

By Mr. Navin of Marlborough, petition of the Massachusetts Association of Paraplegics, Inc., 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 Sixty-Nine.

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  
3 34B:—

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

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

23 fees and witness fees of physicians appearing at such proceed-  
24 ing, shall be determined by the board and shall be paid by the  
25 insurer.

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

36 A finding of partial incapacity hereunder may stand even  
37 where there is evidence of actual post-injury earnings equal-  
38 ling or exceeding those received before the injury.

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

50 Evidence of the increases in the area rates established by  
51 the Bureau of Labor Statistics of the United States Depart-  
52 ment of Labor from the date of injury onwards for the same  
53 or similar classifications may be used to establish what his  
54 wage reasonably would have been had he not received the  
55 injury.