health care entity under the act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act."

"Person" means an individual, corporation, partnership, association, joint-stock company, trust or unincorporated organization. The term includes any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, beneficial association and any other legal entity engaged or proposing to become engaged, either directly or indirectly, in the business of insurance, including agents, brokers, adjusters and health care plans as defined in 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations), 63 (relating to professional health services plan corporations), 65 (relating to fraternal benefit societies) and 67 (relating to beneficial societies) and the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act." For purposes of this article, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

"Statement" means any oral or written presentation or other evidence of loss, injury or expense, including, but not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result or computer-generated documents.

(1101 added July 2, 1993, P.L.190, No.44)

Section 1102. A person, including, but not limited to, the employer, the employe, the health care provider, the attorney, the insurer, the State Workmen's Insurance Fund and self-insureds, commits an offense if the person does any of the following:

(1) Knowingly and with the intent to defraud a State or local government agency files, presents or causes to be filed with or presented to the government agency a document that contains false, incomplete or misleading information concerning any fact or thing material to the agency's determination in approving or disapproving a workers' compensation insurance rate filing, a workers' compensation transaction or other workers' compensation insurance action which is required or filed in response to an agency's request.

(2) Knowingly and with intent to defraud any insurer presents or causes to be presented to any insurer any statement forming a part of or in support of a workers' compensation insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the workers' compensation insurance claim.

(3) Knowingly and with the intent to defraud any insurer assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to any insurer in connection with or in support of a workers' compensation insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the workers' compensation insurance claim.

(4) Engages in unlicensed agent or broker activity as defined by the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921," knowingly and with the intent to defraud an insurer or the public.

(5) Knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this section due to the assistance, conspiracy or urging of any person.

(6) Is the owner, administrator or employe of any health care facility and knowingly allows the use of such facility by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this section.

(7) Knowingly and with the intent to defraud assists, abets, solicits or conspires with any person who engages in an unlawful act under this section.

(8) Makes or causes to be made any knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

(9) Knowingly and with the intent to defraud makes any false statement for the purpose of avoiding or diminishing the amount of the payment in premiums to an insurer or self-insurance fund.

(10) Knowingly and with intent to defraud, fails to make the report required under section 311.1.

(11) Knowingly and with intent to defraud, receives total disability benefits under this act while employed or receiving wages.

(12) Knowingly and with intent to defraud, receives partial disability benefits in excess of the amount permitted with respect to the wages received.

(1102 amended June 24, 1996, P.L.350, No.57)

Section 1103. (a) A lawyer may not compensate or give anything of value to a nonlawyer to recommend or secure employment by a client or as a reward for having made a recommendation resulting in employment by a client, except that the lawyer may pay:

(1) the reasonable cost of advertising or written communication as permitted by the rules of professional conduct; or

(2) the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Upon a conviction of an offense under this clause, the prosecutor shall certify the conviction to the disciplinary board of the Supreme Court for appropriate action, including suspension or disbarment.

(b) With respect to a workers' compensation insurance benefit or claim, a health care provider may not compensate or give anything of value to a person to recommend or secure the provider's service to or employment by a patient or as a reward for having made a recommendation resulting in the provider's service to or employment by a patient, except that the provider may pay the reasonable cost of advertising or written communication as permitted by rules of professional conduct. Upon a conviction of an offense under this subsection, the prosecutor shall certify the conviction to the appropriate licensing board in the Department of State which shall suspend or revoke the health care provider's license.

(c) A lawyer or health care provider may not compensate or give anything of value to a person for providing names, addresses, telephone numbers or other identifying information of individuals seeking or receiving medical or rehabilitative care for accident, sickness or disease, except to the extent a referral and receipt of compensation is permitted under

applicable professional rules of conduct. A person may not knowingly transmit such referral information to a lawyer or health care professional for the purpose of receiving compensation or anything of value. Attempts to circumvent this subsection through use of any other person, including, but not limited to, employes, agents or servants, shall also be prohibited.

(1103 added July 2, 1993, P.L.190, No.44)

Section 1104. If an insurance claim is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the insurer in writing that claims will be submitted by use of computer billing tapes or other electronic means.

(1104 added July 2, 1993, P.L.190, No.44)

Section 1105. (a) A person who violates section 1102 shall be guilty of a felony of the third degree and, upon conviction thereof, shall be sentenced to pay a fine of not more than fifty thousand dollars ($50,000) or double the value of the fraud or to undergo imprisonment for a period of not more than seven years, or both.

(b) A person who violates section 1103 shall be guilty of a misdemeanor of the first degree and, upon conviction thereof, shall be sentenced to pay a fine of not more than twenty thousand dollars ($20,000) or double the amount of the fraud, or both.

(c) A health care provider or lawyer who is guilty of an offense under section 1102 while acting on behalf of others shall be subject to disciplinary action, including suspension or revocation of a license or certificate or recommendation for suspension or disbarment to the Supreme Court, on the same basis as a health care provider or lawyer who is guilty of an offense under section 1103.

(1105 added July 2, 1993, P.L.190, No.44)

Section 1106. The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution under 18 Pa.C.S § 1106 (relating to restitution for injuries to person or property).

(1106 added July 2, 1993, P.L.190, No.44)

Section 1107. An insurer and any agent, servant or employe thereof acting in the course and scope of his employment shall be immune from civil or criminal liability arising from the supply or release of written or oral information to any entity duly authorized to receive such information by Federal or State law or by Insurance Department regulations only if the information is supplied to the agency in connection with an allegation of fraudulent conduct on the part of any person relating to a violation of this article and the insurer, agent, servant or employe has reason to believe that the information supplied is related to the allegation of fraud.

(1107 added July 2, 1993, P.L.190, No.44)

Section 1108. Nothing in this article shall be construed to prohibit any conduct by an attorney or law firm which is expressly permitted by the Rules of Professional Conduct of the Supreme Court, by statute or by regulation, or prohibit any conduct by a health care provider which is expressly permitted by law or regulation.

(1108 added July 2, 1993, P.L.190, No.44)

Section 1109. (a) The district attorneys of the several counties shall have authority to investigate and to institute criminal proceedings for any violation of this article.

(b) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this article by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of the Commonwealth to the person making the challenge.

(c) Nothing in this act shall prevent prosecution under 18 Pa.C.S. § 4117 (relating to insurance fraud) or any other provision of law.

(1109 amended June 24, 1996, P.L.350, No.57)

Section 1110. Nothing contained in this article shall be construed to limit the regulatory or investigative authority of any department or agency of the Commonwealth whose functions might relate to persons, enterprises or matters falling within the scope of this article.

