HOUSE . . . . . No. 277

By Mr. White of Worcester, petition of Thomas P. White for legislation to revise workmen's compensation disability payments. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Four.

AN ACT REVISING WORKMEN'S COMPENSATION DISABILITY PAYMENTS.

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 1 of chapter 152 of the General Laws, as most recently amended by chapter 374 of the acts of 1972 is hereby further amended by adding the following paragraphs: —

(9) "Permanent impairment," any anatonic or functional abnormality or loss existing, after the date of maximum medical improvement or recovery which is stable or nonprogressive and which results from the injury.

(10) "Date of maximum medical improvement," the date after which further recovery from, or lasting improvement to an injury or disease can no longer reasonably be anticipated based upon reasonable medical certainty, and on which temporary disability ends and permanent disability, if any, begins.

SECTION 2. Section 29 of chapter 152 of the General Laws, as most recently amended by chapter 155 of the acts of 1979, is hereby further amended by striking out in line 2, the word "incapacitate" and insert in place thereof the word, disable and by striking out in line 3, the word "incapacity" and inserting in place thereof the word: — disability.

SECTION 3. Chapter 152 of the General Laws is hereby amended by striking out section 34, as most recently amended by

3 section 5 of chapter 474 of the acts of 1976, and inserting in place
4 thereof the following section: —
5 *Section 34.* In case of total disability, the insurer shall pay the
6 injured employee a weekly compensation equal to two-thirds of his
7 average weekly wages, but not more than the average weekly wage
8 in the commonwealth, as determined according to the provisions of
9 subsection (a) of section twenty-nine of chapter one hundred and
10 fifty-one A during the continuance of such total disability, and
11 promulgated by the director of the division of employment security
12 on or before October first of each year, unless the average weekly
13 wages of the injured employee are less than forty dollars per week,
14 in which case, said weekly compensation shall be equal to his
15 average weekly wages, but not less than twenty dollars per week
16 where the number of normal working hours of the employee is
17 fifteen or more; provided that the amount does not exceed forty-
18 five thousand dollars, except that if the injured employee has
19 received compensation for the same injury under section thirty-
20 five, the combined amount of compensation under this section and
21 section thirty-five shall not exceed the maximum amount as set
22 forth in section thirty-five.

1 SECTION 4. Chapter 152 of the General Laws is hereby
2 amended by striking out section 34A, as most recently amended by
3 chapter 474 of the acts of 1976, and inserting in place thereof the
4 following new section: —
5 *Section 34A.* (1) While the disability for work resulting from
6 injury is both permanent and total, the insurer shall pay to the
7 injured employee, following payment of the maximum amount of
8 compensation provided in section thirty-four and thirty-five, or
9 either of them, a weekly compensation equal to two-thirds of his
10 average weekly wage in the commonwealth, as determined, accord-
11 ing to the provisions of subsection (a) of section twenty-nine of
12 chapter one hundred and fifty-one A, during the continuance of
13 such total disability, and promulgated by the director fo the div-
14 ision of employment security on or before October first of each
15 year, nor less than forty dollars per week during the continuance of
16 such permanent and total disability.
17 Loss of both hands, both arms, both feet, both legs, both eyes, or
18 any 2 thereof, or paraplegia or quadriplegia shall, in the absence of

19 conclusive proof of a substantial earning capacity, constitute per-
20 manent total disability. In all other cases, permanent total disabil-
21 ity shall be determined in accordance with the facts. In such other
22 cases, no compensation may be payable under paragraph (1) if the
23 employee is engaged in, or is physically capable of engaging in,
24 gainful employment, and the burden shall be upon the employee to
25 establish that he is not able to do even light work due to physical
26 limitation; and
27 If an employee who is being paid compensation for permanent
28 total disability becomes rehabilitated to the extent that he estab-
29 lishes a work capacity, or otherwise regains or acquires a work
30 capacity, he shall be paid, instead of the compensation provided in
31 paragraph (1), benefits pursuant to section 35.
32 (2) Temporary total disability. Compensation for temporary
33 total disability shall be paid as follows: —
34 In case of disability total in characte but temporary in quality, a
35 weekly compensation equal to two-thirds of his average weekly
36 wages, earnings or salary, but not more than the average weekly
37 wage in the commonwealth during the continuance thereof, not to
38 exceed 250 weeks.
39 (3) Compensation adjustment. Compensation payable pursu-
40 ant to this section shall be adjusted each year as of the first day of
41 the state's fiscal year so that it continues to bear the same percen-
42 tage relationship to the state average weekly wage as it did at the
43 time of injury; provided that no adjustment in any one year may
44 exceed 5%.

