

WORKERS' COMPENSATION SECURITY FUND ACT
Act of Jul. 1, 1937, P.L. 2532, No. 470
AN ACT

Cl. 77

To establish funds to provide security for the payment of benefits in event of the insolvency of an insurance carrier authorized to write workmen's compensation insurance in this Commonwealth; and to provide for the administration thereof.

Section 1. Be it enacted, &c., That this act shall be known, and may be cited, as the "Workers' Compensation Security Fund Act."

(1 amended Apr. 13, 1988, P.L.344, No.48)

Section 2. As hereafter used in this act, unless the context or subject matter otherwise require--

"Fund" means the Worker's Compensation Security Fund created by this act. (Def. amended Apr. 13, 1988, P.L.344, No.48)

"Fund year" means the calendar year.

"Stock Company" means any stock corporation authorized to transact the business of workmen's compensation insurance in this Commonwealth, except an insolvent stock company.

"Mutual carrier" means any corporation or association organized and operating on the mutual plan, including the State Workmen's Insurance Fund, authorized to transact the business of workmen's compensation insurance in this Commonwealth, except an insolvent mutual carrier.

"Reciprocal exchange" means any association or group of persons exchanging contracts of insurance or indemnity on the reciprocal or inter-insurance plan, authorized to transact the business of workmen's compensation insurance in this Commonwealth, except an insolvent reciprocal exchange.

"Carrier" means either a stock company, a mutual company, a reciprocal exchange, or the State Workmen's Insurance Fund, as the context may require.

"Insolvent stock company," "insolvent mutual carrier," or "insolvent reciprocal exchange" means a stock company, a mutual company, a reciprocal exchange, or the State Workmen's Insurance Fund, as the case may be, which has been determined to be insolvent, or for which, or for the assets of which, a receiver or liquidator, howsoever entitled, has been appointed by a court or public officer of competent jurisdiction and authority, after the effective date of this act.

"Commissioner" means the Insurance Commissioner of this Commonwealth.

"Workmen's Compensation Law," means The Workmen's Compensation Act of 1915 or any supplement or amendment thereto or revision thereof, the Pennsylvania Occupational Disease Act of 1939 or any supplement or amendment thereto or revision thereof and the Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.). (Def. amended Apr. 13, 1988, P.L.344, No.48)

(2 amended Oct. 18, 1975, P.L.419, No.117)

Section 3. There is hereby created a fund, to be known as

"The Workers' Compensation Security Fund," for the purpose of assuring to persons entitled thereto the compensation provided by the Workmen's Compensation Law for employments insured in insolvent stock companies; insolvent mutual carriers; insolvent reciprocal exchanges; or the State Workmen's Insurance Fund. Such fund shall be applicable to the payment of valid claims for compensation heretofore or hereafter made pursuant to the Workmen's Compensation Law and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this act of an insolvent stock company; insolvent mutual carrier or insolvent reciprocal exchange or the insolvent State Workmen's Insurance Fund. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by stock companies, mutual carriers and reciprocal exchanges as herein defined, all property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys deposited or invested, as herein provided. The fund shall be administered by the commissioner in accordance with the provisions of this act.

(3 amended Apr. 13, 1988, P.L.344, No.48)

Section 4. Every stock company, mutual carrier and reciprocal exchange shall, on or before the first day of September, one thousand nine hundred and thirty-eight, file with the Treasurer of the Commonwealth, and with the commissioner, identical returns under oath, on a form to be prescribed and furnished by the commissioner, stating the amount of net written premiums for the year's period ending June thirtieth, one thousand nine hundred and thirty-eight, on policies issued, renewed, or extended by such stock company, mutual carrier and reciprocal exchange to insure payment of compensation pursuant to the Workmen's Compensation Law. For the purposes of this act, "net written premiums" shall mean gross written premiums, less return premiums on policies returned not taken and on policies cancelled. Thereafter on or before the first day of September of each year, each such stock company, mutual carrier and reciprocal exchange shall file similar identical returns, stating the amount of such net written premiums for the year's period ending on the preceding June thirtieth on policies issued, renewed, or extended by such stock company, mutual carrier and reciprocal exchange.

(4 amended Oct. 18, 1975, P.L.419, No.117)

Section 5. (5 deleted by amendment June 22, 2000, P.L.379, No.49)

Compiler's Note: Section 2 of Act 49 of 2000, which deleted section 5, provided that the amendment of section 5 shall take effect on the effective date of regulations promulgated under section 9(1).