(1110 added July 2, 1993, P.L.190, No.44)

Section 1111. (a) A person found by a court of competent jurisdiction, pursuant to a claim initiated by a prosecuting authority, to have violated any provision of section 1102 shall be subject to civil penalties of not more than five thousand dollars ($5,000) for the first violation, ten thousand dollars ($10,000) for the second violation and fifteen thousand dollars ($15,000) for each subsequent violation. The penalty shall be paid to the prosecuting authority to be used to defray the operating expenses of investigating and prosecuting violations of this article. The court may also award court costs and reasonable attorney fees to the prosecuting authority.

(b) If a prosecuting authority has probable cause to believe that a person has violated this section, nothing in this clause shall be construed to prohibit the prosecuting authority and the person from entering into a written agreement in which that person does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding, but notification thereof shall be made to the licensing authority if the person is licensed by a licensing authority of the Commonwealth so that the licensing authority may take appropriate administrative action.

(c) All fines and penalties imposed following a conviction for a violation of this article shall be collected in the manner provided by law and shall be paid in the following manner:

(1) If the prosecutor is a district attorney, the fines and penalties shall be paid into the operating fund of the county in which the district attorney is elected.

(2) If the prosecutor is the Attorney General, the fines and penalties shall be paid into the State Treasury and appropriated to the Office of Attorney General.

(1111 amended June 24, 1996, P.L.350, No.57)

Section 1112. A prosecution for an offense under this act must be commenced within five years after commission of the offense.

(1112 added June 24, 1996, P.L.350, No.57)

ARTICLE XII.
FRAUD ENFORCEMENT

(Art. added July 2, 1993, P.L.190, No.44)

Section 1201. 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:

"Antifraud plan" means the insurance antifraud plan required to be filed and maintained pursuant to this article.

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Department" means the Insurance Department of the Commonwealth.

(1201 added July 2, 1993, P.L.190, No.44)

Section 1202. (a) The department is authorized to refer to the appropriate law enforcement official violations of Article XI if the department has reason to believe that a person has engaged in or is engaging in an act or practice that violates Article XI.

(b) The department shall furnish all papers, documents, reports, complaints or other facts or evidence to any police, sheriff or other law enforcement agency or governmental entity duly authorized to receive such information, when so requested, and shall assist and cooperate with those agencies.

(1202 added July 2, 1993, P.L.190, No.44)

Section 1203. A workers' compensation insurer shall institute and maintain an insurance antifraud plan.

(1203 added July 2, 1993, P.L.190, No.44)

Section 1204. All workers' compensation insurers shall annually provide to the department a summary report on actions taken under an antifraud plan to prevent and combat insurance fraud, including, but not limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combating fraud and the amount of fraud identified and recovered during the reporting period.

(1204 added July 2, 1993, P.L.190, No.44)

Section 1205. (a) Every workers' compensation insurer and its employes, agents and brokers are authorized to refer to the appropriate law enforcement official violations of Article XI if the insurer, employe, agent or broker has reason to believe that a person has engaged in or is engaging in an act or practice that violates Article XI.

(b) The insurer, its employes, agents and brokers, shall furnish all papers, documents, reports, complaints or other facts or evidence to any police, sheriff or other law enforcement agency or governmental entity duly authorized to receive such information, when so requested, and shall assist and cooperate with those agencies.

(1205 added July 2, 1993, P.L.190, No.44)

ARTICLE XIII.
SMALL BUSINESS ADVOCATE

(Art. added July 2, 1993, P.L.190, No.44)

Section 1301. As used in this article:

"Department" means the Insurance Department of the Commonwealth.

(1301 added July 2, 1993, P.L.190, No.44)

Section 1302. In addition to his powers and duties under the act of December 21, 1988 (P.L.1871, No.181), known as the "Small Business Advocate Act," the small business advocate shall have standing to represent the interest of employers as a party in proceedings before the department or any court involving

filings by rating organizations and insurers pursuant to Article VII.

(1302 added July 2, 1993, P.L.190, No.44)

Section 1303. (a) In addition to any other assessment authorized by section 446, an additional annual assessment shall be made on insurers, including the State Workmen's Insurance Fund but not including self-insureds, as a percentage of the total compensation paid for the purpose of funding the operations of the Office of Small Business Advocate pursuant to this act. Assessments under this section shall be made by the department and deposited into the Workmen's Compensation Administration Fund in a restricted account to be used by the Office of Small Business Advocate. The total amount assessed shall be the amount of the budget approved annually by the General Assembly for the operations of the Office of Small Business Advocate pursuant to this act.

(b) The total moneys assessed under the act of December 28, 1994 (P.L.1414, No.166), known as the Insurance Fraud Prevention Act, shall be permitted to be utilized by the Section of Insurance Fraud, within the Office of Attorney General, for prosecution and investigation of crimes arising under section 1102 and 18 Pa.C.S. § 4117 (relating to insurance fraud), as well as other grants by the Insurance Fraud Prevention Authority.

(1303 amended June 24, 1996, P.L.350, No.57)

Section 1304. Nothing contained in this article shall in any way limit the right of any person to bring a proceeding before either the department or a court.

(1304 added July 2, 1993, P.L.190, No.44)

ARTICLE XIV.
WORKERS' COMPENSATION JUDGES
(Art. added June 24, 1996, P.L.350, No.57)

Section 1401. (a) There is created within the department an office to be known as the Office of Adjudication.

(b) The secretary shall appoint as many qualified and competent workers' compensation judges as necessary to conduct matters under this act.

(c) The secretary shall set normal working hours for workers' compensation judges. During those hours, workers' compensation judges shall devote full time to their official duties and shall perform no work inconsistent with their duties as workers' compensation judges. Workers' compensation judges shall not engage in any unapproved activities during normal working hours.

(d) Workers' compensation judges shall be afforded employment security as provided by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

(e) Compensation for workers' compensation judges shall be established by the Executive Board.

(f) The secretary shall develop and require all workers' compensation judges to complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. The course of training and instruction shall not exceed four weeks in duration and shall consist of a minimum of forty hours of class instruction in medicine and law.

(g) The secretary shall develop a continuing professional development plan for workers' compensation judges which shall require the annual completion of twenty hours of approved continuing professional development courses.

(h) The secretary may adopt additional rules to establish standards and procedures for the evaluation, training, promotion and discipline of workers' compensation judges.

(1401 added June 24, 1996, P.L.350, No.57)

Section 1402. (a) The secretary shall appoint a director of adjudication, who:

(1) must meet the qualifications under section 1403;

(2) shall serve at the pleasure of the secretary; and

(3) shall report directly to the secretary or a designee.

(b) The position of director of adjudication shall be part of the unclassified service, as provided for by the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

(c) The director of adjudication shall be responsible for assigning a workers' compensation judge to every matter which may require the utilization of a workers' compensation judge. The director of adjudication shall also have other responsibilities as the secretary may prescribe.

