

No. 263

AN ACT

SB 1223

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as 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," further defining "maximum weekly compensation payable" and "the maximum compensation payable per week"; making the act compulsory and providing for actions at law for damages for certain noncompliance; providing for extraterritorial coverage; changing the waiting period and payments in connection therewith, computation and distribution of certain compensation and agricultural labor coverage; and incorporating certain existing coverages with changes as to computation of compensation thereunder.

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

Section 1. Sections 101, 105.2 and 204, act of June 2, 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's Compensation Act," reenacted and amended June 21, 1939 (P.L.520, No.281), and amended or added March 29, 1972 (P.L.159, No.61), are amended to read:

Section 101. That this act shall be called and cited as The Pennsylvania Workmen's 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 shall not apply to any injury occurring outside of the Commonwealth, except to injuries occurring to Commonwealth employes outside the Commonwealth while such employes are engaged in duly authorized business of the Commonwealth, and except injuries occurring to employes whose duties require them to go temporarily beyond the territorial limits of the Commonwealth, not over six months when such employes are performing services for employers whose place of business is within the Commonwealth.] and extraterritorially as provided by section 305.2.**

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.***

Section 204. No agreement, composition, or release of damages made before the date of any injury **[, except the agreement defined in article three of this act,]** shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement **[, other than that defined**

in article three herein,] 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 [the occupational disease act.] *section 108.*

Section 2. The article heading of Article III of the act is amended to read:

ARTICLE III.
[Elective] *Liability and Compensation.*

Section 3. Subsection (a) of section 301 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 301. (a) [When employer and employe shall by agreement, either express or implied, as hereinafter provided, accept the provisions of article three of this act,] *Every employer shall be liable for compensation for personal injury to, or for the death of [such] 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, 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.*

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Section 4. Paragraph (2) of subsection (c) of section 301 of the act, amended October 17, 1972 (P.L.930, No.223), is amended to read:

Section 301. * * *

(c) * * *

(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) or (q), 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.*

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Section 5. Section 302 of the act, subsection (c) of section 302 added March 29, 1972 (P.L.159, No.61), is amended to read:

Section 302. **[(a) In every contract of hiring made after December thirty-first, one thousand nine hundred and fifteen, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby, unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of article three of this act are not intended to apply, and unless a true copy of such written statement, accompanied by proof of service thereof upon the other party, setting forth under oath or affirmation the time, place, and manner of such service, be filed with the department within ten days after such service. Every contract of hiring, oral, written, or implied from circumstances, now in operation, or made or implied on or before December thirty-first, one thousand nine hundred and fifteen, shall be conclusively presumed to continue subject to the provisions of article three hereof, unless either party shall, on or before said date, in writing, have notified the other party to such contract that the provisions of article three hereof are not intended to apply, and unless there shall be filed with the department a true copy of such notice, together with proof of service, within the time and in the manner hereinabove prescribed: Provided, however, That the provisions of this section shall not be so construed as to impair the obligation of any contract now in force, or invalidate any acceptance or rejection of the provisions of article three of the Workmen's Compensation Act heretofore in force, but such prior acceptance or rejection shall continue unimpaired under this act until notice is given as provided in section three hundred four hereof. In the**

employment of minors, article three shall be presumed to apply, unless the said written notice be given by or to the parent or guardian of the minor. It shall not be lawful for any officer or agent of this Commonwealth, or for any county, city, borough, town, or township therein, or for any officer or agent thereof, or for any other governmental authority created by the laws of this Commonwealth, to give such notice of rejection of the provisions of this article, to any employe of the Commonwealth or of such governmental agency.

(b) After December thirty-first, one thousand nine hundred and fifteen, 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 that employe or contractor, shall be conclusively presumed to have agreed to pay to such laborer or assistant compensation in accordance with the provisions of article three, unless the employer shall post in a conspicuous place, upon the premises where the laborer's or assistant's work is done, a notice of his intention not to pay such compensation, and unless there be filed with the department within ten days thereafter, a true copy of such notice, together with proof of the posting of the same, setting forth upon oath or affirmation the time, place, and manner of such posting; and after December thirty-first, one thousand nine hundred and fifteen, any such laborer or assistant who shall enter upon premises occupied by or under control of such employer, for the purpose of doing such work, shall be conclusively presumed to have agreed to accept the compensation provided in article three, in lieu of his right of action under article two, unless he shall have given notice in writing to the employer, at the time of entering upon such employer's premises for the purpose of doing his work, of his intention not to accept such compensation, and unless within ten days thereafter, there shall have been filed with the department a true copy of such notice, accompanied by proof of service thereof upon such employer, setting forth under oath or affirmation the time, place, and manner of such service. And in such cases, where article three binds such employer and such laborer or assistant, it shall not be in effect between the intermediate employer or contractor and such laborer or assistant, unless otherwise expressly agreed.]

