HOUSE DOCKET, NO. 2202 FILED ON: 1/20/2011

HOUSE . . . . . No. 2194

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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:

An Act Relative to Medical Malpractice Claims.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradley H. Jones, Jr.	*20th Middlesex*
Marc T. Lombardo	*22nd Middlesex*
Donald F. Humason, Jr.	*4th Hampden*
Geoff Diehl	*7th Plymouth*
F. Jay Barrows	*1st Bristol*
Shaunna O'Connell	*3rd Bristol*
Susan Williams Gifford	*2nd Plymouth*
George T. Ross	*2nd Bristol*
Donald H. Wong	*9th Essex*
Todd M. Smola	*1st Hampden*
Kevin J. Kuros	*8th Worcester*
Sheila C. Harrington	*1st Middlesex*
Matthew A. Beaton	*11th Worcester*
Steven L. Levy	*4th Middlesex*
Paul K. Frost	*7th Worcester*
George N. Peterson, Jr.	*9th Worcester*
Elizabeth A. Poirier	*14th Bristol*
Viriato Manuel deMacedo	*1st Plymouth*

HOUSE DOCKET, NO. 2202 FILED ON: 1/20/2011

HOUSE . . . . . No. 2194

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2194) of Bradley H. Jones, Jr., and others relative to medical malpractice claims. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1452* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act Relative to Medical Malpractice Claims.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 112 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out section 12C and inserting in place thereof the following section:—

"Section 12C. No physician or nurse administering immunization or other protective programs under public health programs shall be liable in a civil suit for damages as a result of any act or omission on his part in carrying out his duties. No physician or nurse who is registered by the Commonwealth in the Massachusetts System for Advance Registration of Volunteer Health Professionals or its successor entity shall be liable in civil suit for damages for any act or omission on his part related to his voluntary participation in any disaster preparedness or response activity.".

SECTION 2. Section 60H of chapter 231 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 6, lines 13 and 14, inclusive, and lines 21, and 23, in each instance, the words "five hundred thousand" and inserting in place thereof in each instance the figures: - "$250,000".

SECTION 3. Said chapter 231 is hereby amended by adding after section 60K, the following new sections:

17 "Section 60L. In any action for malpractice, error or mistake against a provider of health
18 care licensed pursuant to section 2 of chapter 112, including actions pursuant to section 60B of
19 this chapter, an expert witness shall be board certified in the same specialty as the defendant
20 licensed pursuant to section 2 of chapter 112, as so appearing.

21 Section 60M. In every action for malpractice, negligence, error, omission, mistake or the
22 unauthorized rendering of professional services against a provider of health care the court may,
23 at the request of either party, enter a judgment ordering that money damages or its equivalent for
24 future damages of the judgment creditor be paid in whole or in part by periodic payments rather
25 than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. In
26 entering a judgment ordering the payment of future damages by periodic payments, the court
27 shall make a specific finding as to the dollar amount of periodic payments which will
28 compensate the judgment creditor for such future damages, and court shall require a defendant
29 who is not adequately insured to post security adequate to assure full payment of such damages
30 awarded by the judgment. Upon termination of periodic payments of future damages, the court
31 shall order the return of this security, or so much as remains, to the defendant.

32 (a)(1) The judgment ordering the payment of future damages by periodic payments shall
33 specify the recipient or recipients of the payments, the dollar amount of the payments, the
34 interval between payments, and the number of payments or the period of time over which
35 payments shall be made. Such payments shall only be subject to modification in the event of the
36 death of the judgment creditor.

37 (2) In the event that the court finds that the defendant has exhibited a continuing pattern
38 of failing to make the payments as specified in paragraph (1), the court shall find the defendant
39 in contempt of court and, in addition to the required periodic payments, shall order the defendant
40 to pay the plaintiff all damages caused by the failure to make such periodic payments, including
41 court costs and attorney's fees.

42 (b)Money damages awarded for loss of future earnings shall not be reduced or payments
43 terminated by reason of the death of the plaintiff, but shall be paid to persons to whom the
44 plaintiff owed a duty of support, as provided by law, immediately prior to his death, or to whom
45 the plaintiff assigned, transferred, or bequeathed his right to receive payment. In such cases the
46 court which rendered the original judgment, may, upon petition of any party in interest, modify
47 the judgment to award and apportion the unpaid future damages in accordance with this
48 subdivision.

49 (c) Following the occurrence or expiration of all obligations specified in the periodic
50 payment judgment, any obligation of the defendant to make future payments shall cease and any
51 security given, pursuant to this section shall revert to the defendant.

52 Section 60N. In any action for malpractice, error, omission, mistake or the unauthorized
53 rendering of professional services against a provider of health care, the liability of each

54 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
55 only for the amount of damages allocated to that defendant in direct proportion to that
56 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
57 for that amount.".