(d) The director of adjudication shall receive remuneration above that of any other workers' compensation judge.

(1402 added June 24, 1996, P.L.350, No.57)

Compiler's Note: Section 32.1 of Act 57 of 1996, which added section 1402, provided that subsec. (a.1) shall not apply only to claims for injuries which are suffered on or after the effective date of section 32.1.

Section 1403. Workers' compensation judges shall be management level employes and must meet the following minimum requirements:

(1) Be an attorney in good standing before the Supreme Court.

(2) Have five years of workers' compensation practice before administrative agencies or equivalent experience.

(3) Complete the course of training and instruction and pass the examination under section 1401(f).

(4) Meet the annual continuing professional development requirement established by the secretary under section 1401(g).

(5) Conform to other requirements as established by the secretary.

(1403 added June 24, 1996, P.L.350, No.57)

Section 1404. (a) A workers' compensation judge shall conform to the following code of ethics:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform duties impartially and diligently.

(3) Avoid ex parte communications in any contested, on-the-record matter pending before the department.

(4) Abstain from expressing publicly, except in administrative disposition or adjudication, personal views on the merits of an adjudication pending before the department and require similar abstention on the part of department personnel subject to the workers' compensation judge's direction and control.

(5) Require staff and personnel subject to the workers' compensation judge's direction and control to observe the standards of fidelity and diligence that apply to a workers' compensation judge.

(6) Initiate appropriate disciplinary measures against department personnel subject to the workers' compensation judge's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. A workers' compensation judge may speak, write or lecture, and reimbursed expenses, honorariums, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the secretary and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the workers' compensation judge.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes: Provided, however, That a workers' compensation judge may be an officer, a director or a trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. A workers' compensation judge may hold and manage investments which are not incompatible with the duties of office.

(12) Conform to additional requirements as the secretary may prescribe.

(13) Uphold the integrity and independence of the workers' compensation system.

(b) Any workers' compensation judge who violates the provisions of clause (a) shall be removed from office in accordance with the provisions of the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

(1404 added June 24, 1996, P.L.350, No.57)

Section 1405. The secretary shall determine the appropriate staff, facilities and administrative support so that the duties of workers' compensation judges may be performed.

(1405 added June 24, 1996, P.L.350, No.57)

Section 1406. Individuals who are currently serving as workers' compensation judges shall continue to serve as workers' compensation judges, subject to sections 1401(c) and 1404.

(1406 added June 24, 1996, P.L.350, No.57)

ARTICLE XV.
STATE WORKERS' INSURANCE FUND
(Art. added June 24, 1996, P.L.350, No.57)

Section 1501. As used in this article:

"Advisory council" means the Advisory Council to the State Workers' Insurance Board.

"Board" means the State Workers' Insurance Board.

"Bureau" means the Bureau of Workers' Compensation of the Department of Labor and Industry.

"Downward deviation" means the extent to which the State Workers' Insurance Board provides deviations under section 654 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," in the premiums charged to State Workers' Insurance Fund subscribers below the otherwise applicable premium rates approved by the Insurance Commissioner for use by the board.

"Fund" means the State Workers' Insurance Fund.

"Reserve funds" means the Sunny Day Fund and the Tax Stabilization Reserve Fund, created by the act of July 1, 1985 (P.L.120, No.32), entitled "An act creating a special fund in the Treasury Department for use in attracting major industry into this Commonwealth; establishing a procedure for the appropriation and use of moneys in the fund; establishing the

Tax Stabilization Reserve Fund; and providing for expenditures from such account."

"Safely distributable" means amounts which are distributable without jeopardizing the ability of the State Worker's Insurance Fund to satisfy its present and future legal obligations to subscribers.

"Surplus" means the amount in the State Workers' Insurance Fund in excess of the fund's liabilities under this act.

"Taxes" means the amount that would be payable as taxes upon receipt of premiums by a private insurance company under section 902 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and the amount that would be payable as Federal income tax by a private insurance company under section 831 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 831), or any amendments to either statute subsequently enacted. For purposes of computing Federal capital gains or losses (for such hypothetical Federal income tax under section 831 of the Internal Revenue Code of 1986) for periods after June 30, 1990, the basis of State Worker's Insurance Fund assets will be the fair market value on June 30, 1990.

(1501 added June 24, 1996, P.L.350, No.57)

Section 1502. The State Workers' Insurance Board is hereby continued, consisting of the Secretary of Labor and Industry, the Insurance Commissioner and the State Treasurer.

(1502 added June 24, 1996, P.L.350, No.57)

Section 1503. (a) The Advisory Council to the State Workers' Insurance Board is hereby continued.

(b) The advisory council shall be appointed by the board and shall be composed of five members, with one member representing each of the following:

(1) The Pennsylvania Chamber of Business and Industry or its successor organization.

(2) The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) or its successor organization.

(3) Insureds of the fund with premiums of five thousand dollars ($5,000) or less annually.

(4) Insureds of the fund with premiums of more than five thousand dollars ($5,000) annually.

(5) The board.

The member of the advisory council representing the board shall serve as chair of the advisory council. The member representing the Pennsylvania Chamber of Business and Industry shall be selected from a list of persons recommended by that organization or its successor. The member representing the AFL-CIO shall be selected from a list of persons recommended by that organization or its successor.

(c) Each member shall serve a term of two (2) years, commencing on January 1 of each odd-numbered year, and shall serve until the board appoints a successor. The board shall make initial appointments within sixty (60) days of the effective date of this section.

(d) Members of the advisory council shall receive no compensation; each member, however, shall be entitled to be reimbursed for reasonable and legitimate expenses incurred in the performance of his duties.

(e) The advisory council shall have the following powers and duties:

(1) Commission, in its discretion, an actuarial study of the fund no more than once a year.

(2) Review any actuarial studies of the fund commissioned by the board under section 1511(b).

(3) Request and receive from the board copies of or access to audits of the fund.

(4) Recommend to the board annually the amount of surplus in the fund, if any, which is safely distributable.

(5) Recommend to the board annually the form in which any safely distributable surplus should be distributed if the board has determined that a safely distributable surplus exists.

(6) Request assistance from the board as may be necessary to fulfill the advisory council's statutory obligations under this section. The advisory council shall make no recommendation to the board unless that recommendation reflects the votes of a majority of advisory council members. Should a majority of the advisory council's members vote to commission an actuarial study of the fund independent of the board's actuarial study, the board shall pay for the reasonable and customary expense associated with the preparation of such a study.

(1503 added June 24, 1996, P.L.350, No.57)

Section 1504. Certain sums to be paid by employers, as provided in this article, are hereby continued as a fund, hereafter to be known as the State Workers' Insurance Fund, for the purpose of insuring such employers against liability under Article III of this act and of assuring the payment of the compensation therein provided and for the purpose of insuring such employers against liability under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) and the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) and of assuring the payment of benefits therein provided and further for the purpose of insuring such employers against liability for all sums such employer shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment. Such fund shall be administered by the board, without liability on the part of the Commonwealth, except as provided in this article, beyond the amount thereof, and shall be applied to the payment of such compensation.

