

SENATE . . . . . No. 390

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**The Commonwealth of Massachusetts.**

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SENATE, May 21, 1918.

The committee on Ways and Means, to whom was committed the Senate Bill to provide additional methods of guaranteeing compensation under the workmen's compensation act (Senate, No. 371), report recommending that the same ought to pass, in a new draft herewith submitted.

For the committee,

GEORGE B. CHURCHILL.

## The Commonwealth of Massachusetts.

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In the Year One Thousand Nine Hundred and Eighteen.

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### AN ACT

To provide Additional Methods of guaranteeing Compensation under the Workmen's Compensation Act.

*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 two of Part V of chapter  
2 seven hundred and fifty-one of the acts of nine-  
3 teen hundred and eleven, as amended by chapter  
4 five hundred and sixty-eight of the acts of  
5 nineteen hundred and thirteen and by chapter  
6 seven hundred and eight of the acts of nineteen  
7 hundred and fourteen, is hereby further amended  
8 by striking out the last paragraph and sub-  
9 stituting the following:—“Subscriber” shall  
10 mean an employer who holds a policy issued by  
11 the association or by a liability insurance com-  
12 pany authorized to issue policies of workmen's  
13 compensation insurance within this common-  
14 wealth, conditioned to pay the compensation  
15 and other benefits provided by Part II of this  
16 act, or an employer who holds a certificate as  
17 provided by Part VI, section two of this act.

1 SECTION 2. Said chapter seven hundred and  
2 fifty-one of the acts of nineteen hundred and  
3 eleven and the several acts in amendment  
4 thereof and in addition thereto, is hereby  
5 amended by adding at the end thereof the  
6 following:—

7 PART VI

8 *Section 1.* Every employer who shall elect to  
9 become a subscriber under this act shall either  
10 insure and keep insured his liability hereunder  
11 as hereinbefore provided or shall furnish to the  
12 insurance commissioner satisfactory proof of his  
13 ability having due regard to the hazard and  
14 extent of his business to pay the compensation  
15 hereunder in the amount and manner and when  
16 due as provided in this act.

17 In the latter case the employer shall file with  
18 said commissioner a statement in such form as  
19 the said commissioner shall prescribe, showing  
20 the number of his employees, the number of  
21 accidents in a given time, and such other facts  
22 as said commissioner shall require and shall file  
23 with the treasurer and receiver general a bond,  
24 running to the commonwealth for such amount  
25 and in such form as may be approved by the in-  
26 surance commissioner, conditioned upon the pay-  
27 ment to the treasurer and receiver general of the  
28 whole or such portions of the penal sum as the in-  
29 surance commissioner may from time to time  
30 direct, but in no case shall the penal sum of such  
31 bond be less than fifty thousand dollars. The  
32 bond above required shall have as surety some

33 corporation or association approved by the in-  
34 surance commissioner and engaged in the busi-  
35 ness of issuing bonds, or some corporation or  
36 association authorized to write policies of work-  
37 men's compensation insurance in this common-  
38 wealth. Any such corporation or association is  
39 hereby authorized to issue such bond.

40 In lieu of such bond or in conjunction there-  
41 with, the employer may make a deposit with  
42 the treasurer and receiver general of securities  
43 satisfactory to the treasurer and receiver general  
44 in such amounts as the insurance commissioner  
45 shall specify, to be held under a trust agreement,  
46 in form satisfactory to the insurance commis-  
47 sioner, that, in event of the failure of the sub-  
48 scriber to perform the obligations assumed by  
49 him hereunder, the whole or such parts of said  
50 securities as the insurance commissioner may  
51 direct, may from time to time be sold by the  
52 treasurer and receiver general to meet such  
53 obligations. The insurance commissioner may  
54 also require the payment of the whole or portion  
55 of the penal sum of such bond or the sale of the  
56 whole or portion of such securities in case the  
57 employer fails to provide the benefits required  
58 by this act. The amounts received by the  
59 treasurer and receiver general by virtue of said  
60 bond, less expenses of collection, if any, and the  
61 proceeds of the sale of said securities, less the  
62 expenses of liquidation, if any, shall be adminis-  
63 tered by a trustee to be appointed by the  
64 industrial accident board, for the purpose of

65 discharging the obligations of such employer  
66 under this act. Such trustee shall give bond  
67 in an amount and with surety or sureties satis-  
68 factory to the industrial accident board con-  
69 ditioned upon the faithful performance of his  
70 duties. With the approval of the treasurer and  
71 receiver general other securities may from time  
72 to time be substituted for those so deposited. If  
73 the market value of the deposit is at any time  
74 less than the amount specified by the insurance  
75 commissioner to be kept on deposit by the  
76 employer, the treasurer and receiver general  
77 shall notify the employer to make good the  
78 deficiency. If the employer fails so to do  
79 within ten days of such notice his delinquency  
80 shall be reported to the insurance commissioner  
81 by the treasurer and receiver general and the  
82 insurance commissioner shall revoke the em-  
83 ployer's certificate provided for by this act.  
84 Such employer shall also insure his liability on  
85 account of his catastrophe risk, so called, in  
86 such amount as the insurance commissioner  
87 may specify, in any corporation, association  
88 or organization authorized to issue policies of  
89 workmen's compensation insurance in this com-  
90 monwealth: *provided, however,* that such protec-  
91 tion may be afforded by a company not author-  
92 ized to issue policies of workmen's compensation  
93 insurance in Massachusetts in cases where in-  
94 surance in authorized companies cannot be  
95 secured for any reason satisfactory to the in-  
96 surance commissioner, but any such arrangement

97 for insurance must first be approved in writing  
98 by the insurance commissioner.