(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 [at any time during the calendar year] shall be required to provide workmen's compensation coverage for such employes according to the provisions of this act, [except casual labor which means employments where the work contemplated is to be completed in not exceeding twenty days without regard to number of employes and the total labor cost of such work is less than one hundred fifty dollars (\$150).] 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 totalling one hundred fifty dollars (\$150) or more or furnishes employment to one employe in agricultural labor on twenty or more days in any of which events the employer shall be required to provide coverage for all employes.

Section 6. Section 303 of the act is amended to read:

Section 303. [Such agreement shall constitute an acceptance of all the provisions of article three of this act, and shall operate as a surrender by the parties thereto of their rights to any form or amount of compensation or damages for any injury or death occurring in the course of the employment, or to any method of determination thereof, other than as provided, in article three of this act. Such agreement shall bind the employer and his personal representatives, and the employe, his or her wife or husband, widow or widower, next of kin, and other

dependents.] (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.

Section 7. Section 304 of the act is repealed.

Section 8. Section 305 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 305. 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 one hundred dollars (\$100.00), issue to the applicant a permit authorizing such exemption. From a refusal of the department to issue such permit, an appeal shall lie to the Commonwealth Court. In any such appeal the only question shall be whether the department abused its discretion in refusing such permit. 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.

Any employer who fails to comply with the provisions of this section for every such failure, shall, upon summary conviction before any official of competent jurisdiction, be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000), and costs of prosecution, or imprisonment for a period of not more than one (1) year, or both. Every day's violation shall constitute a separate offense. 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.

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.

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.

Section 9. The act is amended by adding a section to read:

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 employer or his carrier may file with the director a certificate, issued by the commission or agency of such other state having jurisdiction over workmen's compensation claims, certifying that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury such employe is entitled to the benefits provided under such law.

In such event:

(1) The filing of such certificate shall constitute an appointment by such employer or his carrier of the Secretary of Labor and Industry as his agent for acceptance of the service of process in any proceeding

brought by such employe or his dependents to enforce his or their rights under this act on account of such injury;

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

(3) (i) If such employer is a qualified self-insurer under the workmen's compensation law of such other state, such employer shall, upon submission of evidence, satisfactory to the director, of his ability to meet his liability to such employe under this act, be deemed 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 secretary may, if he deems it necessary, require the employer to file security, satisfactory to the secretary, to secure the payment of benefits due such employe or his dependents under this act; and

(5) 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.

(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."

Section 10. Clauses (a) and (b), the last paragraph of clause (c) and clauses (e) and (f) of section 306 of the act, amended March 29, 1972 (P.L.159, No.61), are amended to read:

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

(a) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section three hundred and nine beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than **[sixty-six and two-thirds per centum of]** the **[Statewide average weekly wage]** *maximum compensation payable* nor less than fifty per centum of the **[maximum weekly compensation payable]** *Statewide average weekly wage*. If at the time of injury, the employe receives wages equal to or less than fifty per centum of the **[maximum weekly compensation payable]** *Statewide average weekly wage*, then he shall receive ninety per centum of his average weekly wage as compensation, but in no event less than thirty-three and one-third per centum of the maximum weekly compensation payable. Nothing in this clause shall require payment of compensation after disability shall cease.

(b) For disability partial in character (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 three hundred and nine, and the earning power of the employe thereafter; but such compensation shall not be more than **[sixty-six and two-thirds per centum of]** the **[Statewide average weekly wage]** *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 those cases in which the employe works fewer than five days per week for reasons not connected with or arising out of the disability resulting from the injury

shall not be less than five times his actual daily wage as fixed by the day, hour, or by the output of the employe; and in no instance shall an employe receiving compensation under this section receive more in compensation and wages combined than a fellow employe in employment similar to that in which the injured employe was engaged at the time of the injury.