(1504 added June 24, 1996, P.L.350, No.57)

Section 1505. The State Treasurer shall be the custodian of the fund, and all disbursements therefrom shall be paid by him by check, upon requisition of the secretary. It shall not be necessary for the State Treasurer to audit the accounts which the requisition of the secretary calls upon him to pay and for making payments according to the requisition of the secretary without audit the State Treasurer shall not be under any liability whatsoever. The State Treasurer may deposit any portion of the fund not needed for immediate use as other State funds are lawfully deposited, and the interest thereon shall be collected by him and placed to the credit of the fund.

(1505 added June 24, 1996, P.L.350, No.57)

Section 1506. On or before October 1 in each year, the board shall prepare and publish a schedule of premiums or rates of insurance for employers under Article III; employers who want insurance against liability under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.); employers who want insurance against liability under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.); and employers who want insurance against liability for all sums such employer shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out

of and in the course of his employment. This schedule shall be printed and distributed free of charge to employers. An employer may pay to the fund the amount of the premium appropriate to his business or domestic affairs and, upon payment thereof, shall thereafter be considered a subscriber to the fund and shall be insured as provided in this article for the year for which the premium is paid. This insurance shall cover all payments becoming due in any year because of accidents occurring during the year for which the premium is paid.

(1506 added June 24, 1996, P.L.350, No.57)

Section 1507. The board shall determine the amount of premiums which the subscribers to the fund shall pay and shall fix the premiums for insurance in accordance with the nature of their business and of the various employments of their employes, and the probable risk of injury to their employes. They shall fix the premiums at such an amount as shall be adequate to enable them to pay all sums which may become due and payable to the employes of such subscribers, under the provisions of Article III of this act, under the provisions of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) and under the provisions of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.); and, by reason of a subscriber's liability for all sums, such subscriber shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, and to create and maintain the surplus provided in section 1509 and to provide an 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 plant, workroom, shop, farm, mine, quarry, operation and all other property or premises of such subscriber, in respect to the safety of those employed therein, as shown by the report of any inspector appointed by the board or by the department. The board 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 plant, workroom, shop, farm, mine, quarry, operation or other property or premises of such subscribers, in respect to the safety of their employes, may justify. The board may increase the premiums of any subscriber neglecting to provide safety devices required by law or disobeying the rules or regulations made by the board under section 1515. The insurance of any subscriber shall not be effective until he shall have paid in full the premium so fixed and determined.

(1507 added June 24, 1996, P.L.350, No.57)

Section 1508. The board shall file with the bureau a notice setting forth the names and places of business of those employers who from time to time shall become subscribers to the fund.

(1508 added June 24, 1996, P.L.350, No.57)

Section 1509. The board shall set aside five per centum of all premiums collected for the creation of a surplus until this surplus shall amount to one hundred thousand dollars ($100,000), and thereafter they may set apart such percentage, not exceeding five per centum, as in their discretion they may determine to be necessary to maintain such surplus sufficiently large to cover the catastrophe hazard of all the subscribers to the fund and to guarantee the solvency of the fund.

(1509 added June 24, 1996, P.L.350, No.57)

Section 1510. The board shall divide the subscribers into groups, in accordance with the nature of the business of such subscribers and the probable risk of injury therein, and they shall fix all premiums for each group in accordance with the experience thereof. Where the employes in any business are engaged in various employments in which the risk of injury is substantially different, the board may subdivide the employments into classes and shall fix the premium for each in accordance with the probable risk of injury therein.

(1510 added June 24, 1996, P.L.350, No.57)

Section 1511. (a) The moneys in the fund are hereby made available and shall be paid:

(1) For the expenses 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, workers' compensation insurance covering the officers and employes of the board, and liability insurance covering vehicles purchased out of moneys of the fund and operated by the officers and employes of the board. In the event that the use of motor vehicles is required only temporarily, then such moneys in the fund are available for the payment to the Department of General Services for the use of such motor vehicles on a mileage basis, at such amount per mile as the Department of General Services, with the approval of the Governor, shall determine.

(2) For payment to the Treasury Department of the cost of making disbursements out of the fund, on behalf of the board, at such amounts as the Treasury Department, with the approval of the Executive Board, shall determine.

(3) For payment to the Department of General Services for space occupied in government buildings and for water, light, heat, power, telephone and other services utilized and consumed by the board, at such amounts as the Department of General Services, with the approval of the Executive Board, shall determine.

(4) For payment to the General Fund in amounts which would have been paid in taxes had the fund been subject to taxes for the period beginning on July 1, 1990, and thereafter. These payments shall be due annually, shall be calculated on a fiscal year basis and shall be paid in equal quarterly installments of the board's estimate of taxes for a fiscal year. Quarterly installments shall be paid after the end of each quarter, and the fourth quarterly installment for each fiscal year shall be adjusted upward or downward as necessary to pay in full the amount due.

(b) The board shall retain the services of a certified actuary who shall be responsible for conducting an annual independent actuarial study of the fund. The purpose of the study shall be to assist the board in determining whether the moneys in the fund exceed the fund's liabilities and, if so, whether any portion of that surplus is safely distributable. Payment for the annual actuarial study shall be considered to be an expense of administering the fund. The precise nature and scope of the study shall be determined by the board. The study shall be made available to the advisory council under clause (e) of section 1503. All persons charged with the administration or management of the fund shall provide the actuary or his agents with the means, facilities and opportunity to examine all books, records and papers pertaining to the fund.

(c) The board shall keep an accurate account of the money paid in premiums by the subscribers, the income derived from

investment of premiums and the disbursement of amounts paid under clause (a). At the expiration of each calendar year after 1990 and upon review of the independent actuarial study conducted under clause (b) and advisory council recommendations, if any, the board shall determine if there is a surplus remaining in the fund after deductions are made for disbursements identified in clause (a), the unearned premiums on undetermined risks, the percentage of premiums paid or payable to create or maintain the surplus provided in section 1509 and the setting aside of an adequate reserve. If a surplus exists in the fund and, if, after reviewing the recommendations of the advisory council, if any, the board determines that a portion of the surplus is safely distributable, the board shall distribute the safely distributable surplus as follows:

(1) An amount up to the amount of any downward deviation that had been granted to subscribers at the start of that calendar year may be transferred to the reserve funds, as appropriated by the General Assembly.

(2) At least one-half of any safely distributable surplus not transferred to the reserve funds under paragraph (1) shall be available for appropriation by the General Assembly for distribution to subscribers or former subscribers who paid premiums in that calendar year in proportion to the premiums each such subscriber or former subscriber paid in that year.

