SPONSOR: Sen. Townsend & Sen. Walsh & Rep. Osienski &
Rep. K. Williams
Rep. Lambert

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 145
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION PAYMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 23, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2344. Agreements on compensation or benefits; filing and approval; conclusiveness.

(a) If the employer and the injured employee, or the employee's dependents in case of the employee's death, reach an agreement in regard to compensation or other benefits in accordance with this chapter, a memorandum of such agreement signed by the parties in interest shall be filed with the Department and, if approved by it, shall be final and binding unless modified as provided in § 2347 of this title. Such agreement shall be approved by the Department only when the terms thereof conform to this chapter. This section shall not apply to deductible clauses.

(b)(1) At the time of agreement, the employer shall obtain from the employee an agreement as to compensation, signed by the parties in interest, in such detail and form as the Department prescribes, stating the eligibility for workers' compensation benefits pursuant to §§ 2324 and 2325 of this title. The agreement as to compensation shall require the employee to indicate any change in employment status which may affect benefits pursuant to §§ 2324 and 2325 of this title. The agreement as to compensation shall include a clear recitation of the legal requirements for eligibility for benefits and shall require the claimant's acknowledgment of and agreement to abide by such requirements. This form, which shall bear a notarized signature of the employee or the signature of a witness, shall accompany the agreement and shall be filed with the Department of Labor for approval.

(2) An insurance carrier or self-insured may pay total or partial disability to claimants under this chapter by check or with mutual consent by direct deposit. Claimants may opt in to authorize payment by direct deposit by electronically signing and dating an electronic authorization form or by physically signing and dating a printed authorization form. The ~~For all payments of total or partial disability to claimants under this chapter, the~~ insurance

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carrier or self-insured shall cause to be printed upon the reverse side of the check, above the endorsement, or upon the form authorizing the direct deposit the following language:

"Your acceptance of ~~this check for~~ total or partial disability payments is a representation by you that you are legally entitled to such payment and a false representation is punishable under federal and state laws." The negotiation of a check for total or partial disability by an attorney or an agent of the attorney on behalf of a client is a representation that the attorney has printed the language set forth in this subsection for printing on claimant checks on checks distributed by the attorney to the attorney's clients. Direct deposit authorization forms must be dated and signed by the claimant. The provisions of this subsection are also applicable to payments made by the Workers' Compensation Fund pursuant to § 2347 of this title.

§ 2386. Violations by insurers or self-insurers; penalties.

(a) If any insurance corporation, mutual association or company, interinsurance ~~exchange~~ exchange, or ~~self-insurer.~~ self-insurer does any of the following, it shall be fined not less than $100 nor more than $1,000 for each such offense:

(1) Violates this ~~chapter; or~~ chapter.

(2) Neglects or refuses to comply with this ~~chapter; or~~ chapter.

(3) ~~Wilfully~~ Willfully makes any false or fraudulent statement of its business or condition or a false or fraudulent ~~return,~~ return. ~~it shall be fined not less than $100 nor more than $1,000 for each such offense. The fine shall be assessed by the Industrial Accident Board after the insurance corporation, mutual association or company, interinsurance exchange or self-insurer is given notice and a hearing on the violation. The fine shall be payable to the State Treasurer.~~

(b) Whoever in this ~~State:~~ State does any of the following shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than 90 days, or both.

(1) Acts or assumes to act as an agent in any capacity whatsoever for any insurance corporation, mutual association or company or interinsurance exchange, which is not authorized to do business in this State, or, if such authority to do business in this State has been suspended, so acts or assumes to act while such suspension is in ~~force;~~ force.

(2) Neglects or refuses to comply with any obligatory provisions of this ~~section; or~~ section.

(3) ~~Wilfully~~ Willfully makes any false or fraudulent statement of the business or condition of any such insurance carrier or false or fraudulent ~~return,~~ return. ~~shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than 90 days, or both.~~

(c) Fines shall be assessed by the Industrial Accident Board after the insurance corporation, mutual association or company, interinsurance exchange, or self-insurer is given notice and a hearing on the violation. Fines shall be payable to the State of Delaware and mailed to the Department of Labor, Division of Industrial Affairs.

~~(d) This section shall not apply to or be construed to limit the penalties set forth in, § 2374 of this title.~~

§ 2391. Taxes on premiums of insurance carriers and payrolls of self-insurers.

(b) Every employer carrying the employer's own risk, and thereby insuring the employer's self under this chapter, shall annually on or before January 30 report under oath to the Department the total amount of the employer's payroll for the preceding calendar year, classified in accordance with classifications approved by the Department for the purpose of fixing compensation rates. The Department may verify such classifications and such statement of payroll by inspection and audit at the expense of the employer, and such verification shall be made by the rating bureau or association provided for in § 2607 of Title 18. The charges to self-insurers shall be the same charges which other insurance carriers are required to pay under this chapter. The Department shall assess against such payroll a tax computed by taking 4% of the amount of premium payable upon the payroll so ascertained in accordance with the classifications and premium rates approved by the Department for insurance against liability under this chapter. No employer shall become or continue a self-insurer under this chapter, except upon the payment of the tax for the previous calendar year. The moneys so assessed against and paid by insurers who carry their own risks shall be paid to the ~~Secretary of Finance.~~ Department of Labor, Division of Industrial Affairs. Such sums shall be part of the General Fund of the State.

§ 2392. Assessments for administrative expenses on insurance carriers.

(b) Semi-annually, on or before September 30 and March 31, every insurance carrier, insuring employees who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees, shall report, under oath, or, in the case of a corporation, verified by the affidavit of its president and secretary or other chief officers or agents, to the ~~Secretary of Finance,~~ Department, the amount of all compensation payments and awards actually paid by said carrier during the preceding calendar year, excluding payments made under §2395 of this title and reimbursements received under § 2396 of this title.

(c) The Division of Industrial Affairs semi-annually as soon as practicable after January 1, 1996 and July 1 shall ascertain and report to the Secretary of Finance the total amount of the following expenses:

(1) 100% of the expenses of the Office of Workers' Compensation, including the Industrial Accident Board;

(2) ~~66.6%~~ 100% of all expenses of the inspection function of the Division of Industrial Affairs;

(3) ~~66.6%~~ 100% of all expenses of the safety function of the Division of Industrial Affairs; and

§ 2395. Workers' Compensation Fund; payments by insurance carriers.

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(b) Such sums shall be ~~paid by the Department to the State Treasurer, to be~~ deposited in a special account known as "Workers' Compensation Fund." Such sums shall not be a part of the General Fund of the State. Any balance remaining in such special account at the end of any fiscal year shall not revert to the General Fund.