



**Pennsylvania Compensation Rating Bureau**  
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July 2, 1996

**BUREAU CIRCULAR NO. 1332**

To All Members of the Bureau:

Re: **ACT 57 OF 1996**

On June 24, 1996 Governor Tom Ridge signed into law Senate Bill 801, now referred to as Act 57 of 1996. This legislation contains significant amendments to Pennsylvania's workers compensation laws. **Each Bureau member is encouraged to obtain a copy of this law and review its language in detail as various benefit provisions, changes in administrative procedures and implementation requirements will affect carriers writing workers compensation in the Commonwealth.** Copies may be obtained from the Senate Bill Room at (717) 787-6732 by requesting Printers' No. 2154. This Circular is intended to provide an overview of the more substantive provisions of this law for the benefit of all members but does not obviate the need for careful individual and independent review and analysis of the law by each member.

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Prior to enactment of this law the PCRB had undertaken extensive analyses to estimate the potential effects on loss costs for workers compensation insurance in Pennsylvania of legislative proposals of which it had knowledge of having been under discussion or consideration. At present the PCRB is evaluating the effects of changes made in those provisions immediately prior to passage of Act 57 on our previous estimates. All members will be provided with complete information concerning the PCRB's estimates of effects of Act 57 after this review is complete and in no instance later than when our next loss cost filing is made and copies of the filing and all supporting information are provided to all members as has been customary in prior loss cost filings.

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Most provisions of Act 57 are effective 60 days after Governor Ridge's signature or August 23, 1996. Exceptions to this standard are specifically noted in the following discussion.

The following narrative is divided into three parts: Pricing Provisions, Benefit Provisions, and Administrative Procedures.

### PRICING PROVISIONS:

Long term, Act 57 generally preserves the loss cost pricing system initiated by Act 44 of 1993. Specific provisions of Act 57 superimposed upon or added to the pricing provisions of Act 44 are as follow:

#### Transition Loss Cost Filing:

A series of steps are prescribed by Act 57 (See Section 30 of Act 57) for the preparation and submission of the first loss cost filing after enactment of this law. Although the performance of these steps are related to the effective date of Act 57 (i.e., 60 days after signature or August 23, 1996), the extent and complexity of the process provided (which involves a number of different parties) will take some time in order to be completed. In order of occurrence the key points in this process are set forth below, with reference to the time frame(s) required for each in parentheses:

- Each member of the PCRB is to file the most recent available data with the PCRB. The required data includes the most recent available policy year unit statistical and financial data available after 1993, including the December 31, 1995 Special Schedule W. (Within 15 days of the effective date of the Act or September 7, 1996.)

**NOTE: The law provides that the Insurance Commissioner shall impose fines of \$1,000 per day against any insurer failing to file data as required. Separate and apart from these significant fine amounts, the PCRB is committed to collecting and submitting a complete and accurate database in support of our initial loss cost filing under Act 57. As of this date, most of our member carriers have already submitted all data required of them under Section 30 of Act 57. Toward the objective of completing collection of relevant data as expeditiously as possible, the PCRB will be contacting each carrier which has not satisfactorily provided all required data individually, identifying any outstanding information which must be submitted. We will urge any carrier so contacted to take all necessary measures to comply with all reporting requirements immediately, as this is a matter of great importance to all insurers and employers in Pennsylvania as well as the Insurance Department and the PCRB.**

- The Insurance Commissioner is to appoint an "independent actuary" to provide an estimate of the total change in workers compensation loss cost resulting from implementation of Act 57 of 1996 and Act 44 of 1993 and an estimate of any other loss cost change attributable to data not considered in any previous loss cost filing. (Within 45 days of the effective date of the Act or October 7, 1996.)
- The PCRB is to submit aggregate loss cost data representing at least 75 percent of the market to the independent actuary. (Within 45 days of the effective date of the Act or October 7, 1996.)
- The independent actuary is required to complete an estimate of the indicated total loss cost change and to provide that estimate to the Insurance Commissioner, the PCRB, the Small Business Advocate, the President Pro Tempore of the Senate and the Speaker of the

House of Representatives. (Within 95 days of the effective date of the Act or November 25, 1996.)

- The PCRB is required to "...file new loss cost changes which reflect the estimate of the sum total of loss cost data compiled under this Section." [The term "Section" as used here refers to Section 30 of Act 57.] (Within 25 days of completion and transmittal of the independent actuary's report.)
- The Insurance Commissioner is required to give full consideration to the independent actuary's estimate in approving, disapproving or modifying the PCRB's filing pursuant to provisions of Act 44. (Time frame applies per current Article VII of Act 44.)
- Each new and renewal policy for workers compensation is required to reflect the PCRB's revised loss costs. (Not later than 30 days after the approval of the filing.)

Group Insurance: Carriers are authorized to offer an endorsement for deductible or retrospective rating plans for groups of five or more employers subject to approval by the Insurance Commissioner and subject to underwriting by the insurer consistent with the principles applicable under Act 44 to small deductible coverages. (See Section 448 (C) of Act 57.)