1 SECTION 5. Chapter 152 of the General Laws is hereby
2 amended by striking out section 35 as most recently amended by
3 chapter 474 of the acts of 1976, and inserting in place thereof the
4 following new section: —
5 *Section 35.* While the disability for work resulting from the
6 injury is partial, and said injured employee experiences a decrease
7 in wages caused by a compensable injury, but is not eligible for
8 benefits pursuant to section thirty-four and thirty-four A, he may
9 be entitled to wage-loss benefits under this section. These benefits
10 shall be based on actual wage loss and shall be equal to two-thirds
11 the difference between his average weekly wage before the injury
12 and the salary, wage and other remuneration the employee receives

13 or is able to earn after the injury, as compared on a weekly basis,
14 but not more than the average weekly wage in the commonwealth
15 as determined according to the provisions of subsection (a) of
16 section twenty-nine of chapter one hundred and fifty-one A and
17 promulgated by the director of the division of employment security
18 on or before October first of each year, and the amount of such
19 compensation shall not exceed an amount equal to two-thirds of
20 the employee's average weekly wage at the time of the injury or
21 forty-five thousand dollars, whichever is lower.
22 The amount determined to be the salary, wages and other
23 remunerations the employee is able to earn after the injury shall in
24 no case be less than the sum actually being earned by the employee,
25 including earnings from sheltered employment. In the event the
26 employee voluntarily limits his income, or fails to accept employ-
27 ment commensurate with his ability, the salary, wages and other
28 remunerations the employee is able to earn after the injury shall be
29 deemed to be the amount which would have been earned if the
30 employee did not limit his income or accepted appropriate
31 employment. Whenever a wage-loss benefit as set forth in the first
32 paragraph may be payable, the burden shall be on the employee to
33 establish that any wage loss claimed is the result of the compensa-
34 ble injury.
35 The right to wage-loss benefits shall terminate:
36 (1) As of the end of any 2-year period commencing at any time
37 subsequent to the month when the injured employee reaches the
38 date of maximum medical improvement, unless during such 2-year
39 period wage-loss benefits shall have been payable during at least 3
40 consecutive months;
41 (2) Five hundred weeks after the injured employee reaches the
42 date of maximum medical improvement; or
43 (3) When the injured employee reaches age 65 and is eligible for
44 the benefits under the United States Code Title 42, Sections 402
45 and 405, whichever comes first.
46 When the injured employee reaches age 62, wage-loss benefits
47 shall be reduced by the total amount of Social Security retirement
48 benefits which the employee is receiving, not to exceed 50% of the
49 employee's wage-loss benefits.
50 Annual adjustment. Compensation payable pursuant to this
51 section shall be adjusted each year as of the first day of the state's

52 fiscal year so that it continues to bear the same percentage relation-
53 ship to the state average weekly wage as it did at the time of injury;
54 provided that no adjustment in any one year may exceed 5%.

1 SECTION 6. Chapter 152 of the General Laws is hereby further
2 amended by striking out section 35B, as most recently amended by
3 chapter 667 of the acts of 1970, and inserting in place thereof the
4 following new section: —
5 *Section 35B.* If an employee receiving wage-loss benefits pursu-
6 ant to section 35 suffers a subsequent injury compensable pursuant
7 to this chapter, which subsequent injury causes a further decrease
8 in wages, wage-loss benefits for both such injuries shall be payable,
9 provided that the total wage-loss benefits payable do not exceed
10 the maximum benefits level allowed pursuant to section thirty-five.
11 For purposes of determining wage-loss benefits payable for subse-
12 quent injuries under this subsection, the phrase "average weekly
13 wage" in section thirty-five is deemed to include wage-loss benefits
14 then being paid for the prior injury.

