

By Mr. Kennedy of Brockton, petition of Thomas P. Kennedy relative to rehabilitation programs for injured workers under the workers' compensation law. Commerce and Labor.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT PROMOTING THE VOLUNTARY USE OF REHABILITATION UNDER  
GENERAL LAWS CHAPTER 152 THE WORKERS' COMPENSATION ACT.

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

1 SECTION 1. Section 30 G of Chapter 152 of the General Laws  
2 is hereby repealed.

1 SECTION 2. Section 30 H of Chapter 152 of the General Laws  
2 is hereby amended by striking out the entire Section as amended  
3 by Section 55 and Section 56 of Chapter 398 of the Acts of 1991,  
4 and inserting in place thereof the following subsection: —

5 Any injured employee with total disability or permanent partial  
6 disability to whom compensation has been paid for a period of  
7 three months or more, may submit a proposal for rehabilitation  
8 program to the Office of Education and Vocational Rehabilitation  
9 (OEVR) for approval of the insurer, who must, within sixty days  
10 either offer an alternative plan or certify its belief that vocational  
11 rehabilitation is not necessary or feasible to return the employee  
12 to suitable employment. If the insurer and employee fail to agree  
13 on such a proposal, then the Office of Education and Vocational  
14 Rehabilitation shall determine if the employee's plan, as modified,  
15 if at all, is necessary and feasible; which decision should be prima  
16 facie evidence of same at any proceeding thereafter brought by  
17 an employee to force implementation of the plan by an  
18 Administrative Judge. In the event of such a proceeding  
19 successfully completed by the employee, counsel for the employee,

20 if any, shall be paid fees under Section 13A and further shall be  
21 reimbursed for its reasonable and necessary charges in creating  
22 the plan and proving its case at the Department. No program for  
23 vocational rehabilitation that is contested by an insurer shall  
24 exceed a duration of one hundred and four weeks. Upon  
25 completion of the program, any benefits then being paid to the  
26 employee under Section 34 or Section 35 for permanent and total  
27 disability or temporary total disability, or temporary partial  
28 disability, shall be reduced to seventy percent of such benefit,  
29 whether or not the employee finds employment as a result of  
30 completion of the program. Additionally, a proceeding will  
31 automatically be scheduled at the termination of the rehabilitation  
32 program to determine the employee's earning capacity resulting  
33 from the completion of the program. In no event shall such finding  
34 as to earning capacity be reason for an increase in benefits beyond  
35 seventy percent of the rate prior to the implementation of the  
36 program. Benefits shall not be reduced prior to completion of the  
37 program, except that in the event of actual employment or in the  
38 event that the employee leaves such program prior to completion.  
39 In the latter event, such benefits shall be reduced to seventy  
40 percent of the then rated subject to the employee's claim that  
41 failure to complete the program was excused due to a substantial  
42 change in his medical condition. Duration of weekly benefits shall  
43 be cumulative with the maximum allowable amounts under  
44 Section 34 and 35, notwithstanding other provisions herein.

45 A public employer or public employer self-insurance group  
46 which has filed a notice of non-participation according to the  
47 provisions of section sixty-five, shall be subject to the provisions  
48 herein.