

Accompanying the eighth recommendation of the Department of Public Welfare (House, No. 188). Human Services and Elderly Affairs.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty.

AN ACT GOVERNING THE RECOVERY OF CERTAIN ASSISTANCE PAYMENTS  
BY THE DEPARTMENT OF PUBLIC WELFARE.

*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. Chapter 18 of the General Laws is hereby  
2 amended by striking out section 5G, inserted by section 52 of  
3 chapter 363A of the Acts of 1977, and inserting in place thereof the  
4 following section:—

5 *Section 5G. Third Party Liability*

6 (1) Definitions as used in this section:—

7 (a) "Company" means all corporations, associations, partner-  
8 ships or individuals engaged as principals in the business of insur-  
9 ance, as defined in chapter one hundred seventy-four, chapter one  
10 hundred seventy-four A, chapter one hundred seventy-four B,  
11 chapter one hundred seventy-five, chapter one hundred seventy-  
12 five A, chapter one hundred seventy-five B, chapter one hundred  
13 seventy-five C, chapter one hundred seventy-five D, and chapter  
14 one hundred seventy-five E.

15 (b) "Compensable loss" means any damage to or loss of real or  
16 personal property, and any personal injury, disease, or disability,  
17 including death, for which a person (including a corporation,  
18 partnership, or other entity) other than the third party beneficiary  
19 who suffers or experiences the loss is or may be liable or for which a  
20 company is or may be liable in accordance with the provisions of  
21 any policy of insurance.

22 (c) "Third party beneficiary" means any person who, as the  
23 result of suffering or experiencing a compensable loss, has received

24 or will receive benefits under any program of assistance adminis-  
25 tered by the department, and includes such person's guardian,  
26 conservator, or other personal representative.

27 (d) "Wrongful death claimant" means any person entitled to  
28 commence a civil action against a person or company who is or  
29 may be liable for causing the death of a third party beneficiary.

30 (2) Recovery of Benefits; Limitation; Notice; Compromise and  
31 Release of Claim.

32 (a) The department shall have the right to recover from the  
33 person or company liable for the compensable loss an amount  
34 equal to the benefits provided to the third party beneficiary. The  
35 death of a third party beneficiary does not abate the department's  
36 right to recover on any cause of action established by this section.

37 (b) Notwithstanding any other provision of law, the entire  
38 amount of any settlement, judgement, or other award in a civil  
39 action or other claim of a third party beneficiary or a wrongful  
40 death claimant, with or without suit, is subject to the department's  
41 claim for recovery and any lien filed pursuant thereto, but in no  
42 event shall the department's claim exceed eighty percent of the  
43 difference between the gross amount of the settlement and the  
44 expenses attributable to the compensable loss, and to the establish-  
45 ment of liability therefor, which were paid or incurred directly by  
46 the third party beneficiary or by the wrongful death claimant,  
47 including but not limited to medical expenses not paid by the  
48 department, attorney's fees and costs of litigation.

49 Payment by the department under chapter one hundred eighteen  
50 E of medical expenses of the third party beneficiary at the rate  
51 established by the rate setting commission shall constitute payment  
52 in full pursuant to chapter six A, section thirty-six, and no addi-  
53 tional payments on account of such expenses shall be paid or  
54 allowed out of said settlement, judgement or other award.

55 (c) Notice of Commencement of Action.

56 Within thirty days after a third party beneficiary or wrongful  
57 death claimant commences a civil action or other proceeding  
58 against a person or company who may be liable for the compensa-  
59 ble loss, a written notice which includes the name and address of  
60 the third party beneficiary and the name of the court or state or  
61 local agency in which the action or proceeding is brought shall be  
62 given to the department in Boston by personal service or registered  
63 mail. Proof of such notice shall be filed in the action or proceeding.  
64 The department may by regulation require the giving of further

65 notice. All required notices shall be given by the attorney retained  
66 to assert the claim of third party beneficiary or the wrongful death  
67 claimant, or by the third party beneficiary or wrongful death  
68 claimant if no attorney is retained.

