HOUSE DOCKET, NO. 368 FILED ON: 1/10/2019

HOUSE . . . . . No. 1598

The Commonwealth of Massachusetts

PRESENTED BY:

Tackey Chan

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 relative to worker's compensation insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Tackey Chan	*2nd Norfolk*	*1/10/2019*
Bruce J. Ayers	*1st Norfolk*	*1/28/2019*

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HOUSE . . . . . No. 1598

By Mr. Chan of Quincy, a petition (accompanied by bill, House, No. 1598) of Tackey Chan and Bruce J. Ayers relative to workers' compensation insurance. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2360* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to worker's compensation insurance.

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. Chapter 152 of the General Laws is hereby amended by inserting after section 7G the following section:-

Section 7H. In any claim for compensation by an employee, which is denied by an insurer or self-insurer, no photograph or video of the claimant or the claimant's immediate family shall be admissible in evidence or referred to at the hearing of any such claim, or in any proceeding connected therewith, if it was obtained without the claimant's written consent.

SECTION 2. Section 8 of said chapter 152, as appearing in the 2016 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:-

(1) An insurer which makes timely payments pursuant to subsection 1 of section 7, may make such payments for a period of 180 calendar days from the commencement of disability without affecting its right to contest any issue arising under this chapter. An insurer may not terminate or modify payments at any time within such 180 day period without an order or decision of an arbitrator, an administrative judge, the reviewing board or court of the commonwealth modifying or discontinuing compensation.

Any failure of an insurer to make all payments due an employee under the terms of an order, decision, arbitrator's decision, approved lump sum or other agreement, or certified letter notifying said insurer that the employee has left work after an unsuccessful attempt to return within the time frame determined pursuant to paragraph (a) of subsection (2) of this section within 14 days of the insurer's receipt of such document, shall result in a penalty of $200 dollars, payable to the employee to whom such payments were required to be paid by the said document; provided, however, that such penalty shall be $1,000 dollars if all such payments have not been made within 45 days, $2,500 dollars if not made within 60 days, and $10,000 if not made within 90 days. No penalty shall be assessed a self-administered public employer or the Workers' Compensation Trust Fund under this paragraph where delivery has been made to the employee or other recipient of a copy of an official request made by such employer or fund to the appropriate authority for the issuance of a check in the appropriate amount to said recipient, provided that delivery of such copy to said employee or recipient has been made within 14 days of the employer or fund's receipt of the order, decision or agreement.

SECTION 3. Subsection 2 of said section 8 of said chapter 152, as so appearing, is hereby amended by striking out clause (d) and inserting in place thereof the following clause:-

(d) the insurer has possession of (i) a medical report from the treating physician which indicates that the employee is capable of return to the job held at the time of injury, or other suitable job pursuant to section 35D consistent with the employee's physical and mental condition as reported by said physician and (ii) a written report from the person employing said employee at the time of the injury indicating that such a suitable job is open and has been made available, and remains open to the employee; provided, however, that if due, compensation shall be paid under section 35D; provided, further, that if such employee accepts said employment subsequent to a modification or termination pursuant to this paragraph, compensation shall be reinstated at the prior rate if the employee should cease work in accordance with paragraph (c) of this section or should be terminated by the employer because of the employee's physical or mental incapacity to perform the duties required by the job;

SECTION 4. Said section 8 of said chapter 152, as so appearing, is hereby amended by striking out, in line 153, the words “a conciliator,” and inserting in place thereof the following word:- an.

SECTION 5. Said chapter 152, as so appearing, is hereby amended by striking out section 10 and inserting in place thereof the following section:-

Section 10. Any claim for benefits shall be filed with the division of administration and the insurer on a form prescribed by the division, and shall specifically state the benefits claimed to be due and unpaid. No claim for weekly compensation shall be accepted by the department unless it is either accompanied by a copy of an insurer's notification of denial pursuant to section 7, or at least 30 days have passed from the alleged onset of disability.

Unless otherwise expressly provided, on the receipt of a claim for compensation, a complaint from the insurer requesting a modification or discontinuance of benefits, or a complaint from any party requesting resolution of any other issue arising under this chapter, the division of administration shall notify the parties that it is in receipt of such claim or complaint, and may request the parties to appear and submit relevant information.

In order for an attorney's fee to be required pursuant to section 13A, due to a dispute over a claim for benefits under this chapter, such claim shall have been sent to the insurer by certified mail. No attorney's fee shall be due for services involving a claim sent to the insurer which does not include a copy of a medical report relevant to the alleged claim in the possession of the employee or his attorney. In order for any attorney's fee to be due for services involving a claim for health care services, such claim shall include a copy of any relevant bill and a description from the health care provider of the services rendered. No attorney's fee shall be due for services involving claim for benefits for loss of function or disfigurement under section 36 unless such claim includes a copy of a letter from a physician describing the location and extent of the alleged loss of function or disfigurement and the specific amount requested for compensation therefor. No attorney's fee shall be due for services involving claims for mileage reimbursement unless such claims delineate the date and purpose for the travel, identity of the medical provider and mileage of each trip for which reimbursement is sought. No attorney's fee shall be due for any claim solely involving unpaid attorney's fees or expenses for past services.

