

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*  
\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3201 (2006)

@ 3201. Purposes

Whereas, the anthracite and bituminous coal and clay mine areas have been faced with the grave problem of subsidence for many years, and

Whereas, these problems are becoming more widespread, and

Whereas, these conditions cause undue hardship upon a multitude of persons, and

Whereas, it would be to the advantage of residents of the anthracite and bituminous coal and clay mining regions to form a common bond to combat distress resulting from subsidence;

Now therefore, there shall be established a Coal and Clay Mine Subsidence Insurance Fund and a Coal and Clay Mine Subsidence Insurance Board with the powers and duties as herein set out.

HISTORY: Act 2002-155 (H.B. 401), @ 1, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 2 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3202 (2006)

@ 3202. Terms

The Coal and Clay Mine Subsidence Insurance Board is hereinafter called the board, the Coal and Clay Mine Subsidence Insurance Fund is hereinafter called the fund, and the Department of Environmental Resources is hereinafter called the department.

## LEVEL 1 - 3 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3203 (2006)

@ 3203. The Coal and Clay Mine Subsidence Insurance Board

The Coal and Clay Mine Subsidence Insurance Board is hereby created consisting of the secretary, as chairman, and the Insurance Commissioner and the State Treasurer.

HISTORY: Act 2002-155 (H.B. 401), @ 1, approved Dec. 9, 2002, eff. in 180 days.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. Coal and Clay Mine Subsidence Insurance Board--Insurance Department--Auditor General--Post-Audit., Official Opinion No. 75-38, 1975 Pa. AG LEXIS 39; 1975 Op. Atty Gen. Pa. 126.

2. By virtue of Article VIII, @ 10 of the Pennsylvania Constitution, the Insurance Department may not carry out its statutory duty to post-audit the Coal and Clay Mine Subsidence Insurance Fund, since the Insurance Commissioner is a member of the Board administering the fund and is called upon to pre-approve its transactions., Official Opinion No. 75-38, 1975 Pa. AG LEXIS 39; 1975 Op. Atty Gen. Pa. 126.

3. The function of the Insurance Department as auditor not only conflicts with the Insurance Commissioner's primary duty to administer the fund, it is also unnecessary because the same post-audit function is required to be performed annually by the Auditor General., Official Opinion No. 75-38, 1975 Pa. AG LEXIS

39; 1975 Op. Atty Gen. Pa. 126.

LEVEL 1 - 4 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3204 (2006)

@ 3204. The Coal and Clay Mine Subsidence Insurance Fund

The premiums to be paid by owners of structures, as hereinafter described, are hereby constituted a Coal and Clay Mine Subsidence Insurance Fund, for the purpose of insuring from the moneys in the fund such owners against the damages resulting from subsidence, of coal or clay mines. Such fund shall be administered by a board without liability on the part of the State except as hereinafter provided beyond the amount thereof and shall be applied to the payment of such damages.

HISTORY: Act 2002-155 (H.B. 401), @ 1, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 5 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3205 (2006)

@ 3205. The initial source of fund

The expenses of the administration of the fund shall after July 1, 1972, be paid out of the general appropriation of the department.

HISTORY: Act 2002-155 (H.B. 401), @ 1, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 6 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3206 (2006)

@ 3206. State Treasurer custodian of fund

The State Treasurer shall be the custodian of the fund and all disbursements therefrom shall be paid by him by check upon request by the board. It shall not be necessary for the State Treasurer to audit the accounts which the requisition of the board calls upon him to pay, and for making payments without audit, the State Treasurer shall not be under any liability whatsoever. The State Treasurer may deposit any portion of the fund not needed for immediate use as other state funds are lawfully deposited. The interest shall be placed to the credit of the fund.

LEVEL 1 - 7 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3207 (2006)

@ 3207. Schedule of premiums

At any time during each year, the board shall prepare and publish a schedule of premiums or rates of insurance for subscribers, which schedule shall be printed and distributed free of charge to such persons who shall make application therefor, and any such subscriber may, at his option as hereinafter provided, pay to the fund the amount of premium appropriate, and upon payment thereof, shall be insured, as hereinafter provided, for the year for which such premium is paid, and such insurance shall cover all payments becoming due for which said premium is paid. The premium is fixed and shall be adequate to enable payment of all sums which may become due and payable under the provisions of this act, and adequate reserve sufficient to carry all policies and claims to maturity. In fixing the premiums payable by any subscriber, the board may take into account the condition of the premises of such subscriber in respect to the possibility of subsidence as shown by the report of any inspector appointed by the board or by the department, and they may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the premises of such subscribers in respect to the possibility of subsidence may justify, and they may increase the premiums of any subscriber whose loss experience warrants such change. The insurance of any subscriber shall not be effective until he shall have paid in full the premium so fixed and determined.

