

**SENATE . . . . . No. 976**

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The Commonwealth of Massachusetts

PRESENTED BY:

***James B. Eldridge***

*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 adoption of the accompanying bill:

An Act increasing injured workers' access to medical care and workers' compensation benefits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>

**SENATE . . . . . No. 976**

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 976) of James B. Eldridge, Carmine L. Gentile, Barbara L'Italien, Benjamin Swan and other members of the General Court for legislation to increase injured workers' access to medical care and workers' compensation benefits. Labor and Workforce Development.

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act increasing injured workers' access to medical care and workers' compensation benefits.

*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 6 of chapter 23E of the General Laws, as appearing in the 2012  
2 Official Edition, is hereby amended by striking out, in line 69, the word "or," and inserting after  
3 the words "fifty-two" in line 70, the following words:-

4 , a denial based solely on a dispute over the existence of an employment relationship, or a  
5 dispute limited to the determination of the employee's average weekly wages under section 1(1)  
6 of chapter 152

7 SECTION 2. Section 1 of chapter 152 of the General Laws, as appearing in the 2012  
8 Official Edition, is hereby amended by inserting after the word "wages," in line 21, the following  
9 words:-

10 . In determining the employee's average weekly wages, all available evidence of the  
11 employee's paid wages, wages earned and required to be paid even if not actually received by

12 the employee, and hours worked shall be considered. Where the injured employee earned less  
13 than the wages required to be paid under chapter 149, chapter 151, or any other local, state, or  
14 federal law, the employee's average weekly wages shall be calculated as if the employee had  
15 earned wages in compliance with the law

16 SECTION 3. Section 1 of chapter 152 of the General Laws, as appearing in the 2012  
17 Official Edition, is hereby further amended by striking out, in line 176, the word "twenty," and  
18 inserting, after the word "rate" ,," in line 176, the following word:-

19 thirty

20 SECTION 4. Section 7 of chapter 152 of the General Laws is amended by inserting, in  
21 line 16, after the word "case," the following words:-

22 In determining whether to commence payment of weekly benefits, the insurer, including  
23 in cases where the insurer is the Trust Fund or the Commonwealth, shall consider all information  
24 and evidence provided by both the employer and the employee. The insurer shall not refuse to  
25 commence payment of weekly benefits on grounds that the employer has failed to respond, to  
26 provide certain information, or otherwise to participate. Where the employer has failed to  
27 respond, to provide information, or otherwise to participate, the insurer shall make its  
28 determination based on the information and evidence provided by the employee; provided,  
29 however, that the insurer does not waive any defenses if it commences payment on this basis.

30 SECTION 5. Chapter 152 of the General Laws, as appearing in the 2012 Official  
31 Edition, is hereby amended by inserting after section 11D, the following section:-

32 Section 11E. Interpretation.

33           Where the injured employee’s primary language is not English, the department shall  
34 provide a qualified interpreter for a conciliation held under section 10 of chapter 152, a  
35 conference held under section 10A of chapter 152, a hearing held under section 11 of chapter  
36 152, or an impartial medical exam held under section 11A of chapter 152.

37           SECTION 6. Section 15A of chapter 152 of the General Laws, as appearing in the 2012  
38 Official Edition, is hereby amended by inserting after the word “insurers,” in line 2, the  
39 following words:-

40           counting and including the Trust Fund

41           SECTION 7. Section 15A of chapter 152 of the General Laws, as appearing in the 2012  
42 Official Edition, is hereby further amended by striking out, in line 6, the words “as may be  
43 selected by a single member of the board” and inserting after the word “or,” in line 6, the  
44 following words:-

45           , in the absence of a mutual agreement, the Trust Fund,

46           SECTION 8. Section 15A of chapter 152 of the General Laws, as appearing in the 2012  
47 Official Edition, is hereby further amended by striking out, in line 11, the words “selected by the  
48 single member as aforesaid” and inserting after the word “or” in line 11, the following words:-

49           the Trust Fund

50           SECTION 9. Section 22 of chapter 152, as appearing in the 2012 Official Edition, is  
51 hereby amended by striking out, in line 9, the words “may be given in the manner therein  
52 provided or in such other manner as may be approved by the department” and inserting after the  
53 word “section,” in line 6, the following words:-