(3) Any portion of the remaining safely distributable surplus up to the amount distributed to subscribers or former subscribers pursuant to paragraph (2) may be transferred to the reserve funds, as appropriated by the General Assembly.

Any amount distributed to subscribers pursuant to paragraph (2) shall 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.

(d) No appropriation under clause (c) shall impair the actuarial soundness of the fund.

(1511 added June 24, 1996, P.L.350, No.57)

Section 1512. The 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 secretary. 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 board may, upon like resolution, sell any of such securities.

(1512 added June 24, 1996, P.L.350, No.57)

Section 1513. The board shall have the power to make all contracts necessary for supplying medical, hospital, and surgical services, as provided in clause (e) of section 306.

(1513 added June 24, 1996, P.L.350, No.57)

Section 1514. The board shall have the power to reinsure any risk or join any insurance pool which it may deem necessary.

(1514 added June 24, 1996, P.L.350, No.57)

Section 1515. (a) The board shall be entitled to inspect the plant, workroom, shop, farm, mine, quarry, operation and all other property or premises of any subscriber and shall be entitled to examine from time to time the books, records and payrolls of any subscriber or intending subscriber for the purpose of determining the amount of the premium payable to such subscriber or intending subscriber. The board shall have the power to appoint those inspectors and auditors as may be necessary to carry out the powers given in this section. The board may, with the consent of the department and commissioner, cause this inspection and examination to be made by the inspectors of the department and the auditors of the Insurance Department. These inspectors and auditors shall have free access to all such premises, books, records and payrolls during the regular working and office hours.

(b) The board shall make reasonable rules and regulations for the prevention of injuries upon the premises of the subscribers, and they may refuse to insure or may terminate the insurance of any subscriber who refuses to permit such examinations or disregards such rules or regulations and may forfeit one-half of the unearned premiums previously paid by him.

(1515 added June 24, 1996, P.L.350, No.57)

Section 1516. (a) Any employer subject to Article III and who shall desire to become a subscriber to the fund for the purpose of insuring his liability to his employes; and any employer who wants insurance under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.); and any employer who wants insurance under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) and who shall desire to become a subscriber to the fund for the purpose of insuring his liability to his employes; and any employer who shall desire to become a subscriber to the fund for the purpose of insuring therein his liability for all sums the employer shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, shall make a written application for such insurance to the board. In the application, the applicant shall state:

(1) The nature of the business or domestic affairs in which insurance is desired.

(2) The average number of employes expected to be employed in such business during the year for which insurance is sought and the average number of employes, if any, engaged in such business during the year previous to the application.

(3) The approximate money wages expected to be paid during the year for which insurance is sought and the money wages paid to such employes during the preceding year.

(4) The place where the business is to be transacted.

(5) The place where the employer's payroll and books of accounts are kept and where the employes are customarily paid.

(6) Such other facts and information as the board shall require.

(b) When the employments are subdivided into classes, as provided in section 1510, the applicant shall state:

(1) The number of employes of each class expected to be employed or previously employed.

(2) The approximate money wages expected to be paid or previously paid, as aforesaid, to employes of each class for which insurance is sought.

(c) Upon submission of the application, the board shall make such investigations as it may deem necessary and, within thirty (30) days after the application, shall issue a certificate showing the classification or group in which such applicant is entitled to be placed and the amount of premium payable by such applicant for the year for which insurance is sought. No insurance shall be issued for a longer period than a single year.

(1516 added June 24, 1996, P.L.350, No.57)

Section 1517. All premiums shall be payable to the State Treasurer who shall issue an appropriate receipt therefor, and such receipt, together with the certificate of the board specified in section 1516, shall be the evidence that the applicant has become a subscriber to the fund and is insured therein.

(1517 added June 24, 1996, P.L.350, No.57)

Section 1518. Each subscriber to the fund shall, within one (1) month after his subscription has terminated, furnish a written statement to the board setting forth the maximum average and minimum number of employes insured in the fund that such subscriber had employed during the preceding year, and the actual amount of the money payroll of such employes for such year. When the board has subdivided the employments in any group into classes, as provided in section 1510, the subscriber shall state the number and actual amounts of the money payroll of such employes of each of such classes. Within thirty (30) days, the board shall state the account of each subscriber for that year, based on the facts thus proven, and shall render a copy of this statement to the subscriber. If the amount of the premium theretofore paid by a subscriber shall exceed the amount due according to such stated account, then the excess shall be forthwith refunded to the subscriber by payment out of the fund. If the amount shown by the statement exceeds the amount of the premium theretofore paid by the subscriber, the excess shall be forthwith due and payable by the subscriber into the fund, and until paid shall be a lien, as State taxes are a lien, upon the real and personal property of the subscriber and, if unpaid, shall be collectible as State taxes are now collectible, with interest at the rate of twelve per centum per annum commencing thirty (30) days after service of the copy of the account, which service shall be by registered mail.

(1518 added June 24, 1996, P.L.350, No.57)

Section 1519. Any person who shall knowingly furnish or make any false certificate, application or statement required in this article shall be guilty of a misdemeanor. Any subscriber who shall, after notice from the board, neglect or refuse to file the statement described in section 1518 within ten (10) days after such notice shall be liable to pay to the fund a penalty of ten dollars ($10) for each day that such neglect or refusal shall continue, to be recovered at the suit of the fund.

(1519 added June 24, 1996, P.L.350, No.57)

Section 1520. (a) Any subscriber to the fund who shall, within seven (7) days after knowledge or notice of an accident to an employe in the course of his employment as required by section 311, have filed with the board a true statement of such knowledge or a true copy of the notice shall be discharged from all liability for the payment of compensation for the personal injury or death of such employe by such accident, and all such compensation due therefor under Article III shall be paid out

of the fund. The report of the accident required by the act of July 19, 1913 (P.L.843, No.408), referred to as the Employee Injury Reporting Law, shall be sufficient compliance with this section if that report is made within seven (7) days of the injury and shall state that the employer making the report is a subscriber to the fund.

(b) Nothing in this section shall discharge any employer from the duty of supplying the medical and surgical services, medicine, and supplies required by section 306. Any subscriber who has supplied such services, medicines and supplies shall be reimbursed therefor from the fund. Any subscriber to the fund who, within seven (7) days after knowledge of an accident to any employe arising out of and in the course of his employment and such accident comes within the purview of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) or of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.), has filed with the board a true statement of such knowledge shall be discharged from all liability for the payment of benefits for the personal injury or death of such employe by such accident, and all such benefits due therefor under provisions of the Longshore and Harbor Workers' Compensation Act or the Federal Coal Mine Health and Safety Act of 1969 shall be paid out of the fund. Any subscriber to the fund who shall, within seven (7) days after knowledge of an accident to an employe arising out of and in the course of his employment, have filed with the board a true statement of such knowledge shall be discharged from all liability for all sums such subscriber shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, and all such sums shall be paid out of the fund.

