

# HOUSE . . . . No. 2753

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 17, 1941.

The committee on State Administration to whom were referred the petition (accompanied by bill, House, No. 568) of Franklin L. Greene for legislation to provide additional methods of guaranteeing compensation under the Workmen's Compensation Act, the petition (accompanied by bill, House, No. 2036) of Thomas F. Coyne that workmen's compensation insurance be made compulsory upon employers instead of elective, the petition (accompanied by bill, House, No. 2037) of Thomas F. Coyne that employers be required to provide workmen's compensation protection for employees engaged in hazardous employments, and the petition (accompanied by bill, House, No. 2038) of the Massachusetts Industrial Council, Inc., relative to compensating for personal injuries in industry and providing for a system of self insurance, report the accompanying bill (House, No. 2753).

For the committee,

PHILIP BARNET.

Senator NOLEN, and Representatives RUBIN of Fall River and LUNNEY of Holyoke, dissenting.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-One.

AN ACT RELATIVE TO COMPENSATING FOR PERSONAL INJURIES IN INDUSTRY AND PROVIDING FOR A SYSTEM OF SELF INSURANCE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section one of chapter one hundred  
2 and fifty-two of the General Laws, as most recently  
3 amended by chapter four hundred and thirty-seven  
4 of the acts of nineteen hundred and forty-one, is  
5 hereby further amended by striking out paragraph  
6 (1), as amended by section one of chapter three  
7 hundred and thirty-two of the acts of nineteen hun-  
8 dred and thirty-five, and inserting in place thereof  
9 the following:—

10 (1) “Average weekly wages”, the earnings of the  
11 injured employee during the period of twelve calen-  
12 dar months immediately preceding the date of injury,  
13 divided by fifty-two; but if the injured employee lost  
14 more than two weeks’ time during such period, the  
15 earnings for the remainder of such twelve calendar  
16 months shall be divided by the number of weeks re-  
17 maining after the time so lost has been deducted.  
18 Where, by reason of the shortness of the time during  
19 which the employee has been in the employment of  
20 his employer or the nature or terms of the employ-

21 ment, it is impracticable to compute the average  
22 weekly wages, as above defined, regard may be had  
23 to the average weekly amount which, during the  
24 twelve months previous to the injury, was being  
25 earned by a person in the same grade employed at  
26 the same work by the same employer, or, if there is  
27 no person so employed, by a person in the same  
28 grade employed in the same class of employment  
29 and in the same district. In case the injured em-  
30 ployee is employed in the concurrent service of more  
31 than one employer his total earnings from the sev-  
32 eral employers shall be considered in determining  
33 his average weekly wages. Weeks in which the em-  
34 ployee received less than five dollars in wages shall  
35 be considered time lost and shall be excluded in de-  
36 termining the average weekly wages; provided,  
37 however, that this exclusion shall not apply to em-  
38 ployees whose normal working hours in the service  
39 of the employer are less than fifteen hours each  
40 week.

1 SECTION 2. Said section one of said chapter one  
2 hundred and fifty-two, as so most recently amended,  
3 is hereby further amended by striking out para-  
4 graph (4), as amended by chapter four hundred and  
5 six of the acts of nineteen hundred and thirty-five,  
6 and inserting in place thereof the following:—

7 (4) "Employee", every person in the service of  
8 another under any contract of hire, express or implied,  
9 oral or written, excepting masters of and seamen on  
10 vessels engaged in interstate or foreign commerce,  
11 persons employed by an express company, sleeping  
12 car company or carrier by railroad, subject to Part I  
13 of the interstate commerce act, persons employed as

14 domestic servants and farm laborers, persons whose  
15 employment is not in the usual course of the trade,  
16 business, profession or occupation of his employer,  
17 members of an employer's family dwelling in his  
18 household, persons employed by religious, charitable  
19 or educational institutions, clerical and office workers  
20 other than those whose employer has other employees  
21 for whom he is required to provide compensation,  
22 and employees who have not waived their right of  
23 action at common law or under the law of any other  
24 jurisdiction in respect to an injury therein occurring,  
25 as provided in section twenty-four; but not except-  
26 ing a person conclusively presumed to be an em-  
27 ployee under section twenty-six of this chapter. Any  
28 reference to an employee who has been injured shall,  
29 when the employee is dead, also include his legal  
30 representatives, dependents and other persons to  
31 whom compensation may be payable.

