

HOUSE No. 3584

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 2, 1962.

The committee on Labor and Industries, to whom were referred so much of the recommendations of the Division of Industrial Accidents (House, No. 32) as relates to the amount to be paid into the treasury of the Commonwealth in cases of industrial accidents resulting in death (accompanied by bill, House, No. 34); and the report of the special commission (including members of the General Court) established (under Chapter 73 of the Resolves of 1961) to make an investigation and study relative to the problems of the rehabilitation, employment or re-employment of handicapped or disabled persons (House, No. 3420), report the accompanying bill (House, No. 3584).

For the committee,

MARY B. NEWMAN.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Two.

AN ACT TO FACILITATE THE EMPLOYMENT OR RE-EMPLOYMENT OF
DISABLED WORKERS BY EXPANDING THE FUNCTIONS OF THE SECOND
INJURY FUND.

*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 37, as most recently amended
3 by chapter 287 of the acts of 1957, and inserting in place thereof
4 the following new section:

5 *Section 37.* Whenever an employee who has a permanent
6 physical impairment due to any previous accident or disease or
7 any congenital condition, which is, or is likely to be, a hindrance
8 or obstacle to his employment, incurs a subsequent disability by
9 reason of a personal injury for which compensation is required
10 by this chapter resulting in permanent partial or permanent
11 total disability that is substantially greater by reason of the
12 combined effects of the impairment and subsequent injury than
13 that which would have resulted from the subsequent injury
14 alone, the employer or his insurance carrier or reciprocal exchange
15 shall in the first instance pay all awards of compensation pro-
16 vided by this act; provided, however, that such employer, his
17 insurance carrier or reciprocal exchange shall be reimbursed by
18 the state treasurer from the fund created by section sixty-five for
19 all compensation subsequent to that payable for the first fifty-
20 two weeks of disability.

21 If the subsequent injury of such an employee shall result in the
22 death of the employee, and it shall be determined that either the
23 injury or the death would not have occurred except for such
24 pre-existing permanent physical impairment, the employer or
25 his insurance carrier or reciprocal exchange shall in the first in-
26 stance pay the compensation prescribed by this act, but he or

27 his insurance carrier or reciprocal exchange shall be reimbursed
28 by the state treasurer from the fund created by section sixty-five
29 for all compensation payable in excess of fifty-two weeks.

30 The word "compensation" as used in this section for the pur-
31 pose of reimbursement includes all payments to the injured
32 worker or to his dependents in case of death, and payments for
33 medical, hospital, burial and other services, made under the pro-
34 visions of this chapter.

35 In the event that liability for any case arising under this sec-
36 tion is redeemed by a lump sum payment as provided in section
37 forty-eight of this chapter, and when the order of the division
38 refers to the provisions of this section, reimbursement shall be
39 made without the necessity of further approval of the lump sum
40 by the state treasurer; but no reimbursement shall be made
41 covering the first fifty-two weekly payments, whether paid under
42 an agreement, decision or lump sum settlement.

1 SECTION 2. Section 37A of said chapter 152, inserted by sec-
2 tion 2 of chapter 623 of the acts of 1945, is hereby amended by
3 striking out, in lines 12 and 13, the words "from the fund estab-
4 lished by section sixty-five N" and inserting in place thereof
5 the words:—for any period up to fifty-two weeks, and there-
6 after wholly by the state treasurer from the fund created by
7 section sixty-five,—so as to read as follows:—*Section 37A.*
8 Any employee who is a war veteran and disabled as the result
9 of his military or naval service and has been certified as such
10 by the United States Veterans Administration and who, in the
11 course of and arising out of his employment, receives a personal
12 injury which is aggravated or prolonged by such disability for
13 which he is receiving compensation from said administration,
14 shall receive the compensation provided by this chapter, or said
15 compensation shall be paid to his dependents, if death results
16 from the injury. Such compensation shall be paid by the insurer
17 or self-insurer, who shall be reimbursed for fifty per cent thereof
18 by the state treasurer for any period up to fifty-two weeks, and
19 thereafter wholly by the state treasurer from the fund created
20 by section sixty-five. In the event that said fund becomes
21 exhausted, the state treasurer shall make such payments from
22 the General Fund without appropriation.

1 SECTION 3. Section 46 of said chapter 152, as most recently
2 amended by section 6 of chapter 314 of the acts of 1953, is hereby

3 further amended by striking out all after the word "valid" in
4 line 3 as appearing in section 2A of chapter 623 of the acts of 1945.

1 SECTION 4. Said chapter 152 is hereby further amended by
2 striking out section 65, as most recently amended by section 2
3 of chapter 234 of the acts of 1955, and inserting in place thereof
4 the following section:—

5 *Section 65.* For every case of personal injury resulting in death
6 covered by this chapter, the insurer or self-insurer shall pay into
7 the state treasury five hundred dollars, such payment to be made
8 in all cases regardless of whether the employee's dependents or
9 personal representatives commence action against a third party
10 under section fifteen. For every case of personal injury resulting
11 in death covered by this chapter, when there are no dependents,
12 the insurer or self-insurer shall pay into the state treasury an
13 additional five hundred dollars. Payments under this section
14 shall constitute a special fund in the custody of the state treas-
15 urer, who shall make payments therefrom upon the written order
16 of the division for the purposes set forth in section thirty-seven
17 and thirty-seven A and for the purpose of paying the expense of
18 printing the necessary records, papers and briefs in certain
19 appeals to the supreme judicial court as provided in section
20 eleven. Payments made under section thirty-seven A shall
21 have priority over any other payments made under this section.

22 As soon as practicable after June thirtieth of any year in which
23 payments made from the fund established by this section exceed
24 deposits therein, the chairman of the industrial accident board
25 shall assess upon and collect from each insurance carrier and
26 each self-insurer a sum equal to that proportion of the excess of
27 disbursements over receipts during such year which the total
28 compensation payments of such carrier or self-insurer bore to the
29 total compensation payments made by all carriers and self-
30 insurers during such year.

31 The reasonable expense of prosecution, if any, by the attorney
32 general, of claims for deposit under this section shall, subject to
33 the approval of the division, be payable out of the special fund
34 established hereunder.

1 SECTION 5. Section 26 of said chapter 152, as most recently
2 amended by section 5 of chapter 174 of the acts of 1955, is hereby

3 further amended by striking out the word “sixty-five N”, as
4 appearing in line 14 of section 1 of chapter 623 of the acts of 1945,
5 and inserting in place thereof the word: — sixty-five.

1 SECTION 6. Section sixty-five N of said chapter one hundred
2 and fifty-two, as most recently amended by section five of
3 chapter one hundred and seventy-four of the acts of nineteen
4 hundred and fifty-five, is hereby repealed.

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1950

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