

HOUSE No. 5657

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 2, 1978.

The committee on Commerce and Labor, to whom were referred the petition (accompanied by bill, Senate, No. 113) of Robert D. Wetmore, members of the House of Representatives and others for legislation to further amend the workmen's compensation law; the petition (accompanied by bill, House, No. 745) of Arthur C. Conley relative to further amending the workmen's compensation law; and the petition (accompanied by bill, House, No. 1151) of Arthur C. Conley for legislation to clarify certain provisions of the workmen's compensation law, reports recommending that the accompanying bill (House, No. 5657) ought to pass.

For the committee,

DAVID J. SWARTZ

The Commonwealth of Massachusetts

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

AN ACT CLARIFYING 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. Chapter 152 of the General Laws is hereby
2 amended by striking out section 34, as most recently amended by
3 section 5 of chapter 74 of the acts of 1976, and inserting in place
4 thereof the following section:—

5 *Section 34.* While the incapacity for work resulting from the
6 injury is total the insurer shall pay the injured employee a weekly
7 compensation equal to two thirds of his average wages, but not
8 more than the average weekly wage in the commonwealth in effect
9 at the time of injury except as otherwise provided in section 51A, as
10 determined according to the provisions of subsection (a) of section
11 twenty-nine of chapter one hundred and fifty-one A, and
12 promulgated by the director of the division of employment security
13 on or before October first of each year, unless the average weekly
14 wages of the injured employee are less than forty dollars per week,
15 in which case said weekly compensation shall be equal to his
16 average weekly wages, but not less than twenty dollars per week
17 where the number of normal working hours of the employee is
18 fifteen or more; provided that the amount does not exceed forty-
19 five thousand dollars; except that if the injured employee has
20 received compensation for the same injury under section thirty-
21 five, the combined amount of compensation under this section and
22 section thirty-five shall not exceed the maximum amount as set
23 forth in section thirty-five.

1 SECTION 2. Said chapter 152 is hereby further amended by
2 striking out section 34A, as most recently amended by section 4 of
3 chapter 474 of the acts of 1976, and inserting in place thereof the
4 following section:—

5 *Section 34A.* While the incapacity for work resulting from the

6 injury is both permanent and total, the insurer shall pay to the
7 injured employee, following payment of the maximum amount of
8 compensation provided in sections thirty-four and thirty-five, or
9 either of them a weekly compensation equal to two thirds of his
10 average weekly wage but not more than the average weekly wage in
11 the commonwealth, in effect at the time of injury, except as
12 otherwise provided in section 51 A, as determined, according to the
13 provisions of subsection (a) of section twenty-nine of chapter one
14 hundred and fifty-one A, and promulgated by the director of the
15 division of employment security on or before October first of each
16 year, nor less than forty dollars per week during the continuance of
17 such permanent and total incapacity. In any proceedings brought
18 by the insurer to discontinue compensation under this section, a
19 member or the reviewing board may, after hearing, order the
20 insurer to continue payments to the injured employee hereunder.
21 The reasonable costs of such proceeding, including therein
22 reasonable counsel fees and witness fees of physicians appearing at
23 such proceeding, shall be determined by a member or the reviewing
24 board and shall be paid by the insurer.

1 SECTION 3. Said chapter 152 is hereby further amended by
2 striking out section 35, as most recently amended by section 8 of
3 chapter 474 of the acts of 1976, and inserting in place thereof the
4 following section:—

5 *Section 35.* While the incapacity for work resulting from the
6 injury is partial, the insurer shall pay the injured employee a weekly
7 compensation equal to the entire difference between his average
8 weekly wage before the injury and the average weekly wage he is
9 able to earn thereafter, but not more than the average weekly wage
10 in the commonwealth in effect at the time of injury, except as
11 otherwise provided in section 51 A, as determined according to the
12 provisions of subsection (a) of section twenty-nine of chapter one
13 hundred and fifty-one A and promulgated by the director of the
14 division of employment security on or before October first of each
15 year, and the amount of such compensation shall not be more than
16 forty-five thousand dollars nor shall the combined amount of
17 compensation payable under this section and section thirty-four be
18 more than forty-five thousand dollars.