HISTORY: Act 2002-155 (H.B. 401), @ 1, approved Dec. 9, 2002, eff. in 180 days.



LEVEL 1 - 8 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3208 (2006)

@ 3208. Surplus

The board shall set aside five per centum of all premiums collected for the creation of a surplus until such surplus shall amount to two hundred thousand dollars (\$ 200,000), and thereafter they may set apart such percentage not exceeding five per centum as in their discretion they may determine to be necessary to maintain such surplus sufficiently large to cover the catastrophe hazard of all the subscribers to the fund and to guarantee the solvency of the fund.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3209 (2006)

@ 3209. Investment of surplus

The board may invest any of the surplus or reserve belonging to the fund in such securities and investments as are authorized for investment by savings banks. All such securities or evidences of indebtedness shall be placed in the hands of the State Treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof when due and pay the same into the fund. The State Treasurer shall pay for all such securities or evidences of indebtedness by check issued upon requisition of the board. All such payments shall be made only upon delivery of such securities or evidences of indebtedness to the State Treasurer. To all requisitions calling upon the State Treasurer to pay for any securities or evidences of indebtedness, there shall be attached a certified copy of the resolution of the board authorizing the investment. The board may upon like resolution sell any of such securities.

HISTORY: Act 2002-155 (H.B. 401), @ 1, approved Dec. 9, 2002, eff. in 180 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3210 (2006)

@ 3210. Disbursements from fund

(a) Moneys from the general appropriation of the department are hereby made available for the expense of administering the fund including the purchase through the Department of General Services of surety bonds for such officers or employes of the board as may be required to furnish them supplies, materials, motor vehicles, workmen's insurance covering the officers and employes of the board, and liability insurance covering vehicles operated by the officers and employes of the board.

(b) Moneys from the general appropriation of the department shall also be available for payment, to the Treasury Department, of the cost of making disbursements out of the fund on behalf of the fund at such amounts as the Treasury Department, with the approval of the Executive Board, shall determine.

(c) The board shall keep an accurate account of the money paid in premiums by the subscribers and the disbursements on account of damages to the premises thereof, 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 herein, and after setting aside an adequate reserve, so much of the balance as the board may determine to be safely distributable may either be allocated to the cost of administering the fund or 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 installment 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.

(d) Moneys from the general appropriation to the department shall also be available to pay a one-time commission as determined by the board to insurance

producers who forward applications for mine subsidence insurance to the board

52 P.S. @ 3210

pursuant to section 12 if a policy is issued pursuant to an application submitted by an insurance producer. The amount of the commission shall be determined by the board on an annual basis.

HISTORY: Act 2002-155 (H.B. 401), @ 2, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 11 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3211 (2006)

@ 3211. Deleted. 1972, Nov. 27, P.L. 1243, No. 278, @ 1, imd. effective

## LEVEL 1 - 12 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3212 (2006)

@ 3212. Application for insurance; terms of insurance; penalty for false statement; list of mining areas

(a) Any owner of a structure located within the anthracite or bituminous coal or clay mine region and who desires to become a subscriber to the fund for the purpose of insuring such a structure therein against damages from coal or clay mine subsidences, shall make a complete application as prescribed by the board to the board, its agents or insurance producers. Thereupon, the board shall make such investigation as may be necessary if such application complies with the rules and regulations of the board and within sixty days after the request for an application is received shall issue a certificate showing the acceptance of the application and the amount of premium payable by such applicant for the year for which premium is sought. The amount of insurance coverage shall not exceed the replacement cost of the insured structure or the maximum amount of coverage established by the fund, whichever is less. Policies may be issued for one year, for two years or for three years as the board may establish. Except as provided in subsection (b), no insurance shall become effective until the premiums have been paid. All premiums shall be payable to the State Treasurer whereupon a receipt shall be issued therefor. The receipt for premium together with a certificate of the board shall be evidence that the applicant has become a subscriber to the fund and is insured.