Compiler's Note: Section 6(a) of Act 48 of 1981, which provided for the fixing of fees charged by administrative agencies, provided that section 5 is repealed insofar as it establishes a set fee for any activity inconsistent with the fees set forth in Act 48.

Section 6. (6 repealed Oct. 18, 1975, P.L.419, No.117)

Section 7. (7 repealed Oct. 18, 1975, P.L.419, No.117)

Section 8. (8 repealed Oct. 18, 1975, P.L.419, No.117)

Section 9. (1) The Insurance Department shall adopt regulations as necessary to administer the fund, including regulations to establish contributions to be paid to the fund. Contributions shall be established on an actuarial basis to provide an amount sufficient to pay outstanding and anticipated claims in a timely manner, to meet the costs of the Insurance Department to administer the fund and to maintain a minimum balance in the fund of \$500,000,000. Nothing in this section shall prevent the department from using money in the fund to pay liabilities and claims. If, due to the payment of liabilities or claims, the balance of the fund is reduced below \$500,000,000, the department shall require contributions to maintain the actuarial soundness of the fund and to restore, in a timely manner, the balance of the fund to a level at or above \$500,000,000.

(2) In the event any carrier shall fail to file any return, or make any payment required by this act, or in case the commissioner shall have cause to believe that any return or other statement filed is false or inaccurate in any particular, or that any payment made is incorrect, he shall have full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts, and shall determine the correct amount to be paid, and may proceed in any court of competent jurisdiction to recover for the benefit of the fund any sums shown to be due upon such examination and determination. Any carrier which fails to make any statement as required by this act, or to pay any contribution when due, shall thereby forfeit to the fund a penalty of five per centum of the amount of unpaid contribution determined to be due, as provided by this act, plus one per centum of such amount for each month of delay or fraction thereof after the expiration of the first month of such delay. The commissioner shall revoke the certificate of authority to do business in this Commonwealth of any carrier which shall fail to comply with the provisions of this act or to pay any penalty imposed in accordance with this act.

(9 amended June 22, 2000, P.L.379, No.49)

Section 10. (1) The fund created by this act shall be separate and apart from all other Commonwealth moneys. The State Treasurer shall be the custodian of said fund, and all disbursements from said fund shall be made by the State Treasurer upon vouchers signed by the commissioner.

(2) The Insurance Commissioner and the State Treasurer jointly shall have full and exclusive power to invest moneys of the fund with that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs, not related to speculation, but to the permanent disposition of the funds, considering the probable income to be derived and the probable safety of their capital. Investments shall be made in accordance with a written investment policy approved by the commissioner and the State Treasurer. The investment policy shall address

liquidity, diversification, safety of principal, yield, maturity and quality and the capability of investment management with primary emphasis on safety and liquidity. The commissioner and the State Treasurer shall have the power to hold, purchase, sell, lend, assign, transfer or dispose of any: securities and investments in which moneys from the fund have been invested; proceeds from investments, including commissions which have accrued to the benefit of the fund as a result of investments; and any other assets belonging to the fund, subject to the standard of prudence established under this section.

(3) If at any time any contributing carrier, as herein defined, shall, upon due notice to the commissioner, cease to transact the business of workmen's compensation insurance, the contributions of such carrier, at the time such carrier ceases to transact the business of workmen's compensation insurance, shall be refunded, provided that all its outstanding liability on workmen's compensation insurance shall have terminated.

(10 amended June 22, 2000, P.L.379, No.49)

Compiler's Note: Section 2 of Act 49 of 2000, which deleted section 10, provided that the amendment of section 10 shall take effect on the effective date of regulations promulgated under section 9(1).

Section 11. (1) A valid claim for compensation or installments thereof, heretofore or hereafter made pursuant to the Workmen's Compensation Law, as defined herein, which has remained or shall remain due and unpaid for sixty days by reason of default, after the effective date of this act, by an insolvent carrier, shall be paid from the fund in the manner provided in this act. Any person in interest may file with the commissioner an application for payment of compensation from the fund on a form to be prescribed and furnished by the commissioner. A certified copy of the award must accompany the application. The commissioner shall thereupon certify to the State Treasurer such award for payment according to the terms of the same, whereupon payment shall be made by the State Treasurer, on warrant of the Auditor General and on requisition of the commissioner. Claimants receiving benefits from the fund by virtue of Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.) awards shall be subject to the provisions of this act.

