

By Mr. Dempsey of Haverhill, petition of Brian S. Dempsey for legislation to repeal no-fault motor vehicle insurance. Insurance.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

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 chapter 90 of the General Laws,
2 as appearing in the 1998 Official Edition, is hereby amended by
3 striking out lines 122 through 243 in their entirety.

1 SECTION 2. Section 34M of chapter 90, as so appearing, is
2 hereby repealed.

1 SECTION 3. Section 34N of chapter 90, as so appearing, is
2 hereby repealed.

1 SECTION 4. The second paragraph of section 113C of
2 chapter 175, as so appearing, is hereby amended by striking out,
3 in lines 17 and 18, the words "of medical coverages, to a limit of
4 five thousand dollars" and by inserting in place thereof the
5 following words:— of medical and wage protection coverages, to
6 a limit of no less than two thousand five hundred dollars, and up
7 to limits of at least one hundred thousand dollars.

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

4 (A) Insurance companies undertaking to issue motor vehicle
5 liability policies or bonds, both as defined in section 34A of
6 chapter 90, shall cooperate in the preparation and submission of a
7 plan which shall provide motor vehicle insurance to applicants

8 who have been unable to obtain insurance through the method by
9 which insurance is voluntarily made available; except that the
10 plan shall provide that no insurance company shall be required to
11 issue such policy or execute such bond if:

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

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

18 (3) Any person who has a driving record of step 30 or higher
19 established by the safe driver insurance plan pursuant to 211
20 C.M.R. 127 or its successor unless such a person has participated
21 in and completed a driver education program satisfactory to the
22 registrar.

23 Such a plan shall provide for the fair and equitable apportion-
24 ment among such insurance companies of premiums, losses,
25 expenses, or any combination thereof.

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

28 (1) bodily injury liability and property damage liability cov-
29 erage in at least the minimum amounts required by law;

30 (2) medical payment coverage to limits of no less than two
31 thousand five hundred dollars and up to limits of at least one hun-
32 dred thousand dollars;

33 (3) wage protection coverage to limits of no less than two thou-
34 sand five hundred dollars and up to limits of at least one hundred
35 thousand dollars;

36 (4) increased limits of bodily injury liability limits in an
37 amount to bring the total bodily injury liability coverage available
38 for any one accident to two hundred fifty thousand dollars per
39 person and five hundred thousand dollars per accident;

40 (5) increased property damage liability limits in an amount to
41 bring the total property damage liability coverage available for
42 any one accident to fifty thousand dollars;

43 (6) uninsured motorists limits in an amount up to at least two
44 hundred and fifty thousand dollars per person and five hundred
45 thousand dollars per accident;

46 (7) physical damage insurance, which shall mean:

47 (a) collision coverage or limited collision coverage, (b) fire and
48 theft coverage, or (c) comprehensive coverage, so-called, as those
49 coverages are defined in section 34A and 34O of chapter 90 and
50 section 113O of this chapter. The plan shall permit the refusal of
51 collision, fire, theft or comprehensive coverage under the
52 following circumstances:

53 (i) comprehensive, fire and theft or collision coverage on a
54 vehicle customarily driven by or owned by persons convicted
55 within the most recent five year period of any category of vehic-
56 ular homicide. Auto insurance related fraud, or motor vehicle
57 theft;

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

62 (iii) collision coverage on a vehicle customarily driven by or
63 owned by persons who have been involved in four or more acci-
64 dents in which such person has been deemed to be at fault in
65 excess of fifty percent within the three years immediately pre-
66 ceding the effective date of the policy;

67 (iv) comprehensive or fire and theft coverages on a vehicle cus-
68 tomarily driven by or owned by persons who have two or more
69 total theft or fire claims after January 1, 1984 and within the three
70 years immediately preceding the effective date of the policy;

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

75 (vi) comprehensive, fire and theft or collision coverage on any
76 motor vehicle for which a salvage title has been issued by the reg-
77 istrar of motor vehicles unless a new certificate of title has been
78 issued pursuant to section twenty D of chapter ninety D; or

79 (vii) comprehensive, fire and theft or collision coverage on a
80 high-theft vehicle which does not have at least a minimum anti-
81 theft or auto recovery device as prescribed by the commissioner of
82 insurance. The commissioner may designate as a "high-theft
83 vehicle" any vehicle, classified according to make, model and
84 year of manufacture, which has both above-average incidence of

85 theft and above average original sales price, and may prescribe
86 appropriate auto-theft or auto recovery devices for such vehicles.

1 SECTION 6. Said chapter 175, as so appearing, is hereby fur-
2 ther amended by inserting the following section:—

3 Section 113V. Every policy issued or delivered in the common-
4 wealth shall be deemed to provide medical payments coverage in
5 limits of at least two thousand five hundred dollars unless the pol-
6 icyholder affirmatively elects to purchase no such coverage for
7 himself and members of his household.