SECTION 6. Section 10A of said chapter 152, as so appearing, is hereby amended by striking out subsection (2) and inserting in place thereof the following subsection:-

(2) Within 7 days of the conclusion of the conference the administrative judge shall file:

(a) a written order requiring or denying that weekly compensation or other benefits be paid; or

(b) a written order modifying, terminating, or denying modification or termination of weekly compensation or other benefits.

Whenever the subject of the conference is a claim or complaint for which written offers have been filed pursuant to section 10, the order or arbitrator's award modifying, terminating, or denying modification or termination of weekly compensation benefits shall reflect the amount so filed by one or other of the parties, and shall not require any payment, modification or termination which has not been proposed by either party unless the judge or arbitrator provides a detailed written explanation of why neither submitted amount could reasonably be believed to accurately compensate the employee for his earning capacity. Whenever, with respect to a case in which liability is not an issue, a claim for additional compensation or a complaint to discontinue or modify compensation is among the issues before the administrative judge or arbitrator, if written amounts are unavailable on the date of the conference or arbitration for any reason, the administrative judge or arbitrator shall require or, in case of newly discovered information, allow such filings at the close of the conference or arbitration, and the order or award shall reflect one of the offers so filed and not substitute any other amount unless the judge or arbitrator provides a detailed written explanation of why neither submitted amount could reasonably be believed to accurately compensate the employee for his earning capacity.

Nothing in this section shall restrict the authority of an administrative judge to order weekly benefits or health care services for a closed period into the future or to order that such benefits or services be initiated, modified, or terminated at a particular date in the future.

SECTION 7 . Subsection (1) of section 10C of said chapter 152, as so appearing, is hereby amended by striking out, in line 9, the words “ mediation and conciliation” and inserting in place thereof the following words:- “and mediation.”

SECTION 8. Section 11A of said chapter 152, as so appearing, is hereby repealed.

SECTION 9. Section 13A of said chapter 152, as so appearing, is hereby amended by striking out subsections (1) to (4), inclusive, and inserting in place thereof the following 4 subsections:-

(1) Whenever an insurer contests an initial liability claim for benefits submitted on a form prescribed by the department, by failing to commence the compensation requested within 21 days of receipt of such claim, and then, at any time prior to a conference held under section 10A, the insurer agrees to pay, with or without prejudice, the compensation claimed to be due, said insurer shall pay an attorney's fee to the employee's counsel in the amount of $700 dollars, plus necessary expenses; provided, however, that only 1 such fee shall be paid with respect to any such written claim under this paragraph.

(2) Whenever an insurer contests an initial liability claim for benefits as provided by subsection (1), and then is ordered to pay such benefits by an administrative judge pursuant to a conference held under section 10A, said insurer shall pay an attorney's fee to the employee's counsel in the amount of $1,000, plus necessary expenses; provided, however, that an administrative judge may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney; provided, further, that only 1 such fee under this paragraph shall be paid with respect to any such written claim.

(3) Whenever an insurer contests a claim for benefits on a form prescribed by the department other than an initial liability claim as provided by subsection (1), by failing to commence the compensation requested within 21 days of receipt of such claim and then, at any time prior to a conference pursuant to section 10A the insurer agrees to pay the compensation claimed to be due, said insurer shall pay an attorney's fee to the employee's counsel in the amount of $500, plus necessary expenses; provided, however, that only 1 such fee shall be paid with respect to any such written claim under this paragraph. For purposes of this subsection, the filing of a subsequent written request on a prescribed form shall be deemed an additional written claim for benefits.

(4) Whenever an insurer files a complaint to reduce or discontinue an employee's benefits or whenever an insurer contests a claim for benefits on a form prescribed by the department other than an initial liability claim as provided by subsection (1), by failing to commence the compensation requested within 21 days of receipt of such claim, if the order of the administrative judge pursuant to a conference held pursuant to section 10A, reflects the written offer submitted by the claimant, pursuant to section 10 or section 10A, said insurer shall pay an attorney's fee to the employee's counsel in the amount of $700, plus necessary expenses. If the order of the administrative judge reflects the written offer submitted by the insurer, pursuant to section 10 or section 10A, no attorney's fee shall be payable to the employees' counsel. If the order reflects an amount different from both submissions, the fee shall be in the amount of $350, plus necessary expenses. Only 1 such fee shall be paid with respect to any particular written claim under this paragraph.

SECTION 10. The first paragraph of section 30 of said chapter 152, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

The insurer shall furnish to an injured employee adequate and reasonable health care services, including physical therapy at the injured employee's request, and medicines if needed, together with the expenses necessarily incidental to such services, and in the case of an injured employee, a physical examination shall be given at least once a year while the employee is hospitalized.

SECTION 11. The first paragraph of section 48 of said chapter 152, as so appearing, is hereby amended by striking out the last 2 sentences and inserting in place thereof the following sentence:-

In all other cases the agreement shall not have been perfected until reviewed and approved as complete by an administrative judge or administrative law judge as appropriate.