99 *Section 2.* Whenever an employer has in the  
100 judgment of the insurance commissioner com-  
101 plied with the provisions of section one of this  
102 part relating to self-insurance, so called, the  
103 insurance commissioner shall issue to such  
104 employer a certificate thereof which shall remain  
105 in force for such term, not exceeding five years,  
106 as the insurance commissioner shall prescribe,  
107 unless sooner surrendered or revoked as herein  
108 provided.

109 The insurance commissioner shall forthwith  
110 notify the industrial accident board of the  
111 issuance, surrender or revocation of such cer-  
112 tificate.

113 The employer holding such certificate shall  
114 upon its issuance give notice in writing or print  
115 to all persons under contract of hire with him  
116 and shall give such notice to every person with  
117 whom he is about to enter into a contract of  
118 hire that he holds the certificate under this  
119 section and that payments to injured employees  
120 will be made under the provisions of the work-  
121 men's compensation act. If an employer ceases  
122 to hold such certificate, he shall, on or before  
123 the day when he ceases to hold it, give notice  
124 thereof in writing or print to all persons under  
125 contract with him.

126 He shall file a copy of the notice with the  
127 industrial accident board.

128 *Section 3.* An employer holding the certifi-

129 cate provided for in the preceding section shall  
130 be a subscriber within the meaning of this act  
131 and shall also be liable to pay the compensation  
132 provided for by Part II of this act and be  
133 subject to the provisions of Parts I, II, III and  
134 V of this act to the same extent as the association  
135 for injuries occurring during the period that such  
136 certificate is in effect.

137 *Section 4.* The insurance commissioner shall  
138 make such examinations from time to time and  
139 call for such reports as he shall deem necessary  
140 and may from time to time require the em-  
141 ployer to furnish additional security either by  
142 bond or the deposit of securities as defined in  
143 section one, or may permit the substitution of  
144 bond or securities in a lesser amount as he shall  
145 think the circumstances warrant. When the  
146 obligations of such employer shall have been paid  
147 in full, and there is no possibility of further  
148 claims arising under this act to which the bond  
149 or securities can be applied, the treasurer and  
150 receiver general shall, subject to the approval  
151 of the insurance commissioner, release said  
152 bond to the company furnishing it, or return  
153 said securities to the employer, or his legal  
154 representatives, as the case may be.

155 *Section 5.* A certificate issued hereunder may  
156 be surrendered upon giving notice to the insur-  
157 ance commissioner of the date when such sur-  
158 render is to take effect.

159 The insurance commissioner may after a  
160 hearing, of which the employer shall have not

161 less than ten days' notice, for cause revoke the  
162 certificate, such revocation to become effective  
163 at a date fixed by said commissioner but not less  
164 than five days after notice to the employer of  
165 such revocation, except that if a petition in  
166 bankruptcy has been filed by or against a  
167 subscriber hereunder the said commissioner may  
168 forthwith revoke said certificate.

169 Upon the expiration, surrender or revocation of  
170 such certificate the employer shall cease to be a  
171 subscriber within the meaning of the act.

172 *Section 6.* The industrial accident board  
173 shall submit a written statement of its findings  
174 to the insurance commissioner in case of inten-  
175 tional failure by any subscriber holding a  
176 certificate as provided by section two of this  
177 part, to make a payment provided by an order,  
178 agreement, award or decree under Part III of  
179 this act from which no claim of review or appeal  
180 is pending, or in case of any conduct found by  
181 the board to be oppressive toward an employee  
182 in connection with the carrying out of the pro-  
183 visions of this act, or any failure to perform in  
184 good faith the obligations assumed by the  
185 subscriber hereunder.

186 *Section 7.* For the purpose of defraying the  
187 expenses of the insurance department in admin-  
188 istering the provisions of this part, a subscriber  
189 who shall receive a certificate under section two  
190 of said part shall annually file with the insurance  
191 commissioner an estimate of the payroll of his  
192 employees for the ensuing twelve months, and

193 shall annually pay to the treasurer and receiver  
194 general of the commonwealth one and one half  
195 cents per one hundred dollars of said estimated  
196 payroll. At the expiration of each ensuing period  
197 of twelve months, during the period for which the  
198 certificate shall remain in force and also at such  
199 times as the certificate expires or is revoked, the  
200 subscriber shall make a return to the insurance  
201 commissioner, subject to verification by said  
202 commissioner, indicating the actual payroll for  
203 the period so covered. If the actual payroll be  
204 greater than the estimated payroll the subscriber  
205 shall thereupon pay to the treasurer and receiver-  
206 general an amount equal to one and one half  
207 cents per one hundred dollars of the difference  
208 between the estimated payroll and the actual  
209 payroll. If the actual payroll be less than the  
210 estimated payroll, the treasurer and receiver  
211 general shall refund to the subscriber an amount  
212 equal to one and one half cents per one hundred  
213 dollars difference between the estimated payroll  
214 and the actual payroll. The insurance commis-  
215 sioner shall notify the treasurer and receiver-  
216 general of any amount to be collected or re-  
217 funded.

218 *Section 8.* If an employer who holds or has  
219 held a certificate under this act offers a composi-  
220 tion under the federal bankruptcy act or is ad-  
221 judicated a bankrupt under said act, the total  
222 amount of compensation and other benefits for  
223 injuries occurring during the period when such  
224 certificate was in effect shall be deemed to be due

225 and payable as of date of the offer of composi-  
226 tion or adjudication, and shall be entitled to  
227 priority under the terms of said acts; and if  
228 any such employer makes an assignment for the  
229 benefit of creditors, or a receiver is appointed  
230 of any of his property or business, the said  
231 amounts shall be deemed to be debts due and  
232 payable at the time of such assignment or the  
233 appointment of such receiver, and shall be pre-  
234 ferred as against all other unsecured claims.