(1520 added June 24, 1996, P.L.350, No.57)

Section 1521. In every case where a claim is made against the fund, the fund shall be entitled to every defense against such claim that would have been open to the employer and shall be subrogated to every right of the employer arising out of such accident against the employe, the dependents and against third persons. The fund may, in the name of the State Workers' Insurance Fund, sue or be sued to enforce any right given against or to any subscriber or other person under this act or the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) or the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.) and employers who want insurance against liability for all sums or under circumstances where an employer becomes legally obligated to pay any employe for damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment; proceedings provided in Article IV may be instituted by or against the fund to enforce, before the Workers' Compensation Appeal Board or any workers' compensation judge thereof, the rights given to or against the fund by this act.

(1521 added June 24, 1996, P.L.350, No.57)

Section 1522. Upon receipt of a notice or statement of knowledge of an accident to an employe of a subscriber occurring in the course of his employment, the board shall, if it deems necessary, cause an investigation to be made by an inspector appointed by it or an inspector of the department.

(1522 added June 24, 1996, P.L.350, No.57)

Section 1523. (a) The board is hereby empowered to execute the agreements provided in this act and to promulgate such regulations as they may deem necessary for this purpose. When any such agreement has been approved by the department, the same shall be properly filed and docketed, and the board shall from time to time until such agreement shall be modified or terminated as provided in this act pay the sums therein agreed upon. All such payments shall be made by check of the State Treasurer issued upon requisition of the secretary. Every such check shall be mailed to the person or persons entitled thereto under such agreement. When any award is made by the Workers' Compensation Appeal Board or by a workers' compensation judge in any proceedings brought by an employe of a subscriber or the dependents of such employe against the fund, this award shall be filed and docketed, and the board shall from time to time until such award is modified, reversed or terminated pay the sums therein lawfully awarded against the fund. All such payments shall be made by check of the State Treasurer issued upon requisition of the secretary, and every such check shall be mailed to the person or persons entitled thereto under the award.

(b) When any proceedings brought by an employe of a subscriber or the dependents of such employe against the fund for benefits payable under the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) or the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.), such proceedings shall be filed and docketed; the board shall from time to time until such benefits are modified, reversed, or terminated pay such benefit sums for which the fund is legally responsible. All such payments shall be made by check of the State Treasurer issued upon requisition of the secretary, and every such check shall be mailed to the person or persons entitled thereto.

(c) When any proceedings brought by an employe of a subscriber or the dependents of such employe against the fund for sums such subscriber shall become legally obligated to pay any employe of his as damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment, such proceedings shall be filed and docketed, and the board shall from time to time until such damage sums are modified, reversed or terminated pay such damage sums for which the fund is legally responsible. All such payments shall be made by check the State Treasurer issued upon requisition of the secretary, and every such check shall be mailed to the person or persons entitled thereto.

(1523 added June 24, 1996, P.L.350, No.57)

Section 1524. All salaries, wages, fees or other compensation of physicians, attorneys, investigators, assistants and other employes necessary for the proper administration of the fund and the proper conduct of the work of the board shall be paid out of the fund. All payments to employes, dependents of deceased employes, physicians, attorneys, investigators, assistants and others entitled to be paid out of the fund shall be made by the State Treasurer upon requisition of the secretary.

(1524 added June 24, 1996, P.L.350, No.57)

Section 1525. Information acquired by the fund, its officers and employes from employers, employes or insurance corporations or associations shall not be open to public inspection.

(1525 added June 24, 1996, P.L.350, No.57)

Section 1526. (1526 repealed June 30, 2011, P.L.86, No.20)

ARTICLE XVI
UNINSURED EMPLOYERS GUARANTY FUND
(Art. XVI added Nov. 9, 2006, P.L.1362, No.147)

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.

(1601 amended Oct. 24, 2018, P.L.804, No.132)

Compiler's Note: Section 4(2)(ii) of Act 132 of 2018, which amended section 1601, provided that the amendment shall apply retroactively to claims existing as of the effective date of section 4(2) for which compensation has not been paid or awarded.

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 1610.

(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 as an insurer.

(1602 amended Oct. 24, 2018, P.L.804, No.132)

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 has been advised by the employer or another source 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 from the fund unless:

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

(2) the department determines that the employer failed to voluntarily accept and pay the claim or subsequently defaulted on payments of compensation.

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

(d) Petitions.--

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

(2) A claim petition shall be filed within 180 days after notice of the claim is made to the fund. If the time requirement under this paragraph is not met, a claim petition shall not be allowed.

(e) List of providers.--

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

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

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

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

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

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

(1603 amended Oct. 24, 2018, P.L.804, No.132)

Compiler's Note: Section 4(1) of Act 132 of 2018, which amended or added section 1603(d) and (e), provided that the amendment or addition shall apply to every claim in which notice under section 1603 is provided to the fund on or after the effective date of section 4(1).

Section 4(2)(iii) of Act 132 of 2018, which amended 1603(b), provided that the amendment shall apply retroactively to claims existing as of the effective date of section 4(2) for which compensation has not been paid or awarded.

Section 1604. Claim petition.

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

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

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

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

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

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

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

(7) Testimony of the claimant, if found credible by the judge.

(c) Limitation on wage loss payments.--If a judge accepts testimony and finds it to be credible under subsection (b)(7) as the sole basis for determining wage loss payments, without supporting evidence established in subsection (b)(1), (2), (3), (4), (5) or (6), the wage loss payment rate shall be 66.6% of the average weekly wage for the claimant's occupation. The judge may reduce the average weekly wage loss payment upon the submission of evidence indicating a lesser wage amount or based on the claimant's length of employment with the employer. For the purposes of this subsection, the term "average weekly wage" is the average weekly wage for the claimant's occupation by metropolitan statistical area, as determined by the United States Department of Labor for the calendar year prior to the year in which the claimant's injury occurred, and shall be based on the metropolitan statistical area in which the claimant's injury occurred.

(1604 amended Oct. 24, 2018, P.L.804, No.132)

Compiler's Note: Section 4(2)(iv) of Act 132 of 2018, which amended section 1604, provided that the amendment shall apply retroactively to claims existing as of the effective date of section 4(2) for which compensation has not been paid or awarded.

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. The fund shall be entitled to restitution of all payments made under this article as the result of an 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 a voluntary payment or award and reimbursement of the fund's costs and the fees 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.

(1605 amended Oct. 24, 2018, P.L.804, No.132)

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.

(1606 added Nov. 9, 2006, P.L.1362, No.147)

Section 1607. Assessments and transfers.