(1.1) The insolvency, bankruptcy, or dissolution of the insured shall effect a termination of security fund benefits provided hereunder for claims arising under the Longshore and Harbor Workers' Compensation Act.

(1.2) Payment of compensation pursuant to the Longshore and Harbor Workers' Compensation Act shall be made by the fund at the Federal benefit level or at the maximum State benefit level, whichever is lower.

(2) Payment of an award from the fund shall not give the commissioner of such fund any right of recovery against the employer.

(3) An employer may pay an award or a part thereof in advance of payment from the fund and shall thereupon be subrogated to the rights of the employe or other party in

interest against such fund to the extent of the amount so paid.

(4) The commissioner shall be entitled to recover the sum of all liabilities of such insolvent carrier assumed by the fund from such carrier, its receiver, liquidator, rehabilitator, conservator or trustee in bankruptcy and all others, except employers, liable under any of the terms of the Workmen's Compensation Law, and may prosecute an action or other proceedings therefor. All moneys, recovered in any such action or proceedings, shall forthwith be placed to the credit of the fund which has assumed such liability by the State Treasurer, to reimburse the fund which has assumed such liability, to the extent of the moneys so recovered and paid. If and when all liabilities of all carriers for workmen's compensation losses in this Commonwealth shall have been fully liquidated, distribution shall be made to all contributing carriers of the remaining balance of such fund: Provided, however, That an insolvent carrier shall be entitled to share in the said distribution of the fund only to the extent that its distributive share of said fund is in excess of any losses paid out of said fund for its account by the treasurer, in accordance with the terms of this act.

(11 amended Apr. 13, 1988, P.L.344, No.48)

Section 12. After the effective date of this act, upon any carrier becoming insolvent the commissioner shall so notify the Workmen's Compensation Board, which shall immediately advise the commissioner--(a) of all claims for compensation pending or thereafter made against every employer insured by such insolvent carrier, or against such insolvent carrier; (b) of all unpaid or continuing awards made upon claims for compensation prior to or after the date of such notice from the commissioner; and (c) of all appeals from or applications for modification, rescision or review of such awards.

(12 amended Oct. 18, 1975, P.L.419, No.117)

Section 13. The commissioner, or a representative committee of interested carriers which the commissioner may from time to time appoint, or both, may investigate and defend before the Workmen's Compensation Board or any court, any and all claims for compensation against an employer insured by an insolvent carrier, or against an insolvent carrier, and may prosecute any pending appeal from, or may appeal from, or make application for modification, rescision or review of any agreement, award or decision against any such employer or carrier. Until all such claims for compensation are closed and all awards are paid, the commissioner, as administrator of the funds, shall be a party in interest in respect to all such claims, agreements and awards. For the purposes of this section, the commissioner shall have exclusive power to select and employ such clerks and assistants as may be deemed necessary, and to fix and determine their powers and duties.

Section 14. The expenses of administering the fund shall be paid out of such fund. The commissioner shall serve as administrator of the fund without additional remuneration, but may be allowed and paid, from the fund, expenses incurred in the performance of his duties in connection with the fund. The compensation of persons employed by the commissioner, for the

purposes of this act, in connection with the fund shall be deemed administration expenses payable out of such fund, in the manner provided in section ten of this act. The commissioner shall include in his regular report to the Governor a statement of the expenses of administering the fund during the period covered by such report.

(14 amended Oct. 18, 1975, P.L.419, No.117)

Section 15. Other than the obligation to contribute to the fund as provided in this act, no deposit, bond or other security shall be required of any carrier as a condition to authorization to transact the business of workmen's compensation insurance in this Commonwealth.

Contributions to the fund created by this act, at the rates fixed by this act, shall be allowed in full as expenses of the business of workmen's compensation insurance by the commissioner in fixing and approving rates for such insurance.

(15 amended Oct. 18, 1975, P.L.419, No.117)

Section 15.1. All assets, moneys, securities, reserves, surplus liabilities and the like presently in either the Stock Workmen's Compensation Security Fund or the Mutual Carrier and Reciprocal Exchange Workmen's Compensation Security Fund shall forthwith be transferred to the single Workers' Compensation Security Fund created hereby.

(15.1 amended Apr. 13, 1988, P.L.344, No.48)

Section 16. If any part of this act be adjudged unconstitutional, it shall not invalidate the remainder of the act.

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

Section 17. This act shall take effect on the first day of June, one thousand nine hundred and thirty-seven.