

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

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 passage of the accompanying bill:

An Act to repeal no fault motor vehicle insurance.

PETITION OF:

NAME:

Garrett J. Bradley

DISTRICT/ADDRESS:

3rd Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 910 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO REPEAL NO FAULT MOTOR VEHICLE INSURANCE.

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 34A of said chapter 90 is hereby amended by striking lines 68 through 133 in their
2 entirety.

3

4 SECTION 2. Section thirty-four M of said chapter ninety is hereby repealed.

5

6 SECTION 3. Section thirty-four N of said chapter ninety is hereby repealed.

7

8 SECTION 4. The second paragraph of section 113C of said chapter 175 is hereby amended by striking
9 out the words “of medical coverage, so-called, to a limit of at least five thousand dollars” and by inserting
10 in place thereof the following words:— “of medical and wage protection coverages, each to a limit of no
11 less than five thousand dollars, and up to limits of at least one hundred thousand dollars.”

12

13 SECTION 5. Section 113H of said chapter 175 is hereby amended by striking out subsection (A) and
14 inserting in place thereof the following subsection:—

15

16 (A) Insurance companies undertaking to issue motor vehicle liability policies or bonds, both as defined in
17 section 34A of chapter 90, shall cooperate in the preparation and submission of a plan which shall provide
18 motor vehicle insurance to applicants who have been unable to obtain insurance through the method by
19 which insurance is voluntarily made available; except that the plan shall provide that no insurance
20 company shall be required to issue such policy or execute such bond if:

21

22 (1) The applicant or any person who usually drives the motor vehicle has failed to pay an insurance
23 company any motor vehicle insurance premiums due or contracted during the preceding twelve months;
24 or

25

26 (2) Any person who usually drives the motor vehicle does not hold or is not eligible to obtain an
27 operator's license; or

28

29 Such a plan shall provide for the fair and equitable apportionment among such insurance companies of
30 premiums, losses or expenses, or any combination thereof.

31

32 Such a plan shall provide that at least the following coverages be made available to the applicant:

33

34 (1) Bodily injury liability and property damage liability coverage in at least the minimum amounts
35 required by law.

36

37 (2) Medical payment coverage to a limit of at least five thousand dollars and up to limits of at least one
38 hundred thousand dollars;

39

40 (3) Wage protection coverage to limits of no less than five thousand dollars and up to limits of at least one
41 hundred thousand dollars;

42

43 (4) Increased limits of bodily injury liability coverage in an amount to bring the total bodily injury
44 liability coverage available for any one accident to two hundred fifty thousand dollars per person and five
45 hundred thousand dollars per accident.

46

47 (5) Increased property damage liability limits in an amount to bring the total property damage liability
48 coverage available for any one accident to fifty thousand dollars;

49

50 (6) Uninsured motorist limits in an amount up to the bodily injury liability limits of the policy;

51

52 (7) Physical damage insurance, which shall mean: (a) collision coverage or limited collision coverage, (b)
53 fire and theft coverage, or (c) comprehensive coverage, so-called, as those coverages are defined in
54 section 34A and 34O of chapter 9O and section 1130 of this chapter. The plan shall permit the refusal of
55 collision, fire, theft or comprehensive coverage or the charging of rates at the discretion of the insurer,
56 under the following circumstances:

57

58 (i) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by
59 persons convicted within the most recent five year period of any category of vehicular homicide, auto
60 insurance related fraud, or motor vehicle theft;

61

62 (ii) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by
63 persons who have, within the most recent five year period, made an intentional and material
64 misrepresentation in making claim under such coverages;

65

66 (iii) Collision coverage on a vehicle customarily driven by or owned by persons who have been involved
67 in four or more accidents in which such person has been deemed to be at fault in excess of fifty percent
68 within the three years immediately preceding the effective date of the policy;

69

70 (iv) Comprehensive or fire and theft coverages on a vehicle customarily driven by or owned by persons
71 who have two or more total theft or fire claims after January 1, 1984 and within the three years
72 immediately preceding the effective date of the policy;

73

74 (v) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven, or owned by
75 persons convicted one time within the most recent three year period of any category of driving while
76 under the influence of alcohol or drugs;

77

78 (vi) Comprehensive, fire and theft or collision coverage on any motor vehicle for which a salvage title has
79 been issued by the registrar of motor vehicles unless a new certificate of title has been issued pursuant to
80 section twenty D of chapter ninety D; or

81

82 (vii) Comprehensive, fire and theft or collision coverage on a high-theft vehicle which does not have at
83 least a minimum antitheft or auto recovery device as prescribed by the commissioner of insurance. The
84 commissioner may designate as a “high-theft vehicle” any vehicle, classified according to make, model
85 and year of manufacture, which has both above-average incidence of theft and above-average original
86 sales price, and may prescribe appropriate anti-theft or auto recovery devices for such vehicles.