1 SECTION 3. Said section one of said chapter one  
2 hundred and fifty-two, as so most recently amended,  
3 is hereby further amended by adding at the end the  
4 following new paragraph:—

5 (9) "Self insurer" means an employer who has  
6 conformed to the provisions of subdivisions (a), (b)  
7 or (c) of paragraph (2) of section twenty-five A.  
8 Whenever the provisions of this chapter, other than  
9 sections one, fifty-two to sixty-four, inclusive, sixty-  
10 five A to sixty-five M, inclusive, and seventy refer or  
11 apply to "insurer" or "insurance company", it shall  
12 be understood that such provisions also refer or  
13 apply to "self insurer".

1 SECTION 4. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out section

3 twenty-one, as appearing in the Tercentenary Edi-  
4 tion, and inserting in place thereof the following: —

5 *Section 21.* Every employer who has provided for  
6 the payment to his employees of the compensation  
7 provided for by this chapter, shall post in such form  
8 and in such places as the department may prescribe,  
9 one or more notices stating that he has provided for  
10 the payment to his employees of the compensation  
11 provided for by this chapter.

1 SECTION 5. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out sec-  
3 tion twenty-three, as so appearing, and inserting in  
4 place thereof the following: —

5 *Section 23.* If an employee files any claim for, or  
6 accepts payment of compensation on account of  
7 personal injury under this chapter, or makes any  
8 agreement, or submits to a hearing before a member  
9 of the department under section eight, such action  
10 shall constitute a release to the insured or self insurer  
11 of all claims or demands at law, if any, arising from  
12 the injury.

1 SECTION 6. Section twenty-four of said chapter  
2 one hundred and fifty-two, as so appearing, is hereby  
3 further amended by striking out, in the first line,  
4 the words “of an insured person”, — by inserting  
5 after the word “person” in the seventh line the  
6 words: — or self insurer, — and by striking out, in  
7 the eighth line, the words “notice of such insurance”  
8 and inserting in place thereof the words: — the time  
9 said employer became an insured person or a self  
10 insurer, — so as to read as follows: — *Section 24.*  
11 An employee shall be held to have waived his right  
12 of action at common law or under the law of any

13 other jurisdiction in respect to an injury therein  
14 occurring, to recover damages for personal injuries  
15 if he shall not have given his employer, at the time  
16 of his contract of hire, written notice that he claimed  
17 such right, or, if the contract of hire was made be-  
18 fore the employer became an insured person or self  
19 insurer, if the employee shall not have given the said  
20 notice within thirty days of the time said employer  
21 became an insured person or a self insurer. An em-  
22 ployee who has given notice to his employer that he  
23 claimed his right of action as aforesaid may waive  
24 such claim by a written notice, which shall take  
25 effect five days after it is delivered to the employer  
26 or his agent. The notices required by this section  
27 shall be given in such manner as the department  
28 may approve.

1 SECTION 7. Said chapter one hundred and fifty-  
2 two is hereby further amended by inserting after  
3 section twenty-five, as so appearing, under the cap-  
4 tion COMPULSORY COMPENSATION AND SELF INSUR-  
5 ANCE, the following three new sections:—

6 *Section 25A.* Every employer shall provide for  
7 the payment to his employees of the compensation  
8 provided for by this chapter in the following manner:

9 (1) By insurance with an insurer, or

10 (2) By qualifying as a self insurer by one of the  
11 three following methods:

12 (a) By keeping on deposit with the state treasurer  
13 in trust for the benefit and security of employees  
14 such amount of securities, not less in value than ten  
15 thousand dollars, nor more in value than fifty thou-  
16 sand dollars, as may be required by the industrial  
17 accident board, said securities to be in the form of  
18 cash, bonds, stocks or other evidences of indebted-

