

HOUSE No. 1347

By Mr. Clark of Hamilton, petition of Forrester A. Clark, Jr., for legislation to make certain changes in the workmen's compensation law. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Four.

AN ACT AMENDING 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 one of chapter one hundred and fifty-two
2 of the General Laws, as amended, is hereby further amended by
3 inserting after paragraph A thereof the following paragraphs: —

4 (1B) "Average weekly spendable income," the average weekly
5 wages of the injured employee, determined in accordance with
6 paragraph (1) of this section, less the amounts which would be
7 withheld from such average weekly wages for United States and
8 Massachusetts income taxes, based on the number of persons
9 dependent on the injured employee determined in accordance with
10 section thirty-five A of this chapter, according to tax tables pre-
11 pared; respectively, by the Internal Revenue Service of the United
12 States Department of the Treasury and the Massachusetts Depart-
13 ment of Revenue and in effect on the first day of July immediately
14 preceeding the date on which the personal injury occurred, and less
15 the amounts which would have been withheld from such average
16 weekly wages for taxes under the Federal Insurance Contribution
17 Act (FICA, Social Security taxes).

18 (1C) "Massachusetts average weekly wages", the average weekly
19 wages of all employees covered by chapter one hundred and fifty-
20 one of the General Laws, as determined according to the provisions
21 of subsection (a) of section twenty-nine of said chapter, and pro-

22 mulgated by the Chairman of the Industrial Accident Board on or
23 before November first of each year.

1 SECTION 2. Section thirty-four of said chapter one hundred
2 and fifty-two, as most recently amended, is hereby further amended
3 by striking out said section thirty-four and inserting in place there-
4 of the following: —

5 *Section 34.* While the incapacity from the injury is total, the
6 insurer shall pay the injured employee a weekly compensation
7 equal to eighty-three percent of his or her average weekly spenda-
8 ble income, but not more than an amount equal to eighty-three
9 percent of the average weekly spendable income of a person with
10 the same number of dependents whose average weekly wage is two
11 hundred dollars. The amount of compensation payable under this
12 section shall be one hundred percent of the state average weekly
13 wage, not to exceed an amount equal to two hundred and fifty
14 times the weekly compensation received under this paragraph,
15 except that if the injured employee has received compensation for
16 the same injury under section thirty-five the combined amount of
17 compensation payable under this section shall not exceed the max-
18 imum amount as set forth in section thirty-five.

1 SECTION 3. Section thirty-four A of said chapter one hundred
2 and fifty-two, as most recently amended, is hereby further amended
3 by striking out said section thirty-four A and inserting in place
4 thereof the following: —

5 *Section 34A.* While the incapacity for work resulting from the
6 injury is both permanent and total, the insurer shall pay the injured
7 employee, following payment of the maximum amount of compen-
8 sation provided under either section thirty-four or thirty-five or
9 under a combination of section thirty-four and section thirty-five, a
10 weekly compensation equal to eighty-three percent of his or her
11 average weekly spendable income, but not more than an amount
12 equal to one hundred percent of the state's average weekly wage at
13 the time of the injury.

14 Payments under this section shall be made during the continu-
15 ance of such permanent and total incapacity. Application for pay-
16 ments under this section may be made by an injured employee

17 before he or she has received the maximum compensation to which
18 he or she is or may be entitled under sections thirty-four and
19 thirty-five or either of them.

20 If any proceeding brought by the insurer to discontinue compen-
21 sation under this section, a member of the reviewing board may,
22 after hearing, order the insurer to continue payments to the injured
23 employee hereunder. The reasonable cost of such proceeding,
24 including herein reasonable counsel fees and witness fees of physi-
25 cians appearing at such proceeding, shall be determined by the
26 member or the reviewing board and shall be paid by the insurer.

1 SECTION 4. Section thirty-five of said chapter one hundred
2 and fifty-two, as most recently amended, is hereby amended by
3 striking out said section thirty-five and inserting in place thereof
4 the following: —

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 or her
8 average weekly spendable income before the injury and the average
9 weekly spendable income he or she is able to earn thereafter, but
10 not more than an amount equal to eighty-three percent of his or her
11 average weekly spendable income, and in no case more than one
12 hundred percent of the state's average weekly wage. The amount of
13 compensation payable under this paragraph shall not exceed an
14 amount equal to two hundred and fifty times the weekly compensa-
15 tion received under this paragraph, nor shall the combined amount
16 of compensation payable under this paragraph and section thirty-
17 four be more than an amount equal to two hundred and fifty times
18 the weekly compensation payable under section thirty-four.

1 SECTION 5. Section thirty-five A of said chapter one hundred
2 and fifty-two as most recently amended, is hereby further amended
3 by striking out the first sentence thereof and inserting in place
4 thereof the following: — Where the injured employee has persons
5 conclusively presumed to be dependent upon him or her, or in fact
6 so dependent, his or her average weekly spendable income shall be
7 computed on the basis of the number of persons determined to be
8 dependent upon him or her under the provisions of this section.

1 SECTION 6. Section thirty-five A of said chapter one hundred
2 and fifty-two as most recently amended, is hereby further amended
3 by striking out the last sentence thereof.

1 SECTION 7. This act shall take effect on November the first,
2 nineteen hundred and eighty-four and shall apply only to injuries
3 occurring on or after that date.