8 The medical payment coverage provision of a motor vehicle lia-
9 bility policy or bond shall provide for payment, without regard to
10 negligence or gross negligence or fault of any kind, to the named
11 insured in any such motor vehicle liability policy, the obligor of
12 any motor vehicle liability bond, members of the insured's or
13 obligor's household, any authorized operator or passenger of the
14 insured's or obligor's motor vehicle including a guest occupant,
15 and pedestrian struck by the insured's obligor's motor vehicle, of
16 all reasonable expenses incurred within two years from the date of
17 accident for necessary medical, surgical, x-ray, and dental services,
18 including prosthetic devices and necessary ambulance, hospital,
19 professional nursing and funeral expenses.

20 Provided, however, that no such payment shall be required to
21 the extent such payment has been made by a health insurance
22 policy or other contract with an insurance company, health main-
23 tenance organization, a non-profit hospital or medical services
24 corporation or any other third party compensation system which is
25 designated by the commissioner of insurance as providing the
26 acceptable level of benefits. Nothing in this section shall be con-
27 strued to limit in any way, an individual's choice of physician,
28 hospital, or other health care provider.

29 The medical payments coverage of two or more policies may be
30 added together, combined, or stacked if required to pay an injured
31 person's reasonable and necessary medical expenses. All such
32 expenses shall be submitted first to the named insured's policy
33 covering the vehicle the person was occupying when injured or, if
34 the injured person was a pedestrian, to the named insured's policy
35 covering the vehicle which struck the individual. An insured who
36 is not a named insured on any policy providing medical payments

37 coverage shall next submit a claim to the policies of resident rela-
38 tives. If there are two or more policies which provide such cov-
39 erage and the claim exceeds the combined total of all such
40 policies, the limit of all policies will be paid. A person who is
41 named insured on a policy providing medical payments coverage
42 shall next submit a claim.

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

49 (b) To the policy of resident relatives. If there are two or more
50 policies which provide such coverage and if the claim does not
51 exceed the combined total of all such policies the limit of all poli-
52 cies will be paid.

53 The rate of payment by automobile insurers for health care
54 services adjudged compensable under this chapter shall be estab-
55 lished by the rate setting commission under the provisions of
56 chapter 118G; provided, however, that a different rate for services
57 may be agreed upon by the automobile insurer and the health care
58 provider.

59 Except as otherwise provided in this section, no automobile
60 insurer or insured shall be liable for hospitalization expenses
61 adjudged compensable under this section at a rate in excess of the
62 rate established for that service by the rate setting commission
63 regardless of the setting in which the service is administered.
64 Requests for reimbursement for health care services under this
65 section must be signed by the person performing such service and
66 must be accompanied by a detailed description of the service ren-
67 dered as well as the name and license number of the person per-
68 forming such service. All health care services provided under this
69 section shall be subject to the provisions of section three of
70 chapter one hundred and seventy-five H and 42 C.F.R. 1001.951-
71 1001.953, the so-called "safe harbor regulations" as adopted by
72 the federal government on July twenty-nine, nineteen hundred and
73 ninety-one.

1 SECTION 7. Said chapter 175, as so appearing, is hereby fur-
2 ther amended by inserting the following section:—

3 Section 113 W. Every policy issued or delivered in the com-
4 monwealth shall be deemed to provide wage protection coverage
5 in limits of at least two thousand five hundred dollars unless the
6 policyholder affirmatively elects to purchase no such coverage for
7 himself and for members of his household.

8 The wage protection coverage shall provide for payment to the
9 named insured in any such motor vehicle liability policy, the
10 obligor of any motor vehicle liability bond, members of the
11 insured's or obligor's household, any authorized operator or pas-
12 senger of the insured's or obligor's motor vehicle including a
13 guest occupant, and any pedestrian struck by the insured's or
14 obligor's motor vehicle, unless any of the aforesaid is a person
15 entitled to payments or benefits under the provisions of chapter
16 one hundred and fifty-two, and in the case of persons employed or
17 self-employed at the time of an accident of any amounts actually
18 lost by reason of inability to work and earn wages or salary or the
19 equivalent, but not other income, that would otherwise have been
20 earned in the normal course of an injured person's employment,
21 and for payments in fact made to others, not members of the
22 injured person's household and reasonably incurred in obtaining
23 from those others ordinary and necessary services in lieu of those
24 that had he not been injured, the insured person would have per-
25 formed not for income but for the benefit of himself and/or mem-
26 bers of his household, and in the case of persons not employed or
27 self-employed at the time of an accident of any loss by reason of
28 diminution of earning power and for payments in fact made to
29 others, not members of the injured person's household and reason-
30 ably incurred in obtaining from those others, ordinary and reason-
31 able services in lieu of those that, had he not been injured, the
32 injured person would have performed not for income but for the
33 benefit of himself and/or members of his household, as a result of
34 bodily injury, sickness or disease, including death at any time
35 resulting therefrom, caused by accident and not suffered intention-
36 ally while in or upon, or while entering into or alighting from, or
37 being struck as a pedestrian by, the insured's or obligor's motor
38 vehicle, without regard to negligence or gross negligence or fault
39 of any kind, to the amount or limit of at least five thousand dollars

