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By Mr. Golden of Lowell, petition of Thomas A. Golden, Jr., relative to liability insurance for certain health care providers. Financial Services.

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**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Five.

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AN ACT RELATIVE TO PROFESSIONAL LIABILITY 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. Chapter 175 of the Massachusetts General Laws  
2 is hereby amended by the addition of the following new  
3 section:—

4 Section 193 V: Every insurer or risk management organization  
5 which provides insurance to a physician licensed under Chapter  
6 112 of the Massachusetts General Laws shall make an annual  
7 report to the Betsy Lehman Center for Patient Safety and Medical  
8 Error Reduction established by Chapter 177 of the Acts of 2001.  
9 Said report shall list the top ten categories of losses, claims or  
10 actions for damage for personal injuries alleged to have been  
11 caused by error, omission or negligence in the performance by  
12 physicians of medical services the company incurred during the  
13 previous calendar year. Said report shall also identify the top ten  
14 defendant specialties as to cost and frequency of cases in the prior  
15 year. Where applicable, organizations shall include reports out-  
16 lining losses and claims for non-physician health care providers as  
17 well. Reports shall include completed cases and settlements only  
18 and shall include no information identifying providers or patients.  
19 Reports shall be provided to the center at its request under annual  
20 timelines and reporting requirements established by the center  
21 with the input of the advisory committee established in Chapter  
22 6A Section 16E(C). The Center shall use this information in the  
23 development of evidence-based best practices to reduce medical  
24 errors and enhance patient safety as required by Chapter 6A

25 Section 16E(e)1 to increase awareness of error prevention strate-  
26 gies through public and professional education as required by  
27 Chapter 6A Section 16E(e)4.

28 Section 1. Section 3 of chapter 175F of the General Laws is  
29 hereby amended by striking the word “sixty” and inserting in its  
30 place the words “forty-five”.

1 SECTION 2. Section 9 of chapter 175F of the General Laws is  
2 hereby amended by striking the word “thirty” and inserting in its  
3 place the words “forty-five”.

1 SECTION 3. Section 18 of chapter 175F of the General Laws is  
2 hereby amended by striking the word “five” and inserting in its  
3 place the words “one thousand”.

1 SECTION 4. Chapter 231 of the General Laws is hereby  
2 amended by adding the following section:—

3 Section 60K. In any action for malpractice, error, omission,  
4 mistake or the unauthorized rendering of professional services  
5 against a provider of health care, the liability of each defendant  
6 for damages shall be several only and shall not be joint. Each  
7 defendant shall be liable only for the amount of damages allocated  
8 to that defendant in direct proportion to that defendant’s per-  
9 centage of fault, and a separate judgment shall be rendered against  
10 that defendant for that amount.

1 SECTION 5. Chapter 231 of the General Laws, as appearing in  
2 the 1994 Official Edition, is hereby amended by inserting after  
3 section sixty L the following new section:—

4 Section 60L. In any action for malpractice, negligence, error,  
5 omission, mistake or unauthorized rendering of professional serv-  
6 ices, other than actions brought under section two of chapter two  
7 hundred twenty-nine, against a provider of health care, in which a  
8 verdict is rendered or a finding made or an order for judgment  
9 made for pecuniary damages for personal injuries to the plaintiff  
10 or for consequential damages, there shall be added by the clerk of  
11 the court to the amount of damages interest thereon, at a rate to be  
12 determined as set forth below rather than the rate specified in  
13 section 6B of chapter two hundred thirty-one, from the date of the

14 commencement of the action even though such interest brings the  
15 amount of the verdict or finding beyond the maximum liability  
16 imposed by law. The rate of interest to be applied by the clerk  
17 shall be at a rate equal to the coupon issue yield equivalent, as  
18 determined by the secretary of the treasury, of the average  
19 accepted auction price for the last auction of fifty-two week  
20 United States treasury bills settled immediately prior to the date  
21 on which the verdict is rendered or finding made or order made.

1 SECTION 6. Chapter 231 of the General Laws is amended by  
2 adding the following:

3 Section 60M. In every action for malpractice, negligence, error,  
4 omission, mistake or the unauthorized rendering of professional  
5 services against a provider of health care where the court shall, at  
6 the request of either party, (a) Enter a judgment ordering that  
7 money damages or its equivalent for future damages of the judg-  
8 ment creditor be paid in whole or in part by periodic payments  
9 rather than by a lump-sum payment if the award equals or exceeds  
10 fifty thousand dollars (\$50,000) in future damages. In entering a  
11 judgment ordering of the payment of future damages by periodic  
12 payments, the court shall make a specific finding as to the dollar  
13 amount of periodic payments which will compensate the judgment  
14 creditor for such future damages, the court shall require the defen-  
15 dant who is not adequately insured to post security adequate to  
16 assure full payment of such damages awarded by the judgment.  
17 Upon termination of periodic payments of future damages, the  
18 court shall order the return of this security, or so much as remains,  
19 to the defendant.

20 (b)(1) The judgment ordering the payment of future damages  
21 by periodic payments shall specify the recipient or recipients of  
22 the payments, the dollar amount of the payments, the interval  
23 between payments, and the number of payments or the period of  
24 time over which payments shall be made. Such payments shall  
25 only be subject to modification in the event of the death of the  
26 judgment creditor.

27 (2) In the event that the court finds that the defendant has  
28 exhibited a continuing pattern of failing to make the payments, as  
29 specified in paragraph (1), the court shall find the defendant in  
30 contempt of court and, in addition to the required periodic pay-

31 ments, shall order the defendant to pay the plaintiff all damages  
32 caused by the failure to make such periodic payments, including  
33 court costs and attorney's fees.

34 (c) However, money damages awarded for loss of future earn-  
35 ings shall not be reduced or payments terminated by reason of the  
36 death of the plaintiff, but shall be paid to persons to whom the  
37 plaintiff owed a duty of support, as provided by law, immediately  
38 prior to his death. In such cases the court which rendered the orig-  
39 inal judgment, may, upon petition of any party in interest, modify  
40 the judgment to award and apportion the unpaid future damages in  
41 accordance with this subdivision.

42 (d) Following the occurrence or expiration of all obligations  
43 specified in the periodic payment judgment, any obligation of the  
44 defendant to make future payments shall cease and any security  
45 given, pursuant to section (a) shall revert to the defendant.