

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 establish consumer choice in automobile insurance .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	24th Middlesex
Mr. Tolman	
John Hayes	5 Colonial Terrace, Belmont, MA 02478

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 914 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO ESTABLISH CONSUMER CHOICE IN AUTOMOBILE 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 Chapter 90 of the General Laws of Massachusetts, as
2 appearing in the 2006 Official Edition, is hereby amended by striking out, in line 2,
3 the words "thirty-four N" and inserting in place thereof the words: "thirty-four
4 W".

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7 SECTION 2. Section 34A of Chapter 90, as above, is hereby further amended by
8 inserting the following:

9 After line 2, add the following:

10 "Accidental bodily injury": bodily injury, sickness, disease, or death
11 resulting therefrom, arising out of the ownership, operation, or use of a motor
12 vehicle, or while occupying such vehicle, which is accidental as to the person
13 injured.

14 After line 24, add the following:

15 “Economic loss”: objectively verifiable pecuniary loss caused by an
16 accident for reasonable and necessary medical and rehabilitation expenses, loss
17 of earnings, funeral costs, and replacement services loss.

18 “Economic-loss litigation option”: optional coverage to allow full
19 personal injury protection insureds to claim against their own company for
20 economic losses in excess of their chosen full personal injury protection coverage.

21 “Full personal injury protection” (or “full PIP”): a personal injury
22 protection policy which does not include recovery for pain and suffering as
23 described in Section 6D of Chapter 231, except as described in Section 34W of
24 Chapter 90, and for which the minimum level of coverage per person, as referred
25 to above, is twenty thousand dollars (\$20,000).

26 After line 30, add the following:

27 “Hybrid personal injury protection” (or “hybrid PIP”), a personal
28 injury protection policy which includes recovery for pain and suffering as
29 described in Section 6D of Chapter 231; the so-called no-fault system in effect up
30 through the year 2008 CE, with a monetary threshold of two thousand dollars
31 (\$2000) and a maximum level of coverage per person of eight thousand dollars
32 (\$8000).

33 After line 121, add the following:

34 “Noneconomic loss”, subjective nonmonetary loss recognized under
35 applicable Massachusetts law.

36 After line 243, add the following:

37 “Tort maintenance coverage”: insurance coverage required of an
38 insured who chooses the hybrid PIP insurance coverage whereby that insured
39 may claim for liability based on fault above any relevant tort threshold against
40 their own insurer to the extent of the coverage.

41 “Uncompensated economic loss”: that portion of economic loss
42 arising out of an accidental bodily injury of an insured person that exceeds any
43 benefits provided by personal injury protection coverage and collateral sources.

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46 SECTION 3. Section 34A of Chapter 90, as above, is hereby further amended by
47 striking out, in line 155, the words "of at least eight thousand dollars" and
48 inserting in place thereof the following words: "of the amount specified herein
49 below".

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52 SECTION 4. Section 34M of Chapter 90, as above, is hereby amended by adding
53 after line 132 the following words:

54 “Companies shall offer to full personal injury protection (“full PIP”) insureds
55 an optional economic-loss litigation coverage. This coverage will allow the full
56 PIP insured who is involved in an accident the right to pursue a bodily-injury claim
57 based on fault against his/her own company for uncompensated economic loss
58 beyond the limit of his/her own full PIP policy. The claim and any resulting award
59 will be for economic loss only and will not include noneconomic loss. The claim
60 and any resulting award may also include a provision for litigation expenses, not to
61 exceed fifty per cent (50%) of the uncompensated economic loss. The limits of
62 such economic-loss litigation coverage shall be as described in Section 113C of
63 Chapter 175 of the General Laws, as modified by Section 8 of this act.

