

# HOUSE . . . . . No. 1579

By Mr. Navin of Marlborough, petition of John J. Navin and another that permanent and partial weekly payments be provided for paraplegics and other permanently handicapped employees under the workmen's compensation law. Commerce and Labor.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy.

AN ACT TO HELP PARAPLEGICS AND OTHER PERMANENTLY HANDICAPPED EMPLOYEES, BY PROVIDING FOR PERMANENT AND PARTIAL WEEKLY PAYMENTS.

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

1 Chapter 152 of the General Laws, as amended, is hereby  
2 further amended by adding the following new section 34B:—

3 *Section 34B.* While the incapacity for work resulting from  
4 the injury is both permanent and partial, the insurer shall pay  
5 to the injured employee, following payment of the maximum of  
6 compensation provided in sections thirty-four and thirty-five or  
7 either of them, a weekly compensation equal to the entire  
8 difference between his average weekly wage before the injury  
9 and the average wage he is able to earn thereafter, but not more  
10 than the maximum payable for total incapacity and not less  
11 than twenty dollars a week, during the continuance of such per-  
12 manent and partial incapacity. Application for payments under  
13 this section may be made by an injured employee before he has  
14 received the maximum compensation to which he is or may be  
15 entitled under the aforesaid sections.

16 In any proceedings brought by the insurer to discontinue  
17 compensation under this section, a member or the reviewing  
18 board may, after hearing, order the insurer to continue pay-  
19 ments to the injured employee hereunder. The reasonable cost  
20 of such proceeding, including therein reasonable counsel fees  
21 and witness fees of physicians appearing at such proceeding,

22 shall be determined by the board and shall be paid by the  
23 insurer.

24 In deciding the entire difference between his average weekly  
25 wage before the injury and the average weekly wage he is  
26 able to earn thereafter, the member or reviewing board shall not  
27 be bound by the actual post-injury earnings, and may discount  
28 changes in wage levels due to his employer's sympathy, or due  
29 to claimant's change in age or post-injury training or new hours  
30 of work, or due to raises induced by union activity, or due to any  
31 other factor which reasonably makes it unfair to the employee  
32 to compare post-injury earnings with the original wage.

33 A finding of partial incapacity hereunder may stand even  
34 where there is evidence of actual post-injury earnings equalling or  
35 exceeding those received before the injury.

36 As an alternative, in the case of paraplegics and others, found  
37 by decision or by agreement of the parties, to be permanently  
38 and partially incapacitated, the member or reviewing board may  
39 determine the amount of the average weekly partial payment  
40 due the employee by taking the entire difference between his  
41 average weekly post-injury wage and the average weekly  
42 amounts he would reasonably have been able to earn except for  
43 the original injury, but not more than the maximum possible for  
44 total incapacity and not less than twenty dollars a week, during  
45 the continuance of such permanent and partial disability.

46 Evidence of the increases in the area rates established by the  
47 Bureau of Labor Statistics of the United States Department of  
48 Labor from the date of injury onwards for the same or similar  
49 classifications may be used to establish what his wage reason-  
50 ably would have been had he not received the injury.