54 shall be given by providing to employees a printed copy of the notice as approved by the  
55 department and by posting a copy of the notice in a visible location utilized by and accessible to  
56 all employees of the insured person. The notice shall include information on unlawful employer  
57 retaliation, discrimination, and fraud under chapter 152. Where an employee's primary language  
58 is not English or where the employee prefers to receive written information in a language other  
59 than English, the insured person shall provide the notice both in English and the employee's  
60 primary or preferred language. The insured person shall inform all newly hired employees of  
61 their option to receive the notice in a language other than English. The posted notice shall be  
62 posted in English and in all other primary or preferred languages of current employees. At the  
63 outset of the policy period and whenever any of the information provided on the notice changes,  
64 the insurer shall provide to each insured person

65 (a) a printed copy of the notice in all languages in which the notice is produced by the  
66 department;

67 (b) a link to the page of the department's website where the notice as approved by the  
68 department is posted; and

69 (c) a summary in writing of the insured person's obligations to provide a printed copy  
70 and to post the notice as provided in this section

71 SECTION 10. Section 30 of chapter 152 of the General Laws, as appearing in the 2012  
72 Official Edition, is hereby amended by striking out, in line 3, the following words:-

73 together with the expenses necessarily incidental to such services,

74 SECTION 11. Section 30 of chapter 152 of the General Laws, as appearing in the 2012  
75 Official Edition, is hereby further amended by inserting, in line 5, after the word “hospitalized,”  
76 the following words:-

77 The insurer further shall furnish the services necessarily incidental to the adequate and  
78 reasonable health care services provided to an injured employee, including but not limited to  
79 interpretation, transportation, and other services necessary to allow the injured employee to  
80 obtain effective and timely health care services. The insurer, including in cases where the  
81 insurer is the Trust Fund or the Commonwealth, shall arrange and pay directly for these  
82 necessarily incidental services upon the request of the injured employee or the health care  
83 provider, and otherwise shall reimburse expenses for these services. Transportation services  
84 shall include door-to-door regulated taxi or equivalent transportation services where the injured  
85 employee cannot readily obtain private or public transportation.

86 SECTION 12. Section 34 of chapter 152 of the General Laws, as appearing in the 2012  
87 Official Edition, is hereby amended by inserting after the word “is,” in line 5, the following  
88 word:-

89 (a)

90 SECTION 13. Section 34 of chapter 152 of the General Laws, as appearing in the 2012  
91 Official Edition, is hereby further amended by striking out, in line 7, the word “his” and inserting  
92 after the word “to,” in line seven, the following words:-

93 the employee’s

94 SECTION 14. Section 34 of chapter 152 of the General Laws, as appearing in the 2012  
95 Official Edition, is hereby further amended by inserting after the word “wage,” in line 7, the  
96 following words:-

97 ; (b) less than fifty percent of the average weekly wage in the commonwealth but equal to  
98 or greater than the minimum weekly compensation rate, in which case said weekly compensation  
99 shall be equal to eighty percent of the employee’s average weekly wage; or (c) less than seventy  
100 percent of the average weekly wage in the commonwealth but equal to or greater than fifty  
101 percent of the average weekly wage in the commonwealth, in which case said weekly  
102 compensation shall be equal to seventy percent of the employee’s average weekly wage.

103 SECTION 15. Section 65 of chapter 152 of the General Laws, as appearing in the 2012  
104 Official Edition, is hereby amended by striking out, in line 19, the word “and” and inserting  
105 after the words “thirty-seven A,” in line 20, the following words:-

106 , and (h) payment of compensation under section 15A; provided, however, that the Trust  
107 Fund shall recover such payment from any other insurer eventually determined to be liable to  
108 pay the compensation

109 SECTION 16. Section 65 of chapter 152 of the General Laws, as appearing in the 2012  
110 Official Edition, is hereby further amended by inserting after the word “provided” in line 24, the  
111 following words:-

112 . The Trust Fund shall make payment of weekly benefits and adequate and reasonable  
113 health care services within fourteen days of an initial written claim for weekly benefits on a form  
114 prescribed by the department in cases where the dispute or disputes are limited to (i) the  
115 existence of an employment relationship, (ii) a question of which of multiple insurers, including

116 the Trust Fund, are liable, or (iii) a question of whether the employer is insured; provided,  
117 however, that the Trust Fund shall recover such payment from any other insurer eventually  
118 determined to be liable for such payments or may recover payment from the employee if such  
119 benefits and services eventually are denied.