64 “A personal injury protection insured may claim for both economic and
65 noneconomic losses from an uninsured motorist who is liable for damages caused
66 by the accident, from a motorist who was under the influence of alcohol or illegal
67 drugs at the time of the accident and whose conduct was the proximate cause of
68 the accident, from a person who caused an injury while seeking to intentionally
69 injure another person, and from any other person who is not affected by the
70 limitations on tort rights and liabilities of this chapter and whose conduct was the
71 proximate cause of the accident.”

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74 SECTION 5. Chapter 90, as above, is hereby amended by adding after Section 34R
75 the following new sections:

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77 Section 34S. Choice of a hybrid personal injury protection policy or a
78 full personal injury protection policy.

79 (a) Upon the earliest and first renewal of any applicable motor
80 vehicle insurance policy on or after the effective date of this act, or prior to the
81 issuance of a policy required by this act, a choice must be made of a hybrid
82 personal injury protection policy or of a full personal injury protection policy as
83 described in section 34A. A choice made pursuant to this act is binding with
84 respect to any continuation, renewal, or reinstatement of an applicable motor
85 vehicle insurance policy, and continues with respect to any policy or policies
86 which extend, change, supersede, or replace the policy unless a named insured
87 subsequently makes a different choice in writing. A choice by a named insured
88 shall be on a form approved by the commissioner of insurance and provided by
89 the insurer.

90 (b) A choice by one named insured binds all the other insureds
91 listed on that policy and all other resident relatives pursuant to the rules of
92 subsection (c) below.

93 (c) (1) If there are two or more policies in the household, each
94 with a different named insured, each such person shall have the right to choose
95 either a hybrid personal injury protection policy or a full personal injury
96 protection for himself or herself. That person's choice shall determine that
97 person's right no matter which vehicle he or she is occupying or which vehicle he
98 or she might be struck by. The rights of all resident relatives of those named
99 insureds who are not motor vehicle owners shall be governed by the choice

100 applicable to the motor vehicle which they were occupying at the time of injury, if
101 that vehicle was owned by a resident relative.

102 (2) In the event of a bodily injury occurring after the effective date
103 of this law, but prior to the effective date of the earliest and first renewal of a
104 motor vehicle insurance policy requiring a choice, the hybrid personal injury
105 protection policy will be applicable.

106 (3) In the event of a conflicting choice within the household
107 creating questions as to the applicability of a hybrid personal injury protection
108 policy or a full personal injury protection policy, the personal injury protection
109 policy will be applicable.

110 (d) The choice between a hybrid personal injury protection policy
111 and a full personal injury protection policy shall be applicable to every motor
112 vehicle of the owner. In the event an owner of more than one vehicle chooses
113 different alternatives, the latest choice prior to the accident giving rise to a claim
114 governs and, in the event of simultaneous choices, the hybrid personal injury
115 protection policy governs. If any person fails to choose prior to a motor vehicle
116 accident, and subsection (c) (2) above does not apply, he or she is conclusively
117 presumed to have chosen the hybrid personal injury protection policy as
118 described in Section 34A.

119 (e) Said choice or otherwise being bound to a hybrid personal
120 injury protection policy or full personal injury protection policy shall be
121 considered voluntary. Provided that the insured shall have completed the form
122 described in Section 17 of this act, no agent, broker, insurer, or employee of an
123 agent, broker, or insurer shall be held liable for damages resulting from the
124 election or failure to elect, unless that person's conduct is or was willful or
125 wanton.

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127 Section 34T. Priority of claims.

128 Subject to the provisions of Section 34S above, the priority of claims
129 applicable to an injury shall be as follows:

130 (a) The priority of claims shall be as follows:

131 (1) An occupant of a motor vehicle who suffers bodily injury
132 shall be covered by the motor vehicle insurance policy under which he or she is
133 insured as a named insured or resident relative.

134 (2) In the event that an occupant is not insured under a motor
135 vehicle insurance policy in (1) above, the occupant shall be covered under the
136 owner's motor vehicle insurance policy.