69 (d) The department may compromise, waive, or settle and  
70 release any claim for its recovery, in whole or in part, for the  
71 convenience of the department, or if the department determines  
72 that collection would result in undue hardship upon the third party  
73 beneficiary, his dependents, or heirs, or the wrongful death  
74 claimant.

75 (3) Action Against Liable Person or Company

76 (a) The department shall be subrogated to the entire cause of  
77 action or right to proceed against any person or company, and to  
78 the entire claim for monies, of every third party beneficiary and  
79 wrongful death claimant to the extent of benefits provided under  
80 any program of assistance administered by the department. The  
81 department, with the consent of the attorney general, may, by  
82 attorneys employed or selected by it, commence a civil action or  
83 other proceeding to establish the liability of any person or com-  
84 pany or to collect such monies, if a third party beneficiary or  
85 wrongful death claimant does not commence such a civil action or  
86 other proceedings within six months after the date of the compen-  
87 sable loss. Such action may be commenced either in the name of the  
88 Commonwealth or in the name of the third party beneficiary, or  
89 the wrongful death claimant.

90 (b) Any civil action commenced by the department pursuant to  
91 this subsection or any judgment rendered in such action shall not  
92 be a bar to any action upon the claim or cause of action of a third  
93 party beneficiary or wrongful death claimant, nor operate to deny  
94 to a third party beneficiary or wrongful death claimant recovery  
95 for that portion of any damages not covered by the department's  
96 claim.

97 (c) Within thirty days after the department commences a civil  
98 action or other proceeding pursuant to this subsection, written  
99 notice shall be given to the third party beneficiary or to every  
100 wrongful death claimant by personal service or registered mail.  
101 Proof of such notice shall be filed in the action or proceeding. The  
102 notice shall include the name and address of the attorney who  
103 represents the department, the name of the court or state or local  
104 agency in which the action or proceeding is brought, and shall  
105 advise him of the right to obtain a private attorney of his choice and

106 of the department's claim for recovery.

107 (4) Judgment or Award Against Third Party or Company;  
108 Litigation Expenses; Payment of Department's Claim.

109 (a) In the event of settlement, judgment or award in a suit or  
110 claim against a person or company in favor of a third party  
111 beneficiary or wrongful death claimant, the court or agency shall  
112 first order paid from any judgment or award the reasonable  
113 litigation expenses incurred in preparation and prosecution of such  
114 action or claim, together with reasonable attorney's fees, when an  
115 attorney has been retained. After payment of such expenses and  
116 attorney's fees the court or agency shall, on the application of the  
117 department, allow as a first lien against the balance of such judg-  
118 ment or award, the department's claim for recovery, in an amount  
119 determined in conformity with subsection two.

120 (b) The court or agency shall, upon further application at any  
121 time before the judgment or award is satisfied, allow as a further  
122 lien the amount of any expenditures of the department in payment  
123 of additional benefits arising out of the same cause of action or  
124 claim paid to or on behalf of the third party beneficiary where such  
125 benefits were provided or became payable subsequent to the origi-  
126 nal order.

127 (c) No judgment, award, or settlement in any action or claim by  
128 a third party beneficiary or wrongful death claimant to recover  
129 damages for injuries, where the department has an interest, shall be  
130 satisfied without first giving the department notice and a reasona-  
131 ble opportunity to perfect and satisfy its lien.

132 (d) When the department has perfected a lien upon a judgment  
133 or award in favor of a third party beneficiary or wrongful death  
134 claimant against any person or company, the department shall be  
135 entitled to a writ of execution as lien claimant to enforce payment  
136 of said lien against such person or company with interest and other  
137 accruing costs as in the case of other executions. In the event the  
138 amount of such judgment or award so recovered has been paid to  
139 the third party beneficiary, the department shall be entitled to a  
140 writ of execution against such third party beneficiary to the extent  
141 of the department's lien, with interest and other accruing costs as in  
142 the case of other executions.