

# HOUSE . . . . . No. 1211

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Garrett J. Bradley and Eugene L. O'Flaherty***

*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 adoption of the accompanying bill:

An Act relative to certain judicial procedures.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>1/18/2013</i>
<i>Eugene L. O'Flaherty</i>	<i>2nd Suffolk</i>	<i>1/24/2013</i>

# HOUSE . . . . . No. 1211

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By Messrs. Bradley of Hingham and O'Flaherty of Chelsea, a petition (accompanied by bill, House, No. 1211) of Garrett J. Bradley and Eugene L. O'Flaherty relative to certain judicial procedures. The Judiciary.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act relative to certain judicial procedures.

*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. The fourth paragraph of section 34M of chapter 90 of the General Laws, as  
2 appearing in the 2010 Official Edition, is hereby amended by adding the following two  
3 sentences:- If after the commencement of any such action, but before judgment, the insurer  
4 makes payment of the amount that is due and payable, the court may still assess costs and  
5 reasonable attorney's fees for the bringing and prosecuting of the action, but only up until the  
6 time of such payment. Interest, running from the commencement of the action shall be assessed  
7 on all amounts adjudged to be due and payable in any such action, at the same rate as interest is  
8 assessed for breach of contract actions in the commonwealth.

9           SECTION 2. Section 70A of chapter 111 of the General Laws, as appearing in the 2010  
10 Official Edition, is hereby amended by adding the following sentence:- The expense of any  
11 attorney's fees and costs incurred in enforcing the liability of the tortfeasor and in obtaining such  
12 judgment, compromise or settlement shall be divided between the health maintenance  
13 organization, or hospital, medical or dental service corporation and the injured person in  
14 proportion to the amounts received by them from any such judgment, settlement or compromise.  
15 If the settlement, judgment or funds available to satisfy the judgment are less than the amount of  
16 plaintiff's total damages, the court may reduce after a hearing the amount of said insurer's lien in  
17 the action, after evaluation of the plaintiff's total cognizable damages at law.

18           SECTION 3. Chapter 111 of the General Laws, as so appearing, is hereby amended by  
19 inserting after section 70D the following section:-

20           Section 70D ½. Notwithstanding the provisions of sections 70A to 70D, inclusive, and  
21 any contractual term to the contrary, no health maintenance organization or group or individual  
22 medical insurer or disability insurer which has provided benefits for covered services to a person  
23 insured in an accident shall have a lien or right of reimbursement or subrogation claim or claims  
24 of recoupment no matter how designated upon any recovery or sum had or collected or to be  
25 collected, whether by judgment or by settlement or compromise from another person as damages  
26 on account of such injuries, for more than the proportionate share of said recovery or sum subject  
27 to its lien, right or reimbursement, subrogation claim or claims of recoupment which the amount  
28 of benefits so provided for covered services bears to the complete value of the injured person's  
29 tort damages.

30           Either the entity which provided benefits or the injured person may petition the court in  
31 which the accident case is pending, or in a court in which such case could be properly filed had  
32 settlement not been attained before commencement of suit, for a determination of the  
33 reasonableness of the settlement and the fair allocation of amounts payable thereunder. A hearing  
34 on such petition shall adhere to the same procedural requirement as provided in section 15 of  
35 chapter 152.

36           SECTION 4. Section 13B of chapter 231 of the General Laws, as appearing in the 2010  
37 Official Edition, is hereby amended by adding the following sentence:- In civil actions in the  
38 superior court, plaintiffs, through their counsel, may ask at trial for a specific monetary amount  
39 for damages.

40           SECTION 5. Said chapter 231 is hereby further amended by inserting after section 72 the  
41 following section:-

42           Section 72A. In any action in which an injured person enters into a settlement with, or  
43 obtains a judgment upon trial from a third party and benefits for such person's injuries have been  
44 paid under chapter 152, and the injured person and the insurer paying said benefits do not agree  
45 to the amount each is entitled to recover out of such settlement or judgment, there shall be a just  
46 and reasonable apportionment thereof in accordance with this section; provided, however if the  
47 settlement, judgment or funds available to satisfy the judgment are less than the amount of  
48 plaintiff's total damages, the court or other authority authorized to approve settlements under  
49 section 15 of chapter 152 may reduce after a hearing the amount of said insurer's lien in the  
50 action, after evaluation of the plaintiff's total cognizable damages at law. Except in the case of a  
51 final judgment, where the plaintiff is dissatisfied with the apportionment by the court, he may  
52 withdraw his consent to the settlement.

53           SECTION 6. Said chapter 231 is hereby further amended by inserting after section 85AA  
54 the following section:-

55           Section 85BB. Any waiver, disclaimer, exclusion or limitation of liability in an  
56 employment application or other document purporting to release any third party from liability for

injuries or death, whether in tort or contract, to an employee shall be void as against public policy, and no employee or employment applicant shall be required to agree to such waiver, disclaimer, exclusion or limitation of liability as a condition of his or her hiring or continued employment. The term "employee" as used in this section shall be as defined in section 1 of chapter 152, and shall include dependents of such employee, also as so defined, except that it shall not exclude an independent contractor, or any employee thereof, providing labor or materials to another. Any employer who violates this section shall be liable for a penalty equal to 2 times the average weekly wage in the commonwealth plus the attorney's fees and costs incurred by the employee in any action involving a determination of the rights of the employee under this section.

SECTION 7. Section 28 of Chapter 234 of the General Laws is hereby amended by adding the following paragraph:

Notwithstanding the above, in all jury trials, both criminal and civil, the following procedures shall govern:

(1) In addition to whatever jury voir dire of the jury venire is conducted by the court, and subject to the provisions in clause(3) for the commonwealth in criminal cases involving multiple defendants, the court shall permit, upon the request of any party or any party's attorney, the party or the party's attorney to conduct, under the direction of the court, an oral examination of the jury venire.

(2) The court may impose reasonable limitations upon the questions allowed during such examination. Additional time may be granted in the discretion of the court.

(3) In criminal cases involving multiple defendants, the commonwealth shall be entitled to the same amount of time as that to which all defendants together are entitled.

(4) This paragraph shall not limit the number of peremptory challenges a party is entitled to by statute or court rule.

(5) Before any examination of prospective jurors begin, the prospective jurors will be told in all civil cases, unless a party is appearing pro se, that at the conclusion of the trial, they will meet with judge and the attorneys for the litigants, for ten minutes. A judge in his or her discretion for good cause may, after a verdict is rendered, disallow a meeting between the jurors and the attorneys for the litigants and may excuse a juror or jurors from such a meeting, and a judge may control the conduct of the meeting.