

# HOUSE . . . . . No. 3609

By Mr. Nordberg of Reading, petition of Nils. L. Nordberg relative to increasing certain payments under the workmen's compensation law. Commerce and Labor.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Three.

### AN ACT INCREASING CERTAIN PAYMENTS UNDER THE WORKMEN'S COMPENSATION LAW.

*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 1 of chapter 152 of the General Laws,  
2 as most recently amended by chapter 374 of the acts of 1972, is  
3 hereby further amended by adding at the end thereof the follow-  
4 ing two paragraphs: —

5 (9) "average spendable weekly income", the average weekly  
6 wages of the injured employee less the amounts properly with-  
7 held for federal and Massachusetts income taxes, based upon the  
8 withholding tables prepared, respectively, by the Internal  
9 Revenue Service of the U.S. Department of the Treasury and the  
10 Massachusetts Department of Corporations and Taxation and  
11 utilizing the exact number of dependents which the employee  
12 has in fact, and less the amounts withheld for social security  
13 (FICA) taxes based on the employee's wages during the twelve  
14 calendar months immediately preceding the date of injury, pro-  
15 rated on a weekly basis.

16 (10) "statewide average weekly wage", the average weekly  
17 wage of all employees covered by chapter one hundred and fifty-  
18 one A of the General Laws as determined according to the pro-  
19 visions of paragraph two of subsection (a) of section twenty-nine  
20 of said chapter one hundred and fifty-one A.

1 SECTION 2. Section 31 of said chapter 152, as most re-  
2 cently amended by chapter 860 of the acts of 1970, is hereby  
3 amended by striking out said section 31 and inserting in place  
4 thereof the following: -

5 *Section 31.* To the widow or widower, so long as she or he  
6 remains unmarried, for the use of the widow or widower and for  
7 the benefit of all dependent children of the employee, a weekly  
8 compensation equal to eighty percent of the employee's average  
9 spendable weekly income, but not more than two-thirds of the  
10 statewide average weekly wage nor, prior to October 1, 1974,  
11 more than \$10 in excess of the compensation (including depen-  
12 dency allowances) he or she would have been entitled to receive  
13 under the provisions of this section in effect immediately prior to  
14 October 1, 1973.

15 Such payments shall after September 30, 1974 be reduced by  
16 the weekly prorated amount of any monthly payments received  
17 by the family of the employee from social security. For the  
18 purpose of this computation, social security payments shall be  
19 prorated on a weekly basis by dividing the gross monthly social  
20 security benefit by 4.3, disregarding any fractional part of a  
21 dollar.

22 In case any dependent child of the employee is a child by a  
23 former wife or husband, the death benefit shall be divided be-  
24 tween the surviving wife or husband and all living children of the  
25 deceased employee in equal shares, the surviving wife or husband,  
26 taking the same share as a child. If the widow or widower dies,  
27 such amount or amounts as would have been payable to or for  
28 her or his own use and for the benefit of all dependent children  
29 of the employee shall be paid in equal shares to all the surviving  
30 dependent children of the employee. If the widow or widower  
31 remarries, all payments under the foregoing provisions shall term-  
32 inate and the insurer shall pay each week to each of such children  
33 of the employee fifteen dollars a week. If there is no surviving  
34 wife or husband of the deceased employee, such amount or  
35 amounts as would have been payable under this section to or for  
36 the use of a widow or widower and for the benefit of all such  
37 children of the employee, shall be paid in equal shares to all such  
38 surviving children of the employee, but no individual shall receive  
39 an amount in excess of forty-one dollars a week. The total  
40 amount of payments and the period of payments in all cases

41 under this section shall not be more than sixteen thousand  
42 dollars nor continue for more than four hundred weeks, except  
43 that payment to or for the benefit of children of the deceased  
44 employee under the age of eighteen shall not be discontinued  
45 prior to the age of eighteen, and except that after a dependent  
46 unremarried widow or physically or mentally incapacitated child  
47 over the age of eighteen has received the maximum payments, he  
48 or she shall continue to receive further payments, but only  
49 during such periods as he or she is in fact not fully self-  
50 supporting. Either party may request hearings at reasonable inter-  
51 vals before a board member on the question of granting such  
52 payments, or on the question of discontinuance of such pay-  
53 ments. A member of the board may set a case for hearing on his  
54 own initiative, after due notice to both parties.

