

# HOUSE . . . . . No. 5596

Substituted by the House, on motion of Mrs. Newman of Cambridge, for a bill with the same title (House, No. 5580). August 4.

## The Commonwealth of Massachusetts

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

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  
3 amended by chapter 287 of the acts of 1957, and inserting in  
4 place thereof the following new section:—

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

22 If the subsequent injury of such an employee shall result in  
23 the death of the employee, and it shall be determined that  
24 either the injury or the death would not have occurred except  
25 for such pre-existing permanent physical impairment, the  
26 employer or his insurance carrier or reciprocal exchange shall  
27 in the first instance pay the compensation prescribed by this  
28 act, but he or his insurance carrier or reciprocal exchange  
29 shall be reimbursed by the state treasurer from the fund  
30 created by section sixty-five for all compensation payable in  
31 excess of one hundred and four weeks.

32 In order to qualify for reimbursement from the fund  
33 created by section sixty-five, it must be established by written  
34 records that the employer had knowledge of the permanent  
35 physical impairment at the time that the employee was hired,  
36 or at the time the employee was retained in employment  
37 after the employer acquired such knowledge.

38 The word "compensation" as used in this section for the  
39 purpose of reimbursement includes all payments to the  
40 injured worker or to his dependents in case of death, and  
41 payments for medical, hospital, burial and other services,  
42 made under the provisions of this chapter.

43 In the event that liability for any case arising under this  
44 section is redeemed by a lump sum payment as provided in  
45 section forty-eight of this chapter, and when the order of the  
46 division refers to the provisions of this section, reimburse-  
47 ment shall be made without the necessity of further approval  
48 of the lump sum by the state treasurer; but no reimburse-  
49 ment shall be made covering the first one hundred and four  
50 weekly payments, whether paid under an agreement, decision  
51 or lump sum settlement.

1 SECTION 2. Section 37A of said chapter 152 is hereby  
2 amended by striking out the second sentence, as amended by  
3 chapter 891 of the acts of 1965, and inserting in place thereof  
4 the following sentence:—Such compensation shall be paid by  
5 the insurer or self-insurer, who shall be reimbursed in an  
6 amount not to exceed fifty per cent thereof by the state  
7 treasurer for any period up to one hundred and four weeks,  
8 and thereafter wholly by the state treasurer from the fund  
9 created by section sixty-five.

1 SECTION 3. Said chapter 152 is hereby amended by striking  
2 out section 46, as most recently amended by section 6 of  
3 chapter 314 of the acts of 1953, and inserting in place thereof  
4 the following section:—

5 *Section 46.* No agreement by any employee to waive his  
6 right to compensation shall be valid.

1 SECTION 4. Said chapter 152 is hereby further amended by  
2 striking out section 65, as most recently amended by chapter  
3 513 of the acts of 1967, and inserting in place thereof the  
4 following section:—

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

24 As soon as practicable after June thirtieth of any year in  
25 which payments made from the fund established by this  
26 section exceed deposits therein, the chairman of the industrial  
27 accident board shall assess upon and collect from each  
28 insurance carrier and each self-insurer a sum equal to that  
29 proportion of the excess of disbursements over receipts during  
30 such year which the gross premiums for workmen's com-  
31 pensation insurance received by such carrier and the equiv-  
32 alent gross premium for each self-insurer bore to the total  
33 gross premiums and equivalents of all such carriers and self-

34 insurers during such year. In the case of an insurer gross  
35 premiums shall mean all premiums for workmen's compensa-  
36 tion insurance written or renewed by it during the preceding  
37 calendar year on risks within the commonwealth or subject to  
38 the jurisdiction thereof. In the case of a self-insurer gross  
39 premium shall mean the premium which such employer  
40 would have had to pay to obtain workmen's compensation  
41 insurance for the preceding calendar year on risks within the  
42 commonwealth or subject to the jurisdiction thereof.

43 The reasonable expense of prosecution or defense, if any,  
44 by the attorney general, of claims for deposit under this  
45 section or against claims for reimbursement under sections  
46 thirty-seven and thirty-seven A, shall, subject to the  
47 approval of the division, be payable out of the special fund  
48 established hereunder.

1 SECTION 5. The last paragraph of section 26 of said chapter  
2 152 is hereby amended by striking out, in line 8, as appearing  
3 in section 1 of chapter 623 of the acts of 1945, the word  
4 "sixty-five N" and inserting in place thereof the word:—  
5 sixty-five.

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

1 SECTION 7. This act shall take effect on July first, nine-  
2 teen hundred and seventy.