

By Mr. Brewer of Barre, petition of Suzanne M. Bump relative to workers' compensation. Commerce and Labor.

## The Commonwealth of Massachusetts

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

### AN ACT RELATIVE TO WORKERS' COMPENSATION.

*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 48 of Chapter 152 of the General Laws, as appearing  
2 in the 1988 Official Edition, is hereby amended as follows:

3 (1) Under the conditions and limitations specified in this  
4 chapter, the insurer and the employee may by agreement redeem  
5 any liability for compensation, in whole or in part, by the payment  
6 by the insurer of a lump sum of an amount to be approved by  
7 a conciliator, administrative judge, or administrative law judge.

8 (2) When the insurer and the employee reach such agreement  
9 subsequent to insurer acceptance of liability or subsequent to a  
10 decision of an administrative judge, the reviewing board, or an  
11 appeals court of the commonwealth finding insurer liability which  
12 decision is in effect at the time such agreement is entered into,  
13 said agreement shall not redeem liability for the payment of  
14 medical benefits or vocational rehabilitation benefits with respect  
15 to such injury.

16 No lump sum agreement made prior to the establishment of  
17 liability for compensation shall prohibit an employee from  
18 subsequently filing a claim for medical benefits only, in any  
19 instance in which such employee has suffered a substantial  
20 deterioration of his medical condition which (i) could not  
21 reasonably have been foreseen at the time said agreement was  
22 entered into, and (ii) is the result of an injury for which the insurer  
23 would have been liable under this chapter, absent the lump sum  
24 settlement. Claims under this paragraph shall be considered only  
25 if brought within one year of the date the employee first became

26 award of the causal relationship between the substantial  
27 deterioration and the employment. Claims shall be consistent with  
28 the procedures set forth in sections ten, ten A, and eleven. No  
29 liability for such claims shall be redeemed by any additional lump  
30 sum settlement.

31 (3) Prior to approval of any lump sum settlement, the office  
32 of education and vocational rehabilitation may review the  
33 following factors with the employee and his attorney:

34 (a) the employee's rights under this chapter and the effect a lump  
35 sum settlement would have upon such rights;

36 (b) in the case of a lump sum settlement that includes the  
37 redemption of future medical benefits, the likelihood that the  
38 employee may require such services and the present cost of  
39 insurance or other means of defraying such potential expenses;

40 (c) the total income and financial prospectus of the employee  
41 including all means of support;

42 (d) the purpose for which the settlement is requested;

43 (e) the employee's post-injury earnings and prospects, including  
44 the projected income and financial security of any proposed  
45 project of employment, self employment, business venture, or  
46 investment and the prudence of consulting with a financial or  
47 other expert to review the likelihood of success of such projects;  
48 and,

49 (f) any other information, including the age of the employee  
50 and of his dependents, which would bear upon whether the  
51 settlement is in the best interest of the claimant.

52 If the employee is not represented by an attorney, such a review  
53 shall be mandatory. If an employee is represented by an attorney,  
54 such review shall be at the discretion of the employee. The  
55 department may establish a procedure for the filing and approval  
56 by affidavit of proposed lump sum agreements for an employee  
57 who is represented by an attorney.

58 The office of education and vocational rehabilitation shall  
59 initiate such review within fourteen days of its receipt of a request  
60 by an employee for a settlement review. A report on the review  
61 shall be transmitted to the proper authority for approval within  
62 five days of completion of the review.

63 (4) No lump sum shall be approved by a conciliator,  
64 administrative judge, or administrative law judge unless he/she  
65 deems such settlement to be in the employee's best interest.

66 (5) No lump sum agreement shall be approved which contains  
67 as part of a settlement a general or specific release that would serve  
68 as a bar to (i) employment with any employer, (ii) the receipt by  
69 the employee of any pay or benefits due him by an employer, (iii)  
70 the bringing of any future workers' compensation claim or (iv)  
71 the bringing of any claims of wrongful discharge or breach of  
72 contract. All such general or specific releases shall be null and  
73 void. Any employer, insurer, or attorney attempting to obtain  
74 such release from an employee shall be punished by a fine of ten  
75 times the average weekly wage in the commonwealth. The  
76 department shall inform each employee seeking a lump sum  
77 settlement of the unlawfulness of such general or specific releases.

78 (6) Whenever a lump sum agreement or payment has been  
79 approved by a conciliator, administrative judge, or administrative  
80 law judge in accordance with the terms of this section, such  
81 agreement shall affect only the insurer and employee who are  
82 parties to such lump sum agreement and shall not affect any other  
83 action or proceeding arising out of a separate and distinct injury  
84 resulting in an incapacity whether the injury precedes or arises  
85 subsequent to the date of settlement.