(a) (1) 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.

(2) In no event shall any annual assessment exceed 0.25% of the total compensation paid by all insurers or self-insured employers during the previous calendar year.

(3) Each fiscal year, the department shall determine the expenses of the fund for the prior fiscal year. If the total amount assessed for the prior fiscal year exceeds 130% of the expenses for that prior fiscal year, the current fiscal year assessment shall be reduced by an amount equal to that excess amount.

((a) amended Oct. 24, 2018, P.L.804, No.132)

(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.

(1607 amended June 30, 2011, P.L.86, No.20)

Section 1608. Regulations.

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

(1608 added Nov. 9, 2006, P.L.1362, No.147)

Section 1609. Uninsured employer obligations.

Nothing in this article shall alter the uninsured employer's obligations under this act. (1609 added Oct. 24, 2018, P.L.804, No.132)

Section 1610. Administrative penalties and stop-work orders.

(a) Certification.--

(1) If the department receives information indicating that an employer has failed to insure the employer's obligations as required by this act, the department may require the employer to certify, on a form prescribed by the department, that the employer meets one of the following:

(i) Possesses the requisite insurance. This subparagraph shall require the identification of the insurer, policy period and policy number.

(ii) No longer operates a business. This subparagraph shall require a statement of the dates of operation and cessation of operation.

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

(iv) Is otherwise exempt from the requirements of obtaining insurance under this act. This subparagraph shall require the identification of the applicable exemption.

(2) The employer shall return the form to the department within 15 days of service of the form by the department. The following shall apply:

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

(A) the date the employer complies; or

(B) 30 days from service under this paragraph.

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

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

(c) Enforcement.--For the purposes of enforcing section 305 and this article, each department employee or agent charged with enforcement may enter the premises or worksite of an employer that is subject to subsection (a)(2)(ii) or (b).

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

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

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

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

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

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

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

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

(f) Appeal.--

(1) An order under subsection (d) is subject to 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

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

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

(g) Noncompliance.--

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

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

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

(ii) In a court of common pleas under 42 Pa.C.S. § 931(b) (relating to original jurisdiction and venue). Venue for an action under this subparagraph lies in either:

(A) the Twelfth Judicial District; or

(B) the judicial district where the violation occurred.

(1610 added Oct. 24, 2018, P.L.804, No.132)

APPENDIX

Supplementary Provisions of Amendatory Statutes

1974, DECEMBER 5, P.L.782, NO.263

Section 16. Pursuant to section 654, act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," each filing for rate changes due to the provisions of The Pennsylvania Workmen's Compensation Act or any subsequent increase in compensation payable or based upon experience shall be on file for a waiting period of thirty days with the Insurance Department before it becomes effective, which period may be extended by the Insurance Commissioner for one additional period not to exceed thirty days upon written notice within such waiting period to the insurer or rating organization which made the filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing of a part thereof which he has reviewed to become effective before the expiration of the waiting period or an extension thereof. A filing shall be deemed to meet the requirements of this act and to become effective upon the termination of the thirty-day waiting period or an extension thereof unless disapproved, amended or modified by the commissioner within the waiting period or an extension thereof. The provisions of this section shall not be deemed to supersede the provisions of "The Insurance Company Law of 1921" in so far as such provisions are not expressly inconsistent.

Compiler's Note. Act 263 amended, added or repealed sections 101, 105.2 and 204, the heading of Article III, sections 301, 302, 303, 304, 305, 305.2, 306, 307, 315, 413 and 434 and Article VI of Act 338.

1993, JULY 2, P.L.190, NO.44

Section 21. No later than December 31, 1993, the Secretary of Labor and Industry shall submit to the General Assembly an analysis of the average workload per workers' compensation judge and a plan to reduce the delays in deciding workers' compensation petitions, including any necessary increases in the number of judges and supporting staff.

Compiler's Note: Act 44 amended or added sections 101, 104, 105.3, 109, 204, 301, 302, 305, 306, 307, 308.1, 314, 321, 322, 323, 401, 406.1, 420, 422, 438, 440, 447 and 448 and Articles VII, VIII, IX, X, XI, XII and XIII.

Section 22. Notwithstanding any other provision of law to the contrary, regulations promulgated under the authority of section 306(f.1)(3)(ii) of the act, as amended by this act, shall not be subject to the provisions of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 23. The Commonwealth, its political subdivisions, their officials and employees acting within the scope of their duties shall enjoy and benefit from sovereign and official immunity from claims of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits.

Section 24. For purposes of the initial filing only, notwithstanding any other provisions of this act, the following provision shall apply:

(1) Each rating organization shall file, within 60 days after enactment of this act, a loss cost filing pursuant to section 709(c) of Article VII of the act for new and renewal policies for workers' compensation insurance to be effective on and after December 1, 1993. Such filing shall be subject to approval or disapproval by the Insurance Commissioner pursuant to Article VII of the act, but such approval or disapproval shall be made not later than 60 calendar days after first receipt of the loss cost filing.

(2) In the absence of an order approving or disapproving the loss cost filing within 60 calendar days of its first receipt, the filing shall be deemed to meet all the requirements of this act.

(3) No later than 30 days from the date of the actual or deemed approval of the above loss cost filing, each individual insurer shall file for the commissioner's approval or disapproval provisions for loss adjustment or claim management expenses, other operating expenses, assessments, taxes and profit or contingency allowances for new and renewal policies to be effective on and after December 1, 1993, but such approval or disapproval shall be made not later than 30 days after the first receipt of the filing. The effective date of such filings shall be the date specified in the filing, but shall not be earlier than 30 days after the filing is received by the commissioner.

(4) In the absence of an order approving or disapproving any filing for loss adjustment or claim management expenses,

other operating expenses, assessments, taxes and profit or contingency allowances within 30 days of its first receipt, such filing shall be deemed to meet all the requirements of this act.

(5) No later than the approval date of the loss cost filing, the commissioner shall publish an aggregate factor reflecting the experience of stock insurance companies and including the effect of applicable premium discount programs, for loss adjustment or claim management expenses, other operating expenses, assessments, taxes and profit or contingency allowances which all insurers may use in the foregoing initial filings. Any insurer filing which uses an aggregate factor not in excess of the appropriate foregoing factor shall be deemed approved upon filing for purposes of this section.

(6) Subsequent to the approval of rates pursuant to paragraphs (1) through (5), no loss cost filing or filings for loss adjustment or claim management expenses, other operating expenses, assessments, taxes and profit or contingency allowances shall be made prior to December 1, 1994, except as the commissioner deems necessary in extraordinary circumstances.