137 (3) In the event that neither (1) nor (2) above apply, the
138 occupant shall be covered under the operator's motor vehicle insurance policy.
139 Provided, however, if the injury occurs in a motor vehicle being used in the
140 business of transporting people for a fee, or in a motor vehicle furnished by the
141 injured person's employer, the injured person has the choice of claiming under
142 the personal injury protection policy applicable to the vehicle instead of his or her
143 own coverage.

144 (b) Once said choice is exercised by the injured person as set forth
145 in subsection (a) above, then in no event shall the limit of liability for any
146 applicable uninsured motorists coverage be added to or stacked upon the
147 personal injury protection policy which applies to the injured person's choice.

148 (c) An insurer may exclude coverage under a personal injury protection
149 policy where the named insured or any resident relative who does not own a
150 motor vehicle is injured while occupying a motor vehicle owned by the named
151 insured but which is not described in that insurance policy's declaration page.

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153 Section 34U.Verification of entitlement benefits.

154 (a) Every employer shall furnish the information on a form approved by
155 the commissioner regarding an employee who has filed a claim for personal injury

156 protection benefits if a request is made by an insurer providing such benefits
157 under this chapter.

158 (b) Every physician, hospital, clinic, or other medical institution
159 providing, before or after an injury resulting from a motor vehicle accident, upon
160 which a claim for personal injury protection benefits is based, any products,
161 services, or treatment in relation to that or any other injury, or in relation to a
162 condition claimed to be connected with that or any other injury shall, if requested
163 to do so by the personal injury protection insurer against whom the claim has
164 been made, furnish a written report of the history, condition, and treatment, and
165 the dates and cost of such treatment, of the injured person. Such information
166 shall be provided together with a sworn statement that the treatment of services
167 rendered were reasonable and necessary with respect to the injury sustained and
168 identifying which portion of the expense for such treatment or services was
169 incurred as a result of such injury. Every such physician, hospital, clinic, or other
170 medical institution shall also promptly produce and permit the inspection and
171 copying of its records regarding such history, condition, and treatment, and the
172 dates and costs of treatment. The sworn statement required under this section
173 shall read as follows:

174 "Under penalty of perjury I declare that I have read the foregoing and the
175 facts alleged are true, to the best of my knowledge and belief."

176 No cause of action for violation of a physician-patient privilege or
177 invasion of the right of privacy is allowed against any physician, hospital, clinic, or
178 other medical institution complying with the provisions of this section. The
179 person requesting records and a sworn statement under this subsection shall pay
180 all reasonable costs connected therewith.

181 (c) In the event of any dispute regarding the personal injury
182 protection insurer's right to discovery of facts about an injured person, a court of
183 record may enter an order for such discovery as justice requires.

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185 Section 34V. Out-of-state policies.

186 (a) Each insurer authorized to transact or transacting business in
187 this state shall file with the commissioner, as a condition of its continued
188 transactions of business with the Commonwealth, a form approved by the
189 commissioner declaring that any contract of motor vehicle liability insurance,
190 wherever issued, covering the maintenance or use of a motor vehicle while the
191 motor vehicle is in this state is deemed to provide the insurance required for
192 traditional liability policies issued in this state, unless the named insured, prior to
193 a motor vehicle accident within this state, has chosen a personal injury protection
194 policy under this chapter in which case the out-of-state policy is deemed to
195 provide the insurance required for a personal injury protection policy. Any
196 nonadmitted insurer may also file such a form.

197 (b) A person whose policy is deemed to incorporate the traditional
198 liability policy requirements under subsection (a) shall be deemed to be a
199 traditional liability policy insured. A person whose policy is deemed to incorporate
200 the personal injury protection policy requirements under subsection (a) shall be
201 deemed to be a personal injury protection insured subject to this act. If a policy
202 under subsection (a) also provides coverage in excess of or in addition to that
203 required for a traditional liability or a personal injury protection policy, that excess
204 or additional coverage shall also apply.