19 ness as the industrial accident board may require,  
20 and to be used, liquidated, and disbursed only upon  
21 the order of the industrial accident board or of a  
22 court of competent jurisdiction. The industrial ac-  
23 cident board may, in its discretion, require an in-  
24 crease or permit a reduction of said deposit, pro-  
25 vided the value in no case shall be less than ten  
26 thousand dollars, and the industrial accident board  
27 may permit a substitution of securities in place of  
28 those deposited. Interest, dividends and other in-  
29 come from said deposit shall be payable to the  
30 employer who deposited them, unless and until the  
31 state treasurer shall direct otherwise. The deposit  
32 may be returned to the employer if the employer  
33 shall insure with an insurer under paragraph (1) of  
34 this section, or qualify as a self insurer under some  
35 other provision of this section, or if he shall cease to  
36 transact business in the commonwealth; provided,  
37 that in any case he satisfies the industrial accident  
38 board that he is not under any obligation to pay  
39 compensation under this chapter, or he files with  
40 said board a single premium non-cancellable bond,  
41 approved by said board, securing him against any  
42 liability that may have arisen under this chapter.

43 (b) By furnishing to the state treasurer a bond  
44 with a corporate surety company authorized to do  
45 business in this commonwealth, and in such an  
46 amount and in such form as the industrial accident  
47 board shall prescribe, with the condition that the  
48 employer will satisfy all obligations to pay compen-  
49 sation under this chapter. The industrial accident  
50 board may in its discretion at any time require an  
51 additional bond or permit a decrease in the amount  
52 of said bond.

53 (c) By furnishing an indemnifying contract, in a

54 form approved by the industrial accident board,  
55 of a company authorized to write workmen's com-  
56 pensation insurance in this commonwealth whereby  
57 the company agrees that upon the failure of the  
58 self-insurer to pay an injured employee or his de-  
59 pendants the benefits due under this chapter, the  
60 company will be liable to the injured employee or  
61 his dependents in the place of the self-insurer for the  
62 full amount of the benefits due under this chapter.

63 Such expenses as shall be determined by the in-  
64 dustrial accident board as necessary to carry out the  
65 provisions of this chapter relating to self-insurance  
66 shall be assessed against all self-insurers, including  
67 for this purpose employers who have ceased to exer-  
68 cise the privilege of self-insurance but whose se-  
69 curities are retained on deposit in accordance with  
70 the rules of the industrial accident board. The  
71 basis of assessment shall be the proportion of such  
72 expense that the total securities of each depositor  
73 at the close of each fiscal year bore to the total  
74 deposits of all self-insurers. All such assessments  
75 when collected shall be paid into the state treasury.

76 *Section 25B.* The preceding section shall not  
77 apply to the commonwealth or the various counties,  
78 cities, towns and districts provided for in sections  
79 sixty-nine through seventy-five, inclusive. Any  
80 employer may bring an employee or employees  
81 for whom he is not required by this chapter to pro-  
82 vide for the payment of compensation within the  
83 coverage of this chapter by providing for the pay-  
84 ment of compensation to such employee or employees  
85 as provided by this chapter.

86 *Section 25C.* If an employer who is required to  
87 provide for the payment to his employees of the

88 compensation provided for by this chapter, fails  
89 to do so, shall be punished by a fine of not more  
90 than five hundred dollars or by imprisonment for  
91 not more than one year, or both. If such employer  
92 is a corporation, the president, treasurer, secretary  
93 or clerk shall be liable to such penalty.

1 SECTION 8. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out sec-  
3 tion twenty-six, as amended by section one of chap-  
4 ter three hundred and seventy of the acts of nineteen  
5 hundred and thirty-seven, and inserting in place  
6 thereof the following:—

7 *Section 26.* If an employee who has not given  
8 notice of his claim of common law rights of action,  
9 under section twenty-four, or who has given such  
10 notice and has waived the same, receives a personal  
11 injury arising out of and in the course of his em-  
12 ployment, or arising out of an ordinary risk of the  
13 street while actually engaged, with his employer's  
14 authorization, in the business affairs or undertakings  
15 of his employer, and whether within or without the  
16 commonwealth, he shall be paid compensation by the  
17 insurer, as hereinafter provided; provided, that as  
18 to an injury occurring without the commonwealth  
19 he has not given notice of his claim of rights of action  
20 under the laws of the jurisdiction wherein such in-  
21 jury occurs or has given such notice and has waived  
22 it. For the purposes of this section, any person while  
23 operating or using a motor or other vehicle, whether  
24 or not belonging to his employer, with his employer's  
25 general authorization or approval, in the performance  
26 of work in connection with the business affairs or  
27 undertakings of his employer, and whether within