(c) * * *

[This compensation] *Compensation under paragraphs (1) through (24) of this clause* shall not be more than [sixty-six and two-thirds per centum of] the [Statewide average weekly wage] *maximum compensation payable* nor less than [sixty-six and two-thirds] *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 [employe's average weekly wage] *Statewide average weekly wage*.

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.

* * *

(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 more than six weeks after the date of the injury, the employe shall also receive compensation for the first seven days of disability.] *If the period of disability lasts fourteen days or more, the employe shall also receive compensation for the first seven days of disability.*

(f) The employer shall provide payment for reasonable surgical and medical services, services rendered by duly licensed practitioners of the healing arts, medicines, and supplies, as and when needed: Provided, That the employe may select a duly licensed practitioner of the healing arts of his own choice, unless at least five physicians shall have been designated by the employer or by the employer and the employe's representative by agreement, in which instances the employe shall select a physician from among those designated. 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. The cost for such hospital treatment, service and supplies shall not in any case exceed the prevailing charge in the hospital for like services to other individuals. If the employe shall refuse reasonable services of duly licensed practitioners of the healing arts, surgical, medical and hospital services, treatment, medicines and supplies, he shall forfeit all rights to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal. Whenever an employe shall have suffered the loss of a limb, part of a limb, or an eye, the employer shall also provide payment 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 in injuries whether or not loss of earning power occurs. If **[ward treatment] hospital confinement** is required, **the employe shall be entitled to semi-private accommodations** but if no **[ward] 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 **[or semi-private] room**.

The payment by an insurer 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.

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Section 11. Section 306 of the act is amended by adding a clause to read:

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

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(h) Any person receiving compensation under sections 306(a), 306(b), 306(c)(23), or section 307, as a result of an accident which occurred prior to the effective date of the amendatory act of January 17, 1968 (P.L.6, No.4) shall have the compensation rate adjusted to the level they would have received had the injury occurred on the effective date of the amendatory act of January 17, 1968 (P.L.6, No.4) and had the injured employe been earning wages equal to ninety dollars (\$90) 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.

Section 12. Section 307 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

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 **[sixty-six and two-thirds per centum 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 **[sixty-six and two-thirds per centum 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 **[sixty-six and two-thirds per centum 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 **[sixty-six and two-thirds per centum 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 **[sixty-six and two-thirds per centum 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 **[sixty-six and two-thirds per centum of]** the Statewide average weekly wage.

2. To the widow or widower, if there be no children, fifty-one per centum of wages, but not in excess of **[sixty-six and two-thirds per centum of]** the Statewide average weekly wage.

3. To the widow or widower, if there be one child, sixty per centum of wages, but not in excess of **[sixty-six and two-thirds per centum of]** the Statewide average weekly wage.

4. To the widow or widower, if there be two children, sixty-six and two-thirds per centum of wages but not in excess of **[sixty-six and two-thirds per centum of]** the Statewide average weekly wage.

4 ½. To the widow or widower, if there be three or more children, sixty-six and two thirds per centum of wages, but not in excess of **[sixty-six and two-thirds per centum of]** the Statewide average weekly wage.

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 **[sixty-six and two-thirds per centum 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 **[sixty-six and two-thirds per centum 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 hundred fifty] one thousand five hundred** dollars, 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).

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 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. of section 307 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 wages upon which death compensation shall be based, shall not in any case be taken to exceed the Statewide average weekly wage nor be less than forty per centum of the Statewide average weekly wage.]

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.

Section 13. Section 315 of the act, amended October 17, 1972 (P.L.930, No.223), is amended to read:

Section 315. In cases of personal injury all claims for compensation shall be forever barred, unless, within **[two] three** years after the injury, the parties shall have agreed upon the compensation payable under this article; or unless within **[two] 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 **[two] three** years after the death, the parties shall have agreed upon the compensation under this article; or unless, within **[two] three** years after the death, one of the parties shall have filed a petition as provided in article four hereof. Where, however, payments of

compensation have been made in any case, said limitations shall not take effect until the expiration of **[two] 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.