Merit Rating: A prescribed set of premium discounts or surcharges is established for application to employers not otherwise qualified for promulgation of an experience modification under the approved uniform Experience Rating Plan. (See Section 707 of Act 57).

Schedule Rating: Authorization is provided for carriers to file a schedule rating plan based upon defined risk characteristics. Such plans require prior approval by the Insurance Commissioner. (See Section 707 of Act 57.)

Workplace Safety Credits: The premium credit provided for employers with a safety committee certified by the Department of Labor and Industry, limited to a one-year period under Act 44, has been extended to apply up to five years based on employers' filing annual affidavits verifying safety committee operation. (See Section 1002, Act 57)

## **BENEFIT PROVISIONS**

For purposes of this Circular, the PCRB has defined "benefit provisions" to be limited to statutory language which speaks directly to eligibility for benefits and/or the amounts to be paid to eligible claimants or health care providers. This convention serves only to organize this discussion, and the PCRB is aware that various procedures and requirements addressed herein as "administrative provisions" could ultimately affect costs of workers compensation benefits.

Consistent with the above terminology Act 57 contains the following revisions to previously enacted benefit provisions:

Section 204 (a): This language invokes offsets against workers compensation benefits otherwise payable for 50 percent of Social Security Old-Age Benefits, employer-funded pension plan benefits and severance benefits. This Section applies to injuries occurring on or after June 24, 1996.

Section 302 (C): The amount of wages required to be paid in a calendar year to any one employee in agricultural labor in order to impose mandatory workers compensation coverage on the employer for all employees is revised from the previous level of \$150 to \$1,200. The number of days' employment of any one employee in agricultural labor in order to impose mandatory workers compensation coverage on the employer for all employees is changed from 20 to 30. Spouses and/or children of employers not engaged in employment under an explicit written contract, a copy of which has been filed with the Department of Labor and Industry, are not deemed to be employees for purposes of this provision.

Section 306 (A) (2): Total disability payments are specifically not required for any period during which the employee is employed or receiving wages. This Section applies to injuries occurring on or after June 24, 1996.

Section 306 (A) (2) (A.1): Neither total nor partial disability payments are required for any period in which the claimant is employed and receiving wages equal to or greater than the employee's prior earnings. This Section applies to injuries occurring on or after June 24, 1996.

Section 306 (A) (2) (A.2): The American Medical Association's Guides for the Evaluation of Permanent Impairment are prescribed for purposes of determining which workers compensation claims will be eligible for total permanent disability benefit in Pennsylvania. Absent agreement to the contrary each claimant is subject to an evaluation and rating consistent with those Guides after they have received 104 weeks of total disability benefits. Claimants having total bodily impairment ratings of 50 percent or greater will be defined to be total permanent disability cases, while claims having less than 50 percent total bodily impairment ratings will be subject to statutory provisions applicable to permanent partial disability benefits, including a limitation of benefits to 500 weeks (in addition to the initial 104 weeks). This Section applies to injuries occurring on or after June 24, 1996.

Section 306 (B) (1): Partial disability benefits are limited to effects of the compensable injury, and the combination of wages and benefits received are limited to the current wages of fellow employees in similar employment to that of the claimant at the time of injury.

Section 306 (B) (2): Considerations applicable to determinations of earning power for purposes of partial disability benefits are set forth. This Section applies to injuries occurring on or after June 24, 1996.

Section 306 (B) (3): If an insurer receives medical evidence that a claimant is able to return to work in any capacity, the insurer must provide prompt written notice to the worker stating all the following:

- The nature of the employee's physical condition or change of condition
- That the employee has an obligation to look for available employment

- That proof of available employment opportunities may jeopardize the employee's right to receipt of ongoing benefits
- That the employee has the right to consult with an attorney in order to obtain evidence to challenge the insurer's contentions

Section 309: Procedures for determination of injured worker wages are revised in certain important respects. First, where wages are not established on the basis of a week, month or year, wages are to be based on the average earnings in the highest three of the last four quarters of employment. Current law selects the highest single quarter of the last four quarters of employment. Second, no adjustment is made for part-time employment under the revised law. Current law effectively computes wages for benefit determination purposes on a full-time basis for some part-time workers. This Section applies to injuries occurring on or after June 24, 1996.

Section 321: Licensed insurance agents affiliated with a licensed insurance agency under a written agreement, compensated on a commission-only basis and qualified as an independent contractor for state tax or for federal tax purposes are excluded from the Act.

Section 435 (D) (1): Maximum penalties to employers and insurers in instances of unreasonable or excessive delays are increased from 20 to 50 percent of the amount awarded and interest accrued.

Section 450: Employers and recognized or certified and exclusive representatives of its employees may agree to negotiate binding obligations and procedures relating to workers compensation in specified areas.

### **ADMINISTRATIVE PROVISIONS**

In several areas Act 57 initiates new steps or series of steps in various administrative areas of the workers compensation law in Pennsylvania. In other areas existing processes and procedures have been changed by language contained in this law. Brief references to a number of the more substantive of these types of changes are provided below:

Section 204 (C): Employees are required to report regularly to the insurer receipt of unemployment compensation benefits, wages received, Social Security "old-age" benefits, severance benefits and pension benefits which post-date the compensable injury under the Act. Failure to report is subject to fraud provisions of the law.