1 SECTION 7. Chapter 152 of the General Laws is hereby further
2 amended by striking out section 48, as most recently amended by
3 chapter 776 of the acts of 1977, and inserting in place thereof the
4 following new section: —
5 *Section 48.* (1) It is stated policy for the administration of the
6 worker's compensation system that it is in the best interests of the
7 injured worker that he receive disability or wage-loss payments on
8 a periodic basis. Lump sum payments in exchange for the employ-
9 er's or carrier's release from liability for future payments of com-
10 pensation, other than for medical expenses, shall be allowed only
11 under special circumstances, as when the claimant can demonstrate
12 that lump sum payments will definitely aid in his rehabilitation or
13 are otherwise clearly in his best interests and that lump sum pay-
14 ments will avoid undue expense or undue hardship to any party, or
15 that such claimant has removed himself or is about to remove
16 himself from the state. In no case shall a lump sum payment be
17 allowed in exchange for the release of an employer's or carrier's
18 liability for future medical expenses. In no case shall a lump sum

19 settlement be allowed until 6 months after the date of maximum
20 medical improvement has been reached.
21 (2) Upon the application of any party in interest or upon joint
22 petition of all interested parties, and after giving due consideration
23 to the interests of all interested parties, if a deputy commissioner
24 finds that a lump sum payment in exchange for release from
25 liability is proper under paragraph (1), said commissioner may
26 enter a compensation order requiring that the liability of the
27 employer for compensation shall be discharged by the payment of a
28 lump sum equal to the present value of all future payments of
29 compensation, computed at 4 percent true discount compounded
30 annually or requiring that the employer make advance payment of
31 a part of the compensation for which said employer is liable by the
32 payment of a lump sum equal to the present value of such part of
33 the compensation, computed at 4 percent true discount com-
34 pounded annually. A compensation order so entered upon joint
35 petition of all interested parties shall not be subject to modification
36 or review. However, nothing in this subsection shall be construed
37 to mean that a commissioner is required to approve any award for
38 lump sum payment when it is determined by the commissioner that
39 the payment being made is in excess of the value of benefits the
40 claimant would be entitled to under this chapter. The commis-
41 sioner shall make or cause to be made such investigations as he
42 considers necessary, in each case in which the parties have stipu-
43 lated that a proposed final settlement of liability of the employer
44 for compensation shall not be subject to modification or review, to
45 determine whether such final disposition will definitely aid the
46 rehabilitation of the injured worker or otherwise is clearly for the
47 best interests of the person entitled to compensation and, in his
48 discretion, may have an investigation made by the Rehabilitation
49 Section of the Division of Workers' Compensation. The joint
50 petition and the report of any investigation so made will be deemed
51 a part of the proceeding. A commissioner, in his discretion, may
52 hear testimony relating to a proposed stipulation for settlement
53 under this subseciton without haivng in hand the division file;
54 however, he shall in no event enter an order thereon without first
55 having reviewed the division file. An employer shall have the right
56 to appear at any hearing pursuant to this subseciton which relates

57 to the discharge of such employer's liability and to present testim-
58 ony at such hearing. The carrier shall provide reasonable notice to
59 the employer of the time and date of any said hearing and inform
60 him of his rights to appear and testify. When the claimant is
61 represented by counsel or when the claimant and carrier or
62 employer are represented by counsel, final approval of the lump
63 sum settlement agreement, as provided for in a joint petition and
64 stipulation, shall be approved by entery of an order within 7 days of
65 the filing of such joint petition and stipulation without a hearing,
66 unless the deputy commissioner determines, at his discretion, that
67 additional testimony is needed before such settlement can be
68 approved or disapproved and so notifies the parties. The probabil-
69 ity of the death of the injured employee or other person entitled to
70 compensation before the expiration of the period during which
71 such person is entitled to compensation shall, in the absence of
72 special circumstances making such course improper, be deter-
73 mined in accordance with the most recent United States Life Tables
74 published by the National Office of Vital Statistics of the United
75 States Department of Health, Education, and Welfare. The proba-
76 bility of the happening of any other contingency affecting the
77 amount of duration of a compensation, except the possiblity of the
78 remarriage of a surviving spouse, shall be disregarded. As a condi-
79 tion of approving a lump sum payment to a surviving spouse, the
80 commissioner at the commissioner's discretion, may require secur-
81 ity which will insure that, in the event of the remarriage of such
82 surviving spouse, any unaccrued future payments so paid may be
83 recovered or recouped by the employer or carrier.