(b) If the board fails to make the necessary investigations or inspection and fails to approve or deny an application for insurance within sixty days of receipt of the written request for an application by the board or any of its agents, in accordance with this section, the insurance requested by the applicant shall be deemed granted. The insurance shall be effective from the date the written request for an application was received by the board or any of its agents, but the coverage will be null and void if the applicant fails to remit the premium payment within twenty days from the day the bill for the premium was postmarked.





(1) The insurance may be subjected to later reductions, and premiums adjusted accordingly, if the board determines that the amount of insurance coverage requested is in excess of the current replacement cost of the structure or the maximum amount of coverage established by the fund, whichever is less.

(2) The insurance shall be void if, upon inspection of the structure, the board determines that either (i) mine subsidence damage occurred prior to the request by the applicant for insurance, or (ii) the applicant by his unreasonable actions or in actions is responsible for the failure of the board to inspect the structure within sixty days of receipt of the written request for an application in accordance with this section.

(c) Whoever shall knowingly furnish or make any false certificate, application or statement herein required shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand five hundred dollars (\$ 1,500) and shall undergo imprisonment not exceeding one year.

(d) In order to assist insurance producers and potential policyholders in identifying structures that could be at risk from mine subsidence damage, the board shall publish and update in the Pennsylvania Bulletin a list of areas in this Commonwealth that are believed to be at risk for mine subsidence damage.

HISTORY: Act 2002-155 (H.B. 401), @ 3, approved Dec. 9, 2002, eff. in 180 days.

## PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3212.1 (2006)

@ 3212.1. Application for an increase in insurance

(a) Additions in the amount of insurance, up to the allowable limits, may be made at any time by the subscriber by submitting a written statement to the board or to any of its agents except during a period when a claim filed by the subscriber is open and pending investigation by the department. Upon receipt of the subscriber's written statement by the board or any of its agents, the board shall have sixty days from the day the request was received to reinspect the structure. If reinspection occurs within the sixty-day period and the structure passes the reinspection, the new amount of insurance shall be effective from the date of premium payment after reinspection. If reinspection does not occur within the sixty-day period, the new amount of insurance shall be effective from the date the subscriber's written request for additional insurance was received by the board or any of its agents, but the additional coverage will be null and void if the applicant fails to remit the premium payment within twenty days from the day the bill for additional premium is postmarked.

(b) The additional insurance may be subjected to later reductions, and premiums adjusted accordingly, if the board determines that the added insurance raises the total amount of insurance in excess of the current replacement cost of the structure or the maximum amount of coverage established by the fund, whichever is less.

(c) The additional insurance shall be void if, upon reinspection of the structure, the board determines that either:

(1) Mine subsidence damage occurred prior to the request of the subscriber for additional insurance.

(2) The subscriber's unreasonable actions or inactions are responsible for the board's failure to reinspect the insured structure within sixty days of

receipt of the written request for an increase in the amount of coverage by

52 P.S. @ 3212.1

the board or any of its agents.

HISTORY: Act 2002-155 (H.B. 401), @ 3, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 14 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3212.2 (2006)

@ 3212.2. Automatic inflation protection increase

The board shall make available to all subscribers an annual inflation protection option on the anniversary date of each policy to uniformly increase subscribers' coverage, and shall allow thirty days for subscribers to elect this option. In any case, the option shall not be made available more than once annually. An inflation protection increase shall not be subject to a reinspection of the structure.

LEVEL 1 - 15 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3212.3 (2006)

@ 3212.3. Insurance for structures under construction

The board shall make available mine subsidence insurance to owners of structures under construction. Such insurance shall have a term of no more than eighteen months, or until the structure is eighty percent complete, whichever is first.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3213 (2006)

@ 3213. Audit by Auditor General

The Auditor General through such agents as he may select shall, at least once each year, make a complete examination and audit of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements, and for these purposes the Auditor General is hereby authorized to employ such consultants, experts, accountants or investigators as he may deem advisable.

The expense incurred in making said examination and audit shall be certified to the fund by the Auditor General and shall be paid from the general appropriation of the department.

The first audit of such fund may, in the discretion of the Auditor General, extend back to the creation of such fund or to any other period in its life.

HISTORY: Act 2002-155 (H.B. 401), @ 4, approved Dec. 9, 2002, eff. in 180 days.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. Coal and Clay Mine Subsidence Insurance Board--Insurance Department--Auditor General--Post-Audit., Official Opinion No. 75-38, 1975 Pa. AG LEXIS 39; 1975 Op. Atty Gen. Pa. 126.