Section 14. Subsection (a) of section 413 and section 434 of the act, amended March 29, 1972 (P.L.159, No.61), are amended to read:

Section 413. (a) A referee of the department 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 referee, if it be proved that such notice of compensation payable or agreement was in any material respect incorrect.

A referee 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 referee, 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 **[two] three** years after the date of the most recent payment of compensation made prior to the filing of such petition: 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 referee 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.

The filing of a petition to terminate or modify a notice of compensation payable or a compensation agreement or award as provided in this section shall operate as a supersedeas, and shall suspend the payment of compensation fixed in the agreement or by the award, in whole or to such extent as the facts alleged in the petition would, if proved, require only when such petition alleges 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 fifteen days of the filing of the petition. In any other case, a petition to terminate 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 referee 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 referee 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 referee 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.

* * *

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 **[two] 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.

Section 15. The act is amended by adding an article and section to read:

ARTICLE VI.
Additional Coverages.

Section 601. In addition to those persons included within the definition of the word "employee" as defined in section 104 of this act, there shall be included all members of volunteer ambulance corps, volunteer fire companies or volunteer fire departments of the various cities, boroughs, incorporated towns, and townships, who shall be and are hereby declared to be "employees" of such cities, boroughs, incorporated towns, townships, for all the purposes of this act, and shall be entitled to receive compensation in case of injuries received while actually engaged as ambulance corpsmen or firemen or while going to or returning from any fire which the fire companies or ambulance corps or fire department of which they are members shall have attended, or while participating in instruction fire or ambulance drills in which the fire company or ambulance corps of which they are members shall have participated, or while repairing or doing other work about or on the fire or ambulance apparatus or buildings and grounds of such fire company upon the authorization of the chief or corps president or other person in charge, or while answering any emergency call for any purpose, or while riding upon the fire or ambulance apparatus owned or used by the fire companies or ambulance corps of which they are members, at any time, or while performing any other duties of such ambulance corps, companies or fire department authorized by such cities, boroughs, incorporated towns and townships, or while performing duties imposed by section 15 of the act, approved April 27, 1927 (P.L.465, No.299), entitled, as amended, "An act to provide for the safety of persons employed, housed, or assembled in certain buildings and structures not in cities of the first class, second class, and second class A, by requiring certain construction and ways of egress, equipment, and maintenance; providing for the licensing of projectionists, except in cities of the first class and second class; requiring the submission of plans for examination and approval; providing for the promulgation of rules and regulations for the enforcement of this act; providing for the enforcement of this act by the Department of Labor and Industry and, in certain cases, by the chiefs of fire departments in cities of the third class; providing penalties for violations of the provisions of this act; and repealing certain acts," as amended; and there shall be included all individuals who extinguish forest fires and are entitled to compensation therefor, as determined by authorized officers of the Department of Environmental Resources, and such individuals are hereby declared to

be "forest fire fighters" and "employes" of the department for all the purposes of this act, and shall be entitled to receive compensation in case of injuries received while actually engaged in extinguishing forest fires or while going to or returning from forest fires or while performing any other duties in connection with extinguishing forest fires authorized or ratified by the department's officers.

In all cases where an injury compensable under the provisions of this act is received by a member of a volunteer ambulance corps, volunteer fire company, or volunteer fire department or by a forest fire fighter of the department whether employed, self-employed, or unemployed, there is an irrebuttable presumption that his wages shall be at least equal to the Statewide average weekly wage for the purposes of computing his compensation under sections 306 and 307 of this act.

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.

Section 17. The act of June 21, 1939 (P.L.566, No.283), entitled "A supplement to the act, approved the second day of June, one thousand nine hundred and fifteen (Pamphlet Laws, seven hundred thirty-six), entitled, as 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,' as reenacted and amended, providing for the payment of compensation to volunteer firemen or their dependents," is repealed.

Section 18. The sum of three million five hundred thousand dollars (\$3,500,000) is hereby appropriated to the Department of Labor and

Industry for the fiscal year beginning July 1, 1975 to carry out the provisions of section 306(h).

Section 19. This act shall take effect in sixty days, except for section 306(h) of The Pennsylvania Workmen's Compensation Act which shall take effect on July 1, 1975.

APPROVED—The 5th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 263.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent "M".

Secretary of the Commonwealth.