40 on account of injury to or death of any person, except that pay-
41 ment for loss of wages or salary or their equivalent or, in the case
42 of persons not employed, loss by reason of diminution of earning
43 power, shall be limited to amounts actually lost by reason of the
44 accident and further limited (1) in the case of persons entitled to
45 wages or salary or their equivalent under any program for continu-
46 ation of said wages or salary or their equivalent to an amount that,
47 together with any payments due under such program, will provide
48 seventy-five percent of the greater of any such person's average
49 weekly wage or salary or its equivalent for the year immediately
50 preceding the accident or the person's average weekly wage or
51 salary at the time of the accident provided that the insurer shall
52 reimburse those wage continuation programs or their equivalent
53 which provide for accumulated benefits which can be converted
54 into either case or additional retirement credit for the amount said
55 program or its equivalent actually pays to the insured, not to
56 exceed seventy-five percent of the greater of the insured's average
57 weekly wages or salary or its equivalent for the year immediately
58 preceding the accident or the insured's average weekly wage or
59 salary at the time of the accident, or (2) in the case of persons not
60 entitled to wages or salary or their equivalent under any program
61 for continuation of said wages or salary or their equivalent to an
62 amount that will provide seventy-five percent of the greater of any
63 such person's average weekly wage or salary or its equivalent for
64 the year immediately preceding the accident or the person's
65 average weekly wage or salary at the time of the accident. In any
66 case where amounts paid for loss of wage, salary or their equiva-
67 lent are reduced as a result of any program for continuation of the
68 same and such reduction produces a subsequent loss, as when
69 limit of any such program for continuation of wage or salary or
70 their equivalent is exhausted with the result that an injured person
71 cannot recover for a later injury or illness as he would have been
72 entitled to but for such a reduction, such subsequent loss to an
73 amount equaling the reduction in payments made in accordance
74 with this section shall, if incurred within one year after the receipt
75 of the last benefit provided under this section, be treated as a loss
76 of wages, salary or their equivalent incurred as a result of the
77 injury to which wage protection coverage applied. In all cases
78 where an insured is compensated under such a wage continuation

79 program and also recovers these benefits from another source, he
80 shall be entitled to reimburse the wage continuation program with
81 no loss in standing under such a program. Coverage under this
82 section shall also provide for payment, to the named insured or
83 obligor and members of their households, all amounts defined in
84 this section in any case where such persons incur such expense or
85 loss as a result of such injury while in, upon, entering into or
86 alighting from, or being struck as a pedestrian by a motor vehicle
87 not insured by a policy or bond providing such coverage.

88 The wage protection coverage of two or more policies may be
89 added together, combined, or stacked if required to compensate an
90 injured person for lost wages, salary,, or their equivalent or a loss
91 by reason of diminution of earning power. All such losses shall be
92 submitted first to the named insured's policy covering the vehicle
93 the person was occupying when injured or, if the injured person
94 was a pedestrian, to the named insured's policy covering the
95 vehicle which struck the individual. An insured who is not a
96 named insured on any policy providing wage protection shall next
97 submit a claim to the policies of a resident relative. If there are
98 two or more policies which provide such coverage and if the claim
99 does not exceed the combined total of all such policies, a pro rata
100 contribution will be made. If there are two or more policies which
101 provide such coverage and the claim exceeds the combined total
102 of all such policies, the limit of all policies will be paid. A person
103 who is named insured on a policy providing wage protection cov-
104 erage shall next submit a claim:

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

111 (b) To the policy of resident relatives. If there are two or more
112 policies which will provide such coverage and if the claim does
113 not exceed the combined total of all such policies, a pro rata con-
114 tribution will be made. If the claim exceeds the combined total of
115 all such policies, the limit of all policies will be paid.

116 Each insurer providing coverage under this section shall issue
117 to any person purchasing a motor vehicle liability policy or bond,

118 at his option, a policy endorsement, approved as to content by the
119 commissioner of insurance and subject to such other regulations
120 regarding said endorsement as the commissioner may from time to
121 time make after appropriate hearing, which shall provide that
122 there shall be deducted from amounts that would otherwise be or
123 become due to the policyholder alone or to the policyholder and
124 members of his household, as the policyholder elects, an amount
125 of either one hundred dollars, two hundred and fifty dollars, five
126 hundred dollars, one thousand five hundred dollars, again as the
127 policyholder elects, said amount to be deducted from the amount
128 otherwise due each person subject to the deduction.

1 SECTION 8. Section 6D of chapter 231, as so appearing, is
2 hereby repealed.

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