Section 305: Group self-insurers (except the Commonwealth or its political subdivisions) are required to establish security for their workers compensation liabilities.

Section 306 (F.1) (1) (1): Claimants are entitled to an additional opinion when invasive surgery may be necessary. Such opinion may be obtained from any health care provider of the claimant's choice at the expense of the employer. The Claimant may elect to follow the alternative course of treatment recommended in the additional opinion if it differs from that of the original opinion, provided such procedures are performed by one of the physicians or health

care providers designated by the employer, for a period of 90 days from the date of the visit to obtain the additional opinion.

The period of time in which claimants are required to treat with a health care provider from a list designated by the employer is extended from 30 to 90 days.

Various Sections (including, for example, Section 306 (F.2) (3)): Responsibilities previously reserved for the Department of Health or the Secretary of Health are transferred to the Department of Labor & Industry or the Secretary of the Department of Labor & Industry.

Section 311.1: Employees filing petitions to receive or receiving total or partial disability benefits shall report to the insurer in writing employment or self-employment in any capacity, wages from such employment or self-employment, the name and address of the employer, the amount of wages, the dates of employment or self-employment, the nature and scope of such employment or self-employment, and any other information relevant to the determination of entitlement to or amount of compensation. Insurers may submit verification forms to such claimants not more frequently than once every six months to verify or update the claimant's status as respects this information.

Section 402.1: Informal conferences are provided at the agreement of the parties as a means of attempting to resolve any action for which a petition has been filed. Procedures governing these informal conferences are set forth.

Section 406.1: The period of time during which an insurer or employer may pay temporary compensation without accepting liability for the claim is extended from six weeks to 90 days.

Section 412: The maximum compensation period which may be commuted without discount and without petition to the Department of Labor and Industry is increased from 25 weeks to 52 weeks. Written notice must still be provided to the claimant with a copy to the Department of Labor and Industry.

Section 413 (A.1): When a petition to terminate, suspend or modify a notice of compensation payable alleges that the employee has fully recovered and is accompanied by a physician's affidavit to that effect based on an examination made within 21 days of the filing of the petition, that petition automatically serves as a request for supersedeas. A special supersedeas hearing shall be held within 21 days of the assignment of such petition, and a ruling shall be made within seven days of the hearing. Certain standards for decisions and burden of proof for employees are set forth. Determinations of full recovery with respect to the petition to terminate, suspend or modify and the supersedeas petition shall be made without consideration of certain vocational information.

Section 413 (C): Insurers are empowered to suspend compensation when an employee has returned to work at earnings equal to or greater than their prior earnings upon written notice to the employee and to the Department of Labor and Industry. Procedures for contests of such action are set forth.

Section 422: Requirements for the content and treatment of evidence in workers compensation judges' decisions are expanded somewhat, with specific reference to instances of conflicting evidence.

Section 449: Procedures to compromise and release liability which is claimed under the Act are established.

Section 717: The PCRB must provide reasonable means within the Commonwealth whereby any person aggrieved by application of the PCRB's rating system may be heard in person or by authorized representative regarding their appeal. The statute specifies that reasonable means includes at least a committee to hear appeals comprised of an equal number of representatives of employers and insurers and reimbursement to the aggrieved person for reasonable travel expenses incurred in conjunction with attendance at the appeal.

Section 802: Self-insured groups are required to provide security in amounts and forms prescribed by the Department of Labor and Industry. Groups comprised solely of political subdivisions or municipalities are exempt from these requirements.

Section 1102: The definitions of "fraud" in the Act are expanded to include the following acts, if done knowingly and with intent to defraud:

- Failure to report or provide information in accordance with Section 311.1
- Receiving total disability benefits while employed or receiving wages
- Receiving partial disability benefits in excess of the amount permitted with respect to the wages received

Section 1112: A statute of limitations (five years from commission of the offense) is established for acts of fraud.

Article XIV: Extensive provisions addressing the administrative structure and operation of the Office of Adjudication and the qualifications, responsibilities, actions required and/or prohibited and related matters pertaining to the workers compensation judges appointed to serve therein are established.

Article XV: The State Workmen's Insurance Fund Law is transferred into Act 57 and has been revised in certain respects. In particular the State Worker's Insurance Fund is authorized to underwrite exposures arising from the United States Longshore and Harborworkers' Act and is further authorized to underwrite voluntary workers compensation coverages for logging or logging-related businesses.

Article XV became effective immediately upon signature of the law on June 24, 1996. Interested parties may contact John Zavada, Underwriting Manager at the State Workmen's Insurance Fund (717) 941-1650 for further information.

The Bureau will continue to notify its members of developments pertaining to data collection, loss cost filing and implementation of Act 57 as they occur. In particular individual notices to carriers with outstanding data reports needed for preparation of the PCRB's loss cost filing and additional information regarding implementation of the merit rating plan and extension of workplace safety credits will be forthcoming in the very near future.

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President

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