28 or without the commonwealth, and any person who,  
29 while engaged in the usual course of his trade, busi-  
30 ness, profession or occupation, is ordered by an  
31 employer, or by a person exercising superintendence  
32 on behalf of such employer, to perform work which  
33 is not in the usual course of such work, trade, busi-  
34 ness, profession or occupation, and while so perform-  
35 ing such work, received a personal injury, shall be  
36 conclusively presumed to be an employee, and if an  
37 employee while acting in the course of his employ-  
38 ment receives injury resulting from frost bite or sun  
39 stroke, without having voluntarily assumed increased  
40 peril not contemplated by his contract of employ-  
41 ment, or is injured by reason of the physical activi-  
42 ties of fellow employees in which he does not par-  
43 ticipate, whether or not such activities are associated  
44 with the employment, such injury shall be conclu-  
45 sively presumed to have arisen out of the employ-  
46 ment.

1 SECTION 9. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out sec-  
3 tion twenty-eight, as amended by section two of  
4 chapter two hundred and ninety-two of the acts of  
5 nineteen hundred and thirty-four, and inserting in  
6 place thereof the following:—

7 *Section 28.* If the employee is injured by reason  
8 of the serious and wilful misconduct of an em-  
9 ployer or of any person regularly intrusted with  
10 and exercising the powers of superintendence, the  
11 amounts of compensation hereinafter provided shall  
12 be doubled. In case the employer is insured, he  
13 shall repay to the insurer the extra compensation  
14 paid to the employee. If a claim is made under  
15 this section, and the employer is insured, the em-

16 ployer may appear and defend against such claim  
17 only. The employment of any minor, known to be  
18 such, in violation of any provision of sections sixty to  
19 seventy-four, inclusive, or of section one hundred  
20 and four of chapter one hundred and forty-nine shall  
21 constitute serious and wilful misconduct under this  
22 section.

1 SECTION 10. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out sec-  
3 tion sixty-seven, as appearing in the Tercentenary  
4 Edition, and inserting in place thereof the fol-  
5 lowing:—

6 *Section 67.* The preceding section shall not apply  
7 to actions for such injuries received by employees of  
8 an insured person or self insurer.

1 SECTION 11. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out sec-  
3 tion sixty-eight, as so appearing, and inserting in  
4 place thereof the following:—

5 *Section 68.* Chapter one hundred and fifty-three  
6 and sections four and seven to ten, inclusive, of  
7 chapter two hundred and twenty-nine shall not  
8 apply to employees of an insured person or a self  
9 insurer, nor to laborers, workmen or mechanics em-  
10 ployed by any county, city, town or district subject  
11 to sections sixty-nine to seventy-five, inclusive, while  
12 this chapter is in effect.

1 SECTION 12. Said chapter one hundred and fifty-  
2 two is hereby further amended by striking out sec-  
3 tion seventy-six, added by section one of chapter  
4 four hundred and sixty-five of the acts of nineteen  
5 hundred and thirty-nine, and inserting in place  
6 thereof the following:—

7    *Section 76.* The right to and liability for and the  
8 amounts of compensation payable for personal in-  
9 juries arising out of and in the course of employment  
10 in the granite industries and resulting from silicosis  
11 or other occupational pulmonary dust disease shall  
12 be subject to and governed by sections seventy-  
13 seven to eighty-four, inclusive, anything in this  
14 chapter to the contrary notwithstanding. An em-  
15 ployer, the compensation for whose employees is  
16 subject to and governed by said sections seventy-  
17 seven to eighty-four, inclusive, may, in lieu of be-  
18 coming an insured person, become a self-insurer;  
19 and said sections seventy-seven to eighty-four, in-  
20 clusive, shall apply to an employer who is a self-  
21 insurer as well as to an employer who is an insured  
22 person.

1    SECTION 13. Sections eighteen, nineteen A, twen-  
2 ty-two and eighty-five of said chapter one hundred  
3 and fifty-two, as amended, and chapter four hun-  
4 dred and twenty-six of the acts of nineteen hundred  
5 and thirty-six, are hereby repealed.

1    SECTION 14. The provisions of this act shall  
2 cease to be of force and effect if and when an act  
3 providing for a state fund for workmen's compen-  
4 sation shall take effect.