55 In all other cases of total dependency, the insurer shall pay the  
56 dependents of the employee wholly dependent upon his earnings  
57 for support at the time of the injury, or at the time of his death,  
58 a weekly payment equal to two-thirds of his average weekly  
59 wages, but not more than twenty dollars nor less than twelve  
60 dollars a week, for a period of five hundred weeks; but in no case  
61 shall the amount be more than eighty-five hundred dollars. If the  
62 employee leaves dependents only partially dependent upon his  
63 earnings for support at the time of his injury, or at the time of  
64 his death, the insurer shall pay such dependents a weekly com-  
65 pensation equal to the same proportion of the weekly payments  
66 for the benefit of persons wholly dependent as the amount con-  
67 tributed by the employee to such partial dependents bears to the  
68 annual earnings of the deceased at the time of his injury. In the  
69 event of the parties agreeing or the division finding that a partial  
70 dependent is the next of kin of the deceased employee and has,  
71 during the year preceding the injury, received from such deceased  
72 employee contributions for his support independent of gifts and  
73 gratuities, such partial dependent shall be paid by the insurer a  
74 minimum weekly compensation of twelve dollars. When weekly  
75 payments have been made to an injured employee before his  
76 death, compensation under this paragraph to dependents shall  
77 begin from the date of death of the employee but shall not  
78 continue for more than five hundred weeks; but in no case of  
79 partial dependency shall the amount be more than eighty-five  
80 hundred dollars.

1 SECTION 3. Section 34 of said chapter 152, as most re-  
2 cently amended by chapter 879 of the acts of 1971, is hereby  
3 amended by striking out said section 34 and inserting in place  
4 thereof the following: -

5 *Section 34.* While the incapacity for work resulting from the  
6 injury is total, the insurer shall pay the injured employee a  
7 weekly compensation equal to eighty percent of his average  
8 spendable weekly income, but not more than two-thirds of the  
9 statewide average weekly wage nor, prior to October 1, 1974,  
10 more than \$10 in excess of the compensation he would have  
11 been entitled to receive under the provisions of this section in  
12 effect immediately prior to October 1, 1973, unless the weekly  
13 wages of the injured employee are less than twenty dollars, in  
14 which case said weekly compensation shall be equal to his aver-  
15 age weekly wages, but not less than ten dollars where the number  
16 of normal working hours of the injured employee in a week are  
17 fifteen or more; provided that the amount does not exceed  
18 twenty thousand dollars except that if the injured employee has  
19 received compensation for the same injury under section thirty-  
20 five the combined amount of compensation payable under this  
21 section and section thirty-five shall not exceed the maximum  
22 amount as set forth in section thirty-five.

1 SECTION 4. Section 34A of said chapter 152, as most re-  
2 cently amended by chapter 879 of the acts of 1971, is hereby  
3 amended by striking out said section 34A and inserting in place  
4 thereof the following: -

5 *Section 34A.* While the incapacity for work resulting from  
6 the injury is both permanent and total, the insurer shall pay to  
7 the injured employee, following payment of the maximum  
8 amount of compensation provided in sections thirty-four and  
9 thirty-five, or either of them a weekly compensation equal to  
10 eighty percent of his average spendable weekly income, but not  
11 more than two-thirds of the statewide average weekly wage nor,  
12 prior to October 1, 1974, more than \$10 in excess of the com-  
13 pensation he would have been entitled to receive under the pro-  
14 visions of this section in effect immediately prior to October 1,  
15 1973. During the continuance of such permanent and total in-  
16 capacity such compensation shall not be less than twenty dollars  
17 a week. Application for payments under this section may be

18 made by an injured employee before he has received the maxi-  
19 mum compensation to which he is or may be entitled under the  
20 aforesaid sections.

21 In any proceeding brought by the insurer to discontinue com-  
22 pensation under this section, a member or the reviewing board  
23 may, after hearing, order the insurer to continue payments to the  
24 injured employee hereunder. The reasonable costs of such pro-  
25 ceeding, including therein reasonable counsel fees and witness  
26 fees of physicians appearing at such proceeding, shall be deter-  
27 mined by the board and shall be paid by the insurer.

1 SECTION 5. Section 35 of said chapter 152, as most recently  
2 amended by chapter 879 of the acts of 1971, is hereby amended  
3 by striking out said section 35 and inserting in place thereof the  
4 following: —

5 *Section 35.* While the incapacity for work resulting from the  
6 injury is partial, the insurer shall pay the injured employee a  
7 weekly compensation equal to the entire difference between his  
8 average weekly wage before the injury and the average weekly  
9 wage he is able to earn thereafter, but not more than eighty  
10 percent of his average spendable weekly income nor more than  
11 two-thirds of the statewide average weekly wage nor, prior to  
12 October 1, 1974, more than \$10 in excess of the compensation  
13 he would have been entitled to receive under the provisions of  
14 this section in effect immediately prior to October 1, 1973; and  
15 the amount of such compensation shall not be more than twenty  
16 thousand dollars, nor shall the combined amount of compen-  
17 sation payable under this section and section thirty-four be more  
18 than twenty thousand dollars.

1 SECTION 6. Section thirty-five A of said chapter one hun-  
2 dred and fifty-two, as most recently amended by chapter five  
3 hundred and sixty-six of the acts of nineteen hundred and fifty-  
4 nine, is hereby repealed.

1 SECTION 7. Sections one through six of this act shall take  
2 effect on October the first, nineteen hundred and seventy-three  
3 and shall apply only to injuries occurring on or after said date.



HOUSE . . . . . No. 3010

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In the case of New York, the ...

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The ...

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An Act to ...

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Chapter 100 of the ...

Section 100 of the ...

The ...

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