1996, JUNE 24, P.L.350, NO.57

Section 30. For the purpose of initial filing only, notwithstanding any other provisions of this act, the following shall apply:

(1) No later than 45 days after the effective date of this section, the Insurance Commissioner shall appoint an independent actuary to provide an estimate of the total change in workers' compensation loss-cost resulting from implementation of this act and resulting from implementation of the act of July 2, 1993 (P.L.190, No.44), entitled "An act 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,' adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of the department, referees and the board; adding provisions relating to insurance, self-insurance pooling, self-insurance guaranty fund, health and safety and the prevention of insurance fraud; further providing for certain penalties; making repeals; and making editorial changes," and an estimate of any other change attributable to data not considered in any previous loss-cost filing. The fee for this independent actuary shall be borne by the Workmen's Compensation Administration Fund. In developing the estimate, the independent actuary shall consider all of the following:

(i) The most recent policy year unit statistical and financial loss-cost data available after policy year 1993. Notwithstanding any other provision of this section, for purposes of this subparagraph, the Coal

Mine Compensation Rating Bureau shall submit the most recent accident or calendar year statistical and financial loss-cost data available after accident or calendar year 1993.

(ii) The standards set forth in section 704 of the act, as applicable.

(iii) Any other relevant factors within and outside this Commonwealth in accordance with sound actuarial principles.

(2) No later than 15 days after the effective date of this section, each insurer, including the State Workmen's Insurance Fund, shall file loss data as required under paragraph (1) with its rating organization. For failure to comply, the commissioner shall impose an administrative penalty of $1,000 for every day that this data is not provided in accordance with this paragraph.

(3) No later than 45 days after the effective date of this section, each rating organization shall provide to the independent actuary, the commissioner and the small business advocate aggregate loss-cost data equal to or greater than 75% of the total data expected from all insurers, including the State Workmen's Insurance Fund. For failure to comply by any rating organization, the commissioner shall impose an administrative penalty of $1,000 for every day that the data is not provided in accordance with this paragraph unless caused by the late reporting of any insurer. The commissioner shall impose an administrative fine of $1,000 upon any insurer whose late reporting of data causes such a delay, for every day beyond the required time frame of this paragraph until the aggregate loss-cost data is reported. This fine is in addition to any fine imposed for the late reporting of data to the rating organization under paragraph (2).

(4) No later than 95 days after the effective date of this section, the independent actuary shall complete and send the estimate of total loss-cost change to the commissioner, each rating organization, the Small Business Advocate, the President pro tempore of the Senate and the Speaker of the House of Representatives. The commissioner shall make the estimate available for public inspection.

(5) No later than 25 days after the independent actuary completes and sends the report referred to in paragraph (4), each rating organization shall, pursuant to section 709(c) of the act, file new loss-cost changes which reflect the estimate of the sum total of loss-cost data compiled under this section. For failure to comply, the commissioner shall impose an administrative penalty of $1,000 for every day that the loss-cost filing is not provided in accordance with this paragraph.

(6) The commissioner shall give full consideration to the independent actuary's estimate from paragraph (4) in approving, disapproving or modifying the filing made under paragraph (5), pursuant to Article VII of the act. No later than 30 days after the approval of the filing, each new and renewal policy for workers' compensation shall reflect the new loss-cost filing of its rating organization.

(7) The commissioner shall appoint and retain an independent actuary in accordance with this section until the independent actuary has prepared and sent the estimate as required by paragraph (4). The commissioner may appoint and retain an independent actuary after the estimate required by paragraph (4) has been completed and sent.

(8) For the purpose of this section, an "independent actuary" means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who is not an employee of the Commonwealth.

Compiler's Note: Act 57 amended or added sections 104, 107, 109, 204, 302, 305, 306, 309, 311.1, 312, 313, 314, 316, 321, 401, 402, 402.1, 406.1, 412, 413, 416, 420, 422, 423, 435, 440, 442, 447, 448, 449, 450, 707, 717, 802, 819, 1002, 1102, 1109, 1111 and 1303 and Articles XIV and XV.

Section 31. In a provision of the act not affected by this act, a reference to the word "referee" shall be deemed a reference to the phrase "workers' compensation judge."

Section 31.1. Any reference in a statute to the Workmen's Compensation Appeal Board shall be deemed a reference to the Workers' Compensation Appeal Board.

2011, JULY 7, P.L.251, NO.46

Section 3. The Department of Labor and Industry shall submit data on the amount of successful claims processed under section 301(f) to the chairman and minority chairman of the Labor and Industry Committee of the Senate and to the chairman and minority chairman of the Labor and Industry Committee of the House of Representatives two years following the adoption of this act and every two years thereafter.

Compiler's Note: Act 46 amended sections 108 and 301 of Act 338.

2018, OCTOBER 24, P.L.714, NO.111

Section 3. The following shall apply:

(1) For the purposes of determining whether an employee shall submit to a medical examination to determine the degree of impairment and whether an employee has received total disability compensation for the period of 104 weeks under section 306(a.3)(1) of the act, an insurer shall be given credit for weeks of total disability compensation paid prior to the effective date of this paragraph. This section shall not be construed to alter the requirements of section 306(a.3) of the act.

(2) For the purposes of determining the total number of weeks of partial disability compensation payable under section 306(a.3)(7) of the act, an insurer shall be given credit for weeks of partial disability compensation paid prior to the effective date of this paragraph.

(3) Within 90 days following the effective date of the addition of section 306(a.3) of the act, the Pennsylvania Compensation Rating Bureau shall calculate the savings achieved through the implementation of that subsection. Immediately following this calculation, the amount of savings shall be used to provide an immediate reduction in rates, equal to the savings, applicable to employers' workers' compensation policies.

Compiler's Note: Act 111 amended sections 306, 307 and 314 of Act 338.

Section 2. Within 90 days of the effective date of this act, the Pennsylvania Compensation Rating Bureau shall conduct a review to determine whether it will be necessary to modify the classification codes affected by the amendment of section 601 of the act. The Pennsylvania Compensation Rating Bureau may make modifications, create separate classifications or revise loss cost values at any time after the effective date of this act.

Section 3. The amendment of section 601 of the act shall not be construed to:

(1) Provide a presumption of occupational exposure to Hepatitis C under section 108(m.1) of the act to an individual who does not serve as any of the following at the time of infection:

(i) An active volunteer firefighter who responds to emergency calls.

(ii) An individual appointed as special fire police under 35 Pa.C.S. Ch. 74 Subch. D who responds to emergency calls.

(iii) An active volunteer ambulance corpsman who responds to emergency calls.

(iv) An active rescue and lifesaving squad member who responds to emergency calls.

(2) Provide compensation for cancer under section 108(r) of the act to an individual who:

(i) has not served as an active volunteer firefighter who responds to emergency calls; or

(ii) does not meet the criteria for compensation provided in section 301(f) of the act.

Compiler's Note: Act 108 amended section 601 of Act 338.