87

88 SECTION 6. Chapter 175 of the General Laws is hereby amended by adding the following section:—

89

90 Section 113V. Every policy issued or delivered in the commonwealth shall be deemed to provide medical
91 payments coverage in limits of at least five thousand dollars unless the policyholder affirmatively elects
92 to purchase no such coverage for himself and for members of his household.

93

94 The medical payment coverage provision of a motor vehicle liability policy or bond shall provide for
95 payment, without regard to negligence or gross negligence or fault of any kind, to the named insured in
96 any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the
97 insured’s or obligor’s household, any authorized operator or passenger of the insured’s or obligor’s motor
98 vehicle, including a guest occupant, and pedestrian struck by the insured’s or obligor’s motor vehicle, of
99 all reasonable expenses incurred within two years from the date of accident for necessary medical,
100 surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital,
101 professional nursing, and funeral services; provided, however, that no such payment shall be required to
102 the extent such payment has been made by a health insurance policy or other contract with an insurance
103 company, health maintenance organization, a non-profit hospital or medical service corporation or any
104 other third party compensation system which is designated by the commissioner of insurance as providing
105 the acceptable level of benefits. Nothing in this section shall be construed to limit in any way, an
106 individual’s choice of a physician, hospital, or other health care provider or course of medical treatment.

107

108 The medical payments coverage of two or more policies may be added together, combined, or stacked if
109 required to pay an injured person’s reasonable and necessary medical expenses. All such expenses shall
110 be submitted first to the named insured’s policy covering the vehicle the person was occupying when
111 injured or, if the injured person was a pedestrian, to the named insured’s policy covering the vehicle
112 which struck the individual. An insured who is not a named insured on any policy providing medical
113 payments coverage shall next submit a claim to the policies of resident relatives; provided, however, if
114 there are two or more policies which provide such coverage and if the claim does not exceed the

115 combined total of all such policies, a pro rata contribution will be made. If there are two or more policies
116 which provide such coverage and if the claim exceeds the combined total of all such policies, the limit of
117 all policies will be paid. A person who is named insured on a policy providing medical payments
118 coverage shall next submit a claim:

119

120 (a) to the policy on which such person is named insured; provided, however, if there are two or more such
121 policies which provide such coverage a pro rata contribution will be made if the claim does not exceed the
122 combined total of all such policies. If the claim exceeds the combined total of all such policies the limit of
123 all policies will be paid.

124

125 (b) to the policy of resident relatives. If there are two or more policies which provide such coverage and if
126 the claim does not exceed the combined total of all such policies, a pro rata contribution will be made. If
127 the claim exceeds the combined total of all such policies the limit of all policies will be paid.

128

129 SECTION 7. Said Chapter 175 is hereby amended by adding the following section:—

130

131 Section 113W. Every policy issued or delivered in the Commonwealth shall be deemed to provide wage
132 protection coverage in limits of at least five thousand dollars unless the policyholder affirmatively elects
133 to purchase no such coverage for himself and for members of his household.

134

135 The wage protection coverage shall provide for payment to the named insured in any such motor vehicle
136 liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's
137 household, any authorized operator or passenger of the insured's or obligor's motor vehicle, including a
138 guest occupant, and any pedestrian struck by the insured's or obligor's motor vehicle, unless any of the
139 aforesaid is a person entitled to payments or benefits under the provisions of chapter one hundred and
140 fifty-two, in the case of persons employed or self-employed at the time of any accident of any amounts
141 actually lost by reason of inability to work and earn wages or salary or their equivalent, but not other
142 income, that would otherwise have been earned in the normal course of any injured person's employment,
143 and for payments in fact made to others, not members of the injured person's household and reasonably
144 incurred in obtaining from those others ordinary and necessary services in lieu of those that had he not
145 been injured, the insured person would have performed not for income but for the benefit of himself
146 and/or members of his household, and in the case of persons not employed or self-employed at the time of
147 any accident of any loss by reason of diminution of earning power and for payments in fact made to
148 others, not members of the injured person's household and reasonably incurred in obtaining from those
149 others ordinary and necessary services in lieu of those that, had he not been injured, the injured person
150 would have performed not for income but for the benefit of himself and/or members of this household, as
151 a result of bodily injury, sickness or disease, including death at any time resulting there from, caused by

