

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the workers' compensation system.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	13th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1865 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE WORKERS' COMPENSATION SYSTEM.

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 8 of chapter 152 of the General Laws as appearing in the 2002
2 Official Edition, is hereby amended by striking the text in clause (d) of subsection (2) and
3 inserting in its place the following:-- "the insurer has possession of (i) a medical report from the
4 treating physician, the report indicates that the employee is capable of return to the job held at
5 the time of injury, or other suitable job pursuant to section thirty-five D consistent with the
6 employee's physical and mental condition as reported by said physician and (ii) a written report
7 from the person employing said employee at the time of the injury indicating that such a
8 suitable job is open and has been made available, and remains open to the employee; provided,
9 however, that if due, compensation shall be paid under section thirty-five; provided, further,
10 that if such employee accepts said employment subsequent to a modification or termination
11 pursuant to this paragraph, compensation shall be reinstated at the prior rate if the employee

12 should cease work in accordance with paragraph (c) of this section or should be terminated by
13 the employer because of the employee's physical or mental incapacity to perform the duties
14 required by the job;"

15 SECTION 2. Section 8 of chapter 152 of the General Laws, as so appearing, is hereby
16 amended by striking out the text in subsection (4) and inserting in its place the following:--

17 "An insurer who makes prompt payment of benefits pursuant to section seven and continues
18 payment for one hundred eighty days or more, without contesting liability, may, no sooner than
19 sixty days following a referral to the industrial accident board of a complaint for termination or
20 reduction of benefits under section thirty-four, thirty-four A or thirty-five, if no conference
21 order has been issued during such sixty day period, request the administrative judge to which
22 the case has been assigned to appoint an impartial physician to examine the employee. The
23 administrative judge may, within thirty days of the request for an impartial examination,
24 appoint a physician from the appropriate roster to conduct an examination of the employee
25 and make a report within fourteen days. If such report contains *clear and convincing* evidence
26 of increased capability to work, the insurer may, with the administrative judge's consent,
27 reduce or terminate benefits in accordance with such report. In such instances, if the
28 requirements of this subsection have been complied with, when an order is issued on the
29 insurer's complaint, if such order requires that retroactive weekly benefits are due the
30 employee, an additional payment equal to two times the average weekly wage in the
31 commonwealth shall also be paid to the employer.

32 At any time subsequent to the filing of a claim or complaint solely regarding the
33 reasonableness or necessity of a particular course of medical treatment, any party to such claim
34 or complaint may request the senior judge to appoint a physician from the appropriate roster
35 to conduct an examination of the employee and make a report within fourteen days. If the
36 senior judge determines that said claim or complaint involves only the issue of reasonable and
37 necessary medical treatment, he shall make such appointment within seven days. The impartial
38 physician shall determine the appropriateness of any medical treatment claimed or denied by
39 the parties, using any guidelines adopted by the health care services board or promulgated by
40 the department, if applicable. The determination by the impartial physician shall be *some*
41 evidence of the appropriateness or inappropriateness of the course of medical treatment in
42 question at any hearing at which such treatment is at issue. The parties shall have the right to
43 submit other medical evidence of the appropriateness or inappropriateness of the disputed
44 medical treatment."

45 SECTION 3. Section 11A of chapter 152 of the General Laws, as appearing in the 2002
46 Official Edition, is hereby amended by striking the text in subsection (2) and inserting in its
47 place the following:--

48 "When any claim or complaint involving a dispute over medical issues is the
49 subject of an appeal of a conference order pursuant to section ten A, the administrative
50 judge may appoint an impartial medical examiner from the roster to examine the
51 employee-examiner from the roster. Any party who files such appeal shall also submit
52 the fee set by the commissioner for the provision of an impartial medical report within

53 ten days of filing said appeal; provided, however, that where more than one party
54 appeals, the fee shall be divided equally among all appealing parties; provided, further,
55 that such amount paid by a claimant shall be refunded by the insurer to any claimant
56 who prevails at hearing.

57 The impartial medical examiner, so appointed, shall examine the employee and
58 make a report at least one week prior to the beginning of the hearing, which shall be
59 sent to each party. No hearing shall be commenced sooner than one week after such
60 report has been received by the parties. The report of the impartial medical examiner
61 shall, where feasible, contain a determination of the following: (i) whether or not a
62 disability exists, (ii) whether or not any such disability is total or partial and permanent
63 or temporary in nature, and (iii) whether or not within a reasonable degree of medical
64 certainty any such disability has as its major or predominant contributing cause a
65 personal injury arising out of and in the course of the employee's employment. Such
66 report shall also indicate the examiner's opinion as to whether or not a medical end
67 result has been reached and what permanent impairments or losses of function have
68 been discovered, if any. Such impartial physician's report shall constitute evidence of
69 the matters contained therein.

70 Failure of an employee to report to an impartial medical examiner agreed upon
71 or appointed under this section or section eight, after due notice and without cause,
72 and failure to submit to such examiner all relevant medical records, medical reports,
73 medical histories, and any other relevant information requested without good reason,

74 shall constitute sufficient cause for suspension of benefits pursuant to section forty-five.

75 The report of the impartial medical examiner shall be admitted into evidence at the

76 hearing. Either party shall have the right to engage the impartial medical examiner to

77 be deposed for purposes of cross examination. "

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