2. By virtue of Article VIII, @ 10 of the Pennsylvania Constitution, the

Insurance Department may not carry out its statutory duty to post-audit the



Coal and Clay Mine Subsidence Insurance Fund, since the Insurance Commissioner is a member of the Board administering the fund and is called upon to pre-approve its transactions., Official Opinion No. 75-38, 1975 Pa. AG LEXIS 39; 1975 Op. Atty Gen. Pa. 126.

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PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3214 (2006)

NOTICE: This section is deleted, effective in 180 days, see Dec. 9, P.L., 1323,  
No. 155, @ 4.

@ 3214. Deleted by 2002, Dec. 9, P.L. 1323, No. 155, @ 4, effective in 180 days

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

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39; 1975 Op. Atty Gen. Pa. 126.

LEVEL 1 - 18 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3215 (2006)

@ 3215. Claims against fund

Any subscriber to the fund must file with the board a true statement of his claim for any subsidence and shall give to the board an opportunity to investigate and to determine whether the board will pay the claim.

HISTORY: Act 2002-155 (H.B. 401), @ 4, approved Dec. 9, 2002, eff. in 180 days.

## PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3216 (2006)

@ 3216. Defenses against claims; suits; procedure; investigations of claims

In every case where a claim is made against the fund, the fund shall be entitled to every defense against such claim under the policy and shall be subrogated to every right of the subscriber arising out of such accidents against any third persons. The fund may, in the name of the fund, sue or be sued to enforce any right given against or to any subscriber or other persons under this act.

LexisNexis (R) Notes:

CASE NOTES

Environmental Law: Litigation & Administrative Proceedings: Jurisdiction & Procedure

1. Environmental Hearing Board (EHBs) had an unambiguous and clear grant of jurisdiction over the homeowners' appeal of the denial of their claims, which involved primarily the issue of subsidence, not merely a contract action; the general language of 52 P.S. @ 3216, which governed policy claims, and the Act's provision that granted jurisdiction to the Board of Claims over contract actions, were general in nature and did not defeat the EHB's jurisdiction. Commonwealth, Dep't of Environmental Resources v. Burr, 125 Pa. Commw. 475, 557 A.2d 462, 1989 Pa. Commw. LEXIS 282 (1989).

LEVEL 1 - 20 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3217 (2006)

@ 3217. Subrogation to rights of claimants

Nothing herein shall relieve any person, partnership, or corporation otherwise liable therefor from any liability for damages sustained; and the fund shall be subrogated to the rights of any property owners' insurance herein.

HISTORY: Act 2002-155 (H.B. 401), @ 4, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 21 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3218 (2006)

@ 3218. Insurance companies may cover this type of risk

Any insurance company may issue policies covering this type of risk subject  
to the prior approval of the insurance commissioner as to policy form and rates.

LEVEL 1 - 22 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*THIS DOCUMENT IS CURRENT THROUGH ACT 189 OF THE REG SESSION AND ACT 1 OF THE  
SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3219 (2006)

@ 3219. Power to make rules and regulations

The board may make such rules and regulations and such other conditions of the policies as it deems just and expedient in keeping with the fulfillment of the purposes herein set out, including reasonable classification of risks eligible for coverage hereunder, limits of coverage, and rules covering the adjustment and settlement of claims.

LEVEL 1 - 23 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3220 (2006)

NOTICE: The text of this section is effective 180 days after Dec. 9, 2002.

@ 3220. Department report

The department shall make an annual report on the program and on experience with mine subsidence insurance sales through producers to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives.

HISTORY: Act 2002-155 (H.B. 401), @ 5, approved Dec. 9, 2002, eff. in 180 days.



LEVEL 1 - 24 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3221 (2006)

@ 3221. Deleted by 1972, Nov. 27, P.L. 1243, No. 278, @ 1, imd. effective

LEVEL 1 - 25 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3222 (2006)

@ 3222. Employes of the Board to Be Part of the Department

All employes of the board shall be employed by and located in the department and shall be subject to the administrative jurisdiction and authority of the secretary.

HISTORY: Act 2002-155 (H.B. 401), @ 6, approved Dec. 9, 2002, eff. in 180 days.

LEVEL 1 - 26 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3223 (2006)

@ 3223. Attorney General to be counsel for board

The Attorney General shall, ex officio, be the general counsel of the board and shall appoint such attorney or attorneys as may be deemed necessary to aid the board in its functioning.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3224 (2006)

@ 3224. Appropriation

The sum of one million dollars (\$ 1,000,000), or so much thereof as may be necessary, is hereby appropriated for the purposes of this act, expenses of organization and administration of the fund as is herein provided.