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206 Section 34W. Tort maintenance system.

207 (a) Every insurer offering hybrid personal injury protection
208 coverage shall offer, and every insured who chooses hybrid personal injury
209 protection shall be required to purchase tort maintenance coverage at a level that is
210 at least equivalent to the minimum required bodily injury level. Such coverage
211 shall allow such insured to claim against their own insurer for liability based on
212 fault above the relevant tort threshold up to the extent of the coverage.

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215 SECTION 6. Chapter 175 of the General Laws, as above, is hereby amended
216 by adding after Section 3C the following new section:

217 Section 3D. The Commissioner of Insurance shall conduct, or cause the
218 insurance companies to conduct, effective ongoing informational programs in order
219 to assist the public to understand the choices of hybrid personal injury protection
220 and full personal injury protection available to an insurer or obligor relative to
221 automobile insurance, as described in Chapter 90, and the ramifications of these

222 choices. Such informational programs shall include, but not be limited to,
223 information relative to the comparative costs of insurance under the hybrid
224 personal injury protection policy and the full personal injury protection policy, and
225 the benefits, rights, and obligations of insurers and insureds under each such
226 policy.

227 The Commissioner of Insurance shall prepare a standardized form or forms
228 on which an insured or obligor as above shall indicate, by initialing or in some
229 other affirmative manner, that said insured or obligor understands the choices
230 available to him or her, as described in said Chapter 90, and voluntarily accepts the
231 ramifications of the selected choice. Said form or forms shall include the
232 information relative to comparative costs, benefits, rights, and obligations
233 described above. The Commissioner shall distribute a sample copy of such form
234 or forms to all companies licensed to do motor vehicle insurance business in the
235 Commonwealth. A copy of such form or forms shall be required to be completed
236 as part of any new motor vehicle insurance contract, and of any change of choice
237 of policy in such contract, between the company and the insured or obligor.

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240 SECTION 7. Section 113C of Chapter 175 of the General Laws, as above, is
241 hereby amended by inserting after line 26 the following words:

242 Similarly, such insurers shall offer additional personal injury protection
243 coverages beyond that required by section thirty-four A of chapter ninety, to bring
244 such benefit levels up to fifty thousand dollars (\$50,000), one hundred thousand
245 dollars (\$100,000), two hundred and fifty thousand dollars (\$250,000), five
246 hundred thousand dollars (\$500,000), and one million dollars (\$1,000,000) for all
247 eligible victims, and any other amounts determined by the Commissioner of
248 Insurance to be reasonable.

249 Such insurers shall also offer economic-loss litigation coverages to bring the
250 total of an insured's full personal injury protection coverage and economic-loss
251 litigation coverage up to the same limits as prescribed in the paragraph above.

252 Companies may offer other coverage limits in addition to those of the
253 paragraphs above.

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256 SECTION 8. Section 6D of Chapter 231 of the General Laws, as above, is
257 hereby amended as follows:

258 By adding after the words "a plaintiff" in line 4 the words:

259 "insured under a hybrid personal injury protection policy as described
260 in section 34A of Chapter 90";.

261 By adding at the end of the current section the words:

262 “A plaintiff insured under a full personal injury protection policy as
263 described in section 34A of Chapter 90 is not eligible to recover for damages for
264 pain and suffering, except under the provisions of any applicable economic-loss
265 litigation option.”

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268 SECTION 9. The provisions of this act are severable, and if any part of this act
269 shall be adjudged unconstitutional or otherwise invalid by any court of competent
270 jurisdiction, the validity of the remaining parts shall not be affected thereby.

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273 SECTION 10. This act shall take effect nine (9) months from the date of its
274 enactment, or on January first of the year two thousand and ten, whichever date
275 is later, except that any preparatory actions necessary to permit the other
276 sections of this act to be effective on that date shall be allowed to proceed prior
277 to that date.