

No. 1990-68

## AN ACT

HB 2618

Amending the act of June 2, 1915 (P.L.762, No.340), entitled "An act providing for the creation and administration of a State Fund for the insurance of compensation for injuries to employes of subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; and providing penalties for the violation thereof," providing for the transfer of money from the State Workmen's Insurance Fund to the General Fund, the Sunny Day Fund and the Tax Stabilization Reserve Fund; establishing an Advisory Council to the State Workmen's Insurance Board; requiring the State Workmen's Insurance Fund to undergo an independent actuarial study annually; and making repeals.

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

Section 1. Section 1 of the act of June 2, 1915 (P.L.762, No.340), referred to as the State Workmen's Insurance Fund Law, is amended to read:

Section 1. [Be it enacted, &c., That the State Workmen's Insurance Board is hereinafter called the Board; the State Workmen's Insurance Fund is hereinafter called the Fund; and the Bureau of Workmen's Compensation of the Department of Labor and Industry is hereinafter called the Bureau.] *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:*

*"Advisory council."* The Advisory Council to the State Workmen's Insurance Board.

*"Board."* The State Workmen's Insurance Board.

*"Bureau."* The Bureau of Workmen's Compensation of the Department of Labor and Industry.

*"Downward deviation."* The extent to which the State Workmen's Insurance Board provides deviations under section six hundred and fifty-four 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 Workmen's Insurance Fund subscribers below the otherwise applicable premium rates approved by the Insurance Commissioner for use by the Board.

*"Fund."* The State Workmen's Insurance Fund.

*"Reserve funds."* 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."* Amounts which are distributable without jeopardizing the ability of the State Workmen's Insurance Fund to satisfy its present and future legal obligations to subscribers.

**“Surplus.”** *The amount in the State Workmen’s Insurance Fund in excess of the Fund’s liabilities under this act.*

**“Taxes.”** *The amount that would be payable as taxes upon receipt of premiums by a private insurance company under section nine hundred and two 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 eight hundred and thirty-one 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 eight hundred and thirty-one of the Internal Revenue Code of 1986) for periods after June 30, 1990, the basis of State Workmen’s Insurance Fund assets will be the fair market value on June 30, 1990.*

Section 2. Section 2 of the act is amended to read:

Section 2. The State Workmen’s Insurance Board is hereby created, consisting of the [Commissioner] *Secretary* of Labor and Industry, the Insurance Commissioner, and the State Treasurer.

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

**Section 2.1. (a)** *The General Assembly hereby establishes the Advisory Council to the State Workmen’s Insurance Board.*

**(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 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 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 or her 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 eleven, subsection (b) of this act.*

*(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.*

Section 4. Section 11 of the act, amended June 3, 1933 (P.L.1490, No.324), is amended to read:

Section 11. *(a) The [money paid in premiums by subscribers is] moneys in the Fund are hereby made available [for] and shall be paid:*

*(1) for the expenses of administering the [fund] Fund, including the purchase, through the Department of [Property and Supplies] General Services, of surety bonds for such officers or employes of the [board] Board as may be required to furnish them, supplies, materials, motor vehicles, workmen's compensation insurance covering the officers and employes of the [board] Board, and liability insurance covering vehicles purchased out of moneys of said [fund] Fund and operated by the officers and employes of the [board] Board. In the event that the use of motor vehicles is required only temporarily, then such moneys in the [fund] Fund are available for the payment to the Department of [Property and Supplies] General Services, for the use of such motor vehicles on a mileage basis, at such amount per mile as the Department of [Property and Supplies] General Services, with the approval of the Governor, shall determine[.*

*The moneys in the fund shall also be available for payment to the Insurance Department of the cost incurred by that department in examining and auditing the State Workmen's Insurance Fund, at such amounts as the Insurance Department shall determine[;*

*(2) for payment to the Treasury Department of the cost of making disbursements out of the [State Workmen's Insurance] Fund, on behalf of the [State Workmen's Insurance] Board, at such amounts as the Treasury Department, with the approval of the Executive Board, shall determine[;*

*(3) for payment to the Department of [Property and Supplies] General Services for space occupied in the Capitol buildings and for water, light,*

heat, power, telephone and other services utilized and consumed by the [State Workmen's Insurance] Board, at such amounts as the Department of [Property and Supplies] *General Services*, with the approval of the Executive Board, shall determine[.]; and

(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. Such payments shall be due annually, shall be calculated on a fiscal year basis and shall be paid in equal quarterly instalments of the Board's estimate of taxes for a fiscal year. Quarterly instalments shall be paid after the end of each quarter, and the fourth quarterly instalment 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 section two point one, subsection (e) of this act. All persons charged with the administration or management of the Fund shall provide the actuary or his or her agents with the means, facilities and opportunity to examine all books, records and papers pertaining to the Fund.*

(c) *The [board] Board shall keep an accurate account of the money paid in premiums by the subscribers, the income derived from investment of premiums, and the [disbursements on account of injuries to the employes thereof, and on account of administering the fund; and if, at the expiration of any year, there shall be a balance remaining, after deducting such disbursements, the unearned premiums on undetermined risks, and the percentage of premiums paid or payable to create or maintain the surplus provided in section nine of this act, and after setting aside an adequate reserve, so much of the balance as the board may determine to be safely distributable 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 instalment 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 in the manner hereinafter provided.] disbursement of amounts paid under subsection (a) of this section. At the expiration of each calendar year after 1990 and upon review of the independent actuarial study conducted under subsection (b) of this section, 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 subsection (a) of this section, the unearned premiums on undetermined risks, the percentage of premiums paid or payable to create or maintain the surplus provided in section nine of this act, 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 clause (1) of this subsection 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 clause (2) of this subsection may be transferred to the reserve funds, as appropriated by the General Assembly.*

*Any amount distributed to subscribers pursuant to clause (2) of this subsection 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 instalment 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 subsection (c) shall impair the actuarial soundness of the Fund.*

Section 5. The sum of \$125,000,000, or as much thereof as may be necessary, is hereby appropriated from the State Workmen's Insurance Fund for the fiscal year July 1, 1990, to June 30, 1991, to the Treasury Department for transfer to the General Fund for in-lieu-of-tax payments for the time periods of calendar years 1985, 1986, 1987, 1988 and 1989, and January 1, 1990, through June 30, 1990.

Section 6. Sections 1, 2 and 3 of the act of May 1, 1933 (P.L.102, No.68), entitled, as amended, "A supplement to the act, approved the second day of June, one thousand nine hundred and fifteen (Pamphlet Laws, seven hundred sixty-two), entitled 'An act providing for the creation and administration of a State Fund for the insurance of compensation for injuries to employes of subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; and providing penalties for the violation thereof,' providing for the inspection and examination of the State Workmen's Insurance Fund by the Insurance Commissioner, and appropriating the moneys in the fund for the payment of the cost of such inspection and examination," are hereby repealed.

Section 7. This act shall take effect as follows:

(1) Section 4 (section 11(a)(4)) of this act shall take effect July 1, 1990.

(2) Section 5 of this act shall take effect July 1, 1990, or immediately, whichever is later.

(3) The remainder of this act shall take effect December 31, 1990.

APPROVED—The 1st day of July, A. D. 1990.

ROBERT P. CASEY