

**HOUSE . . . . . No. 1872**

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**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:

Martin J. Walsh

DISTRICT/ADDRESS:

13th Suffolk

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

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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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  
2   2002 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 suitable  
8   job is open and has been made available, and remains open to the employee; provided, however,  
9   that if due, compensation shall be paid under section thirty-five; provided, further, that if such  
10   employee accepts said employment subsequent to a modification or termination pursuant to this  
11   paragraph, compensation shall be reinstated at the prior rate if the employee should cease work  
12   in accordance with paragraph (c) of this section or should be terminated by the employer because  
13   of the employee's physical or mental incapacity to perform the duties required by the job;"

14           SECTION 2. Section 8 of chapter 152 of the General Laws, as so appearing, is hereby  
15 amended by striking out the text in subsection (4) and inserting in its place the following:--  
16 "An insurer who makes prompt payment of benefits pursuant to section seven and continues  
17 payment for one hundred eighty days or more, without contesting liability, may, no sooner than  
18 sixty days following a referral to the industrial accident board of a complaint for termination or  
19 reduction of benefits under section thirty-four, thirty-four A or thirty-five, if no conference order  
20 has been issued during such sixty day period, request the administrative judge to which the case  
21 has been assigned to appoint an impartial physician to examine the employee. The administrative  
22 judge may, within thirty days of the request for an impartial examination, appoint a physician  
23 from the appropriate roster to conduct an examination of the employee and make a report within  
24 fourteen days. If such report contains *clear and convincing* evidence of increased capability to  
25 work, the insurer may, with the administrative judge's consent, reduce or terminate benefits in  
26 accordance with such report. In such instances, if the requirements of this subsection have been  
27 complied with, when an order is issued on the insurer's complaint, if such order requires that  
28 retroactive weekly benefits are due the employee, an additional payment equal to two times the  
29 average weekly wage in the commonwealth shall also be paid to the employer.

30           At any time subsequent to the filing of a claim or complaint solely regarding the  
31 reasonableness or necessity of a particular course of medical treatment, any party to such claim  
32 or complaint may request the senior judge to appoint a physician from the appropriate roster to  
33 conduct an examination of the employee and make a report within fourteen days. If the senior  
34 judge determines that said claim or complaint involves only the issue of reasonable and  
35 necessary medical treatment, he shall make such appointment within seven days. The impartial  
36 physician shall determine the appropriateness of any medical treatment claimed or denied by the

37 parties, using any guidelines adopted by the health care services board or promulgated by the  
38 department, if applicable. The determination by the impartial physician shall be *some* evidence  
39 of the appropriateness or inappropriateness of the course of medical treatment in question at any  
40 hearing at which such treatment is at issue. The parties shall have the right to submit other  
41 medical evidence of the appropriateness or inappropriateness of the disputed medical treatment."

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

45 "When any claim or complaint involving a dispute over medical issues is the  
46 subject of an appeal of a conference order pursuant to section ten A, the administrative  
47 judge may appoint an impartial medical examiner from the roster to examine the  
48 employee-examiner from the roster. Any party who files such appeal shall also submit  
49 the fee set by the commissioner for the provision of an impartial medical report within  
50 ten days of filing said appeal; provided, however, that where more than one party  
51 appeals, the fee shall be divided equally among all appealing parties; provided, further,  
52 that such amount paid by a claimant shall be refunded by the insurer to any claimant who  
53 prevails at hearing.

54 The impartial medical examiner, so appointed, shall examine the employee and  
55 make a report at least one week prior to the beginning of the hearing, which shall be sent  
56 to each party. No hearing shall be commenced sooner than one week after such report  
57 has been received by the parties. The report of the impartial medical examiner shall,  
58 where feasible, contain a determination of the following: (i) whether or not a disability

59 exists, (ii) whether or not any such disability is total or partial and permanent or  
60 temporary in nature, and (iii) whether or not within a reasonable degree of medical  
61 certainty any such disability has as its major or predominant contributing cause a  
62 personal injury arising out of and in the course of the employee's employment. Such  
63 report shall also indicate the examiner's opinion as to whether or not a medical end result  
64 has been reached and what permanent impairments or losses of function have been  
65 discovered, if any. Such impartial physician's report shall constitute evidence of the  
66 matters contained therein.

67 Failure of an employee to report to an impartial medical examiner agreed upon or  
68 appointed under this section or section eight, after due notice and without cause, and  
69 failure to submit to such examiner all relevant medical records, medical reports, medical  
70 histories, and any other relevant information requested without good reason, shall  
71 constitute sufficient cause for suspension of benefits pursuant to section forty-five. The  
72 report of the impartial medical examiner shall be admitted into evidence at the hearing.  
73 Either party shall have the right to engage the impartial medical examiner to be deposed  
74 for purposes of cross examination. "