152 accident and not suffered intentionally while in or upon, or while entering into or alighting from, or being
153 struck as a pedestrian by, the insured's or obligor's motor vehicle, without regard to negligence or gross
154 negligence or fault of any kind, to the amount or limit of at least five thousand dollars on account of
155 injury to or death of any person, except that payments for loss of wages or salary or their equivalent or, in
156 the case of persons not employed, loss by reason of diminution of earning power, shall be limited to
157 amounts actually lost by reason of the accident and further limited (1) in the case of persons entitled to
158 wages or salary or their equivalent under any program for continuation of said wages or salary or their
159 equivalent to any amount that, together with any payments due under such a program, will provide
160 seventy-five percent of the greater of any such person's average weekly wage or salary or its equivalent
161 for the year immediately preceding the accident or the person's average weekly wage or salary at the time
162 of the accident provided that the insurer shall reimburse those wage continuation programs or their
163 equivalent which provide for accumulated benefits which can be converted into either cash or additional
164 retirement credit for the amount said program or its equivalent actually pays to the insured, not to exceed
165 seventy-five percent of the greater of the insured's average weekly wages or salary or its equivalent for
166 the year immediately preceding the accident or the insured's average weekly wage or salary at the time of
167 the accident, or (2) in the case of persons not entitled to wages or salary or their equivalent under any
168 program for continuation of said wages or salary or their equivalent to any amount that will provide
169 seventy-five percent of the greater of any such person's average weekly wage or salary or its equivalent
170 for the year immediately preceding the accident or the person's average weekly wage or salary at the time
171 of the accident. In any case where amounts paid for loss of wage, salary or their equivalent are reduced as
172 a result of any program for continuation of the same and such reduction produces a subsequent loss, as
173 when the limit of any such program for continuation of wage or salary of their equivalent is exhausted
174 with the result that an injured person cannot recover for a later injury or illness as he would have been
175 entitled to but for such a reduction, such subsequent loss to an amount equaling the reduction in payments
176 made in accordance with this section shall, if incurred within one year after the receipt of the last benefit
177 provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a result of
178 the injury to which wage protection coverage applied. In all cases where an insured is compensated under
179 such a wage continuation program and also recovers these benefits from another source, he shall be
180 entitled to reimburse the wage continuation program with no loss in standing under such a program.
181 Coverage under this section shall also provide for payment, to the named insured or obligor and members
182 of their households, all amounts defined in this section in any case where such persons incur such expense
183 or loss as a result of such injury while in, upon, entering into or alighting from, or by being struck as a
184 pedestrian by, a motor vehicle not insured by a policy or bond providing such coverage.

185

186 The wage protection coverage of two or more policies may be added together, combined or stacked if
187 required to compensate an injured person for lost wages, salary or their equivalent or a loss by reason of
188 diminution of earning power. All such losses shall be submitted first to the named insured's policy
189 covering the vehicle the person was occupying when injured or, if the injured person was a pedestrian, to
190 the named insured's policy covering the vehicle which struck the individual. An insured who is not a
191 named insured on any policy providing wage protection coverage shall next submit a claim to the policies
192 of resident relatives. If there are two or more policies which provide such coverage and if the claim does
193 not exceed the combined total of all such policies, a pro rata contribution will be made. If there are two or
194 more policies which provide such coverage and the claim exceeds the combined total of all such policies,

195 the limit of all policies will be paid. A person who is named insured on a policy providing wage
196 protection coverage shall next submit a claim:

197

198 (a) To the policy on which such person is the named insured; provided, however, if there are two or more
199 such policies which provide such coverage a pro rata contribution will be made if the claim does not
200 exceed the combined total of all such policies. If the claim exceeds the combined total of all such policies,
201 the limit of all policies will be paid.

202

203 (b) To the policy of resident relatives. If there are two or more policies which will provide such coverage
204 and if the claim does not exceed the combined total of all such policies, a pro rata contribution will be
205 made. If the claim exceeds the combined total of all such policies, the limit of all policies will be paid.

206

207 Each insurer providing coverage under this section shall issue to any person purchasing a motor vehicle
208 liability policy or bond, at his option, a policy endorsement, approved as to content by the commissioner
209 of insurance and subject to such other regulations regarding said endorsement as the commissioner may
210 from time to time make after appropriate hearing, which shall provide that there shall be deducted from
211 amounts that would otherwise be or become due to the policyholder alone or to the policyholder and
212 members of his household, as the policyholder elects, an amount of either one hundred dollars, two
213 hundred and fifty dollars, five hundred dollars, one thousand five hundred dollars, or two thousand five
214 hundred dollars, again as the policyholder elects, said amount to be deducted from the amount otherwise
215 due each person subject to the deduction.

216

217 SECTION 8. Section 6D of chapter 231 of the General Laws is hereby repealed.

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219 SECTION 9. Sections 1, 2, 3, 4, 5, 6 and 7 shall take effect and apply to policies or bonds issued or
220 renewed on or after January 1, 2002. Section 8 shall take effect and apply to causes of action that accrue
221 on or after January 1, 2002.

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