SENATE DOCKET, NO. 664 FILED ON: 1/20/2011

SENATE . . . . . No. 963

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 to ensure fairness in the disability adjudication process..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	

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SENATE . . . . . No. 963

By Mr. Tarr, petition (accompanied by bill, Senate, No. 963) of Tarr for legislation to ensure fairness in the disability adjudication process [Joint Committee on Labor and Workforce Development].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *716* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to ensure fairness in the disability adjudication process..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 14 of Chapter 152 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after subsection (1)(b) the following additional new paragraph:

For the purposes of this section, if an insurer contests the total permanent disability of an employee after that decision has been fully and finally adjudicated in favor of the employee, without either evidence of improvement in the condition of the employee, evidence that the employee has been working or otherwise behaving in a manner inconsistent with a total and permanent disability, or evidence of a significant advancement in medical science that has a substantial likelihood of affecting the total and permanent disability of the employee, more than

10 once in any five-year period, that contest shall be considered an action not based on reasonable
11 grounds.

12 SECTION 2. Section 24 of Chapter 152 of the General Laws is hereby amended by
13 inserting at the end thereof the following new subsection:-

14 "(11) All bills submitted pursuant to adjudication under this chapter shall be paid within
15 30 days unless good cause for delay is shown before 30 days has elapsed. Any payments made
16 after the initial 30-day period shall include payment of the prevailing rate of interest".

17 SECTION 3. Section 11 of Chapter 152 of the General Laws is hereby amended by
18 inserting at the end the following paragraphs:-

19 "All such hearings shall be recorded either by tape-recorder or by video and copies or
20 transcriptions made available to the parties for a reasonable fee not exceeding the costs of labor
21 and materials.

22 On motion from the employee and when information of a personally sensitive nature is
23 being discussed, the member may close the proceeding to the parties and family members of the
24 employee."

25 SECTION 4. Section 8 of Chapter 152 of the General Laws is hereby amended by
26 striking subsection 2(D) in its entirety; and further, by striking in Section 2 the following words:-
27 "For purposes of clause (d) of this section, any termination of an employee within one year of
28 resumption of work with his prior employer will be presumed to be for the reason that the
29 employee was physically or mentally incapable of performing the duties required by the job or

30 that the job was unsuitable for the employee, unless the insurer demonstrates the contrary by a
31 preponderance of evidence at a subsequent proceeding".

32 SECTION 5. Section 30 of Chapter 152 of the General Laws is hereby amended by
33 inserting at the end of the second paragraph the following sentence:- "No insurer shall participate
34 in the medical judgments of any utilization review process established by said regulations, except
35 to provide necessary information at the request of the utilization review agent or agents".