If, upon completion of the annual examinations and audits required under sections 13 and 14 of this act, commencing with the annual examinations and audits for the calendar year 1971, it shall be determined that the total asset value of the fund is less than one million dollars (\$ 1,000,000), such additional sum as may be necessary to increase the total asset value of the fund to one million dollars (\$ 1,000,000) shall be appropriated to the fund for the purposes of this act for the fiscal year immediately following such examinations and audits.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3224.1 (2006)

@ 3224.1. Appeals

Any party aggrieved by an action of the board shall have the right to appeal to the Environmental Hearing Board.

HISTORY: Act 2002-155 (H.B. 401), @ 6, approved Dec. 9, 2002, eff. in 180 days.

LexisNexis (R) Notes:

CASE NOTES

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue  
Environmental Law: Litigation & Administrative Proceedings: Jurisdiction & Procedure  
Environmental Law: Natural Resources & Public Lands: Mineral Resources & Mining  
Governments: Legislation: Interpretation

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue

1. Environmental Hearing Board's (EHB) denial of appellant Department of Environmental Resources' motion to dismiss appellee homeowner's appeal for lack of jurisdiction was proper because, pursuant to 52 P.S. @ 3224.1, EHB expressly and unambiguously had jurisdiction over the Subsidence Board's actions which board had denied appellees' claims on mine subsidence policies. Commonwealth,

Dep't of Environmental Resources v. Burr, 125 Pa. Commw. 475, 557 A.2d 462,

## 52 P.S. @ 3224.1

1989 Pa. Commw. LEXIS 282 (1989).

Environmental Law: Litigation & Administrative Proceedings: Jurisdiction & Procedure

2. Pursuant to the specific and clear language of 52 P.S. @ 3224.1, the Environmental Hearing Board (EHBs) had jurisdiction over the homeowners' appeal of the denial of their claims, which involved primarily the issue of subsidence, not merely a contract action; the general language of the Act governing policy claims, and the Act's provision which granted jurisdiction to the Board of Claims over contract actions were general in nature and did not defeat the EHB's jurisdiction. Commonwealth, Dep't of Environmental Resources v. Burr, 125 Pa. Commw. 475, 557 A.2d 462, 1989 Pa. Commw. LEXIS 282 (1989).

Environmental Law: Natural Resources & Public Lands: Mineral Resources & Mining

3. Denial of a claim filed by homeowners with the Coal and Clay Subsidence Board claiming damage to their home as a result of mine subsidence should have been appealed to the Environmental Hearing Board under 52 P.S. @ 3224.1 and not to the Board of Claims. Phillips v. Commonwealth, Dep't of Environmental Resources, 133 Pa. Commw. 598, 577 A.2d 935, 1990 Pa. Commw. LEXIS 354 (1990), appeal denied by 527 Pa. 657, 593 A.2d 427 (1991).

Governments: Legislation: Interpretation

4. Environmental Hearing Board's (EHB) denial of appellant Department of Environmental Resources' motion to dismiss appellee homeowner's appeal for lack of jurisdiction was proper because, pursuant to 52 P.S. @ 3224.1, EHB expressly and unambiguously had jurisdiction over the Subsidence Board's actions which board had denied appellees' claims on mine subsidence policies. Commonwealth, Dep't of Environmental Resources v. Burr, 125 Pa. Commw. 475, 557 A.2d 462, 1989 Pa. Commw. LEXIS 282 (1989).

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3225 (2006)

@ 3225. Constitutionality and severability

The provisions of this act are severable and if any provision, sentence, clause, section, or part thereof, shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the act or their application to him, or to other persons and circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the act or any part thereof is inapplicable had not specifically been exempted therefrom.



LEVEL 1 - 30 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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SP. LEGISLATIVE SESSION\*

\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
CREATION OF FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3226 (2006)

@ 3226. Effective date

This act shall take effect July 1, 1962.

LEVEL 1 - 31 OF 31 SECTIONS

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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\*\*\* APRIL 5, 2007 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 52. MINES AND MINING  
CHAPTER 14. SUBSIDENCE INSURANCE FUND  
EMERGENCY FUNDS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

52 P.S. @ 3241 (2006)

@ 3241. Repealed.