

**SENATE . . . . . No. 479**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***William N. Brownsberger***

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*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 to establish consumer choice in automobile insurance.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Michael S. Dukakis</i>	<i>85 Perry Street Brookline, MA 02446</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>

**SENATE . . . . . No. 479**

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By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 479) of William N. Brownsberger, Michael S. Dukakis and David M. Rogers for legislation to establish consumer choice in automobile insurance. Financial Services.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 418 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act to establish consumer choice in automobile 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 of Massachusetts, as  
2 appearing in the 2010 Official Edition, is hereby amended by striking out, in line 2, the words  
3 "thirty-four N" and inserting in place thereof the words: "thirty-four W".

4           SECTION 2. Section 34A of Chapter 90, as above, is hereby further amended by  
5 inserting the following:

6           After line 2, add the following:

7           "Accidental bodily injury": bodily injury, sickness, disease, or death resulting therefrom,  
8 arising out of the ownership, operation, or use of a motor vehicle, or while occupying such  
9 vehicle, which is accidental as to the person injured.

10 After line 24, add the following:

11 “Economic loss”: objectively verifiable pecuniary loss caused by an accident for  
12 reasonable and necessary medical and rehabilitation expenses, loss of earnings, funeral costs, and  
13 replacement services loss.

14 “Economic-loss litigation option”: optional coverage to allow full personal injury  
15 protection insureds to claim against their own company for economic losses in excess of their  
16 chosen full personal injury protection coverage.

17 “Full personal injury protection” (or “full PIP”): a personal injury protection policy  
18 which does not include recovery for pain and suffering as de-scribed in Section 6D of Chapter  
19 231, except as described in Section 34W of Chapter 90, and for which the minimum level of  
20 coverage per person, as referred to above, is twenty thousand dollars (\$20,000).

21 After line 30, add the following:

22 “Hybrid personal injury protection” (or “hybrid PIP”), a personal injury protection policy  
23 which includes recovery for pain and suffering as described in Section 6D of Chapter 231; the  
24 so-called no-fault system in effect up through the year 2008 CE, with a monetary threshold of  
25 two thousand dollars (\$2000) and a maximum level of coverage per person of eight thousand  
26 dollars (\$8000).

27 After line 121, add the following:

28 “Noneconomic loss”, subjective nonmonetary loss recognized under applicable  
29 Massachusetts law.

30 After line 243, add the following:

31           “Tort maintenance coverage”: insurance coverage required of an insured who chooses the  
32 hybrid PIP insurance coverage whereby that insured may claim for liability based on fault above  
33 any relevant tort threshold against their own insurer to the extent of the coverage.

34           “Uncompensated economic loss”: that portion of economic loss arising out of an  
35 accidental bodily injury of an insured person that exceeds any benefits provided by personal  
36 injury protection coverage and collateral sources.

37           SECTION 3. Section 34A of Chapter 90, as above, is hereby further amended by striking  
38 out, in line 155, the words "of at least eight thousand dollars" and inserting in place thereof the  
39 following words: "of the amount specified herein below".

40           SECTION 4. Section 34M of Chapter 90, as above, is hereby amended by adding after  
41 line 132 the following words:

42           “Companies shall offer to full personal injury protection (“full PIP”) insureds an optional  
43 economic-loss litigation coverage. This coverage will allow the full PIP insured who is involved  
44 in an accident the right to pursue a bodily-injury claim based on fault against his/her own  
45 company for uncompensated economic loss beyond the limit of his/her own full PIP policy. The  
46 claim and any resulting award will be for economic loss only and will not include noneconomic  
47 loss. The claim and any resulting award may also include a provision for litigation expenses, not  
48 to exceed fifty per cent (50%) of the uncompensated economic loss. The limits of such  
49 economic-loss litigation coverage shall be as described in Section 113C of Chapter 175 of the  
50 General Laws, as modified by Section 8 of this act.

51           “A personal injury protection insured may claim for both economic and noneconomic  
52 losses from an uninsured motorist who is liable for damages caused by the accident, from a

53 motorist who was under the influence of alcohol or illegal drugs at the time of the accident and  
54 whose conduct was the proximate cause of the accident, from a person who caused an injury  
55 while seeking to intentionally injure another person, and from any other person who is not  
56 affected by the limitations on tort rights and liabilities of this chapter and whose conduct was the  
57 proximate cause of the accident.”

58 SECTION 5. Chapter 90, as above, is hereby amended by adding after Section 34R the  
59 following new sections:

60 Section 34S. Choice of a hybrid personal injury protection policy or a full personal injury  
61 protection policy.

62 (a) Upon the earliest and first renewal of any applicable motor vehicle insurance policy  
63 on or after the effective date of this act, or prior to the issuance of a policy required by this act, a  
64 choice must be made of a hybrid personal injury protection policy or of a full personal injury  
65 protection policy as described in section 34A. A choice made pursuant to this act is binding with  
66 respect to any continuation, renewal, or reinstatement of an applicable motor vehicle insurance  
67 policy, and continues with respect to any policy or policies which extend, change, supersede, or  
68 replace the policy unless a named insured subsequently makes a different choice in writing. A  
69 choice by a named insured shall be on a form approved by the commissioner of insurance and  
70 provided by the insurer.

71 (b) A choice by one named insured binds all the other insureds listed on that policy and  
72 all other resident relatives pursuant to the rules of subsection (c) below.

73 (c)(1) If there are two or more policies in the household, each with a different named  
74 insured, each such person shall have the right to choose either a hybrid personal injury protection

75 policy or a full personal injury protection for himself or herself. That person's choice shall  
76 determine that person's right no matter which vehicle he or she is occupying or which vehicle he  
77 or she might be struck by. The rights of all resident relatives of those named insureds who are  
78 not motor vehicle owners shall be governed by the choice applicable to the motor vehicle which  
79 they were occupying at the time of injury, if that vehicle was owned by a resident relative.

80 (2) In the event of a bodily injury occurring after the effective date of this law, but prior  
81 to the effective date of the earliest and first renewal of a motor vehicle insurance policy requiring  
82 a choice, the hybrid personal injury protection policy will be applicable.

83 (3) In the event of a conflicting choice within the household creating questions as to the  
84 applicability of a hybrid personal injury protection policy or a full personal injury protection  
85 policy, the personal injury protection policy will be applicable.

86 (d) The choice between a hybrid personal injury protection policy and a full personal  
87 injury protection policy shall be applicable to every motor vehicle of the owner. In the event an  
88 owner of more than one vehicle chooses different alternatives, the latest choice prior to the  
89 accident giving rise to a claim governs and, in the event of simultaneous choices, the hybrid  
90 personal injury protection policy governs. If any person fails to choose prior to a motor vehicle  
91 accident, and subsection (c) (2) above does not apply, he or she is conclusively presumed to have  
92 chosen the hybrid personal injury protection policy as described in Section 34A.

93 (e) Said choice or otherwise being bound to a hybrid personal injury protection policy or  
94 full personal injury protection policy shall be considered voluntary. Provided that the insured  
95 shall have completed the form described in Section 17 of this act, no agent, broker, insurer, or

96 employee of an agent, broker, or insurer shall be held liable for damages resulting from the  
97 election or failure to elect, unless that person's conduct is or was willful or wanton.

98 Section 34T. Priority of claims.

99 Subject to the provisions of Section 34S above, the priority of claims applicable to an  
100 injury shall be as follows:

101 (a) The priority of claims shall be as follows:

102 (1) An occupant of a motor vehicle who suffers bodily injury shall be covered by the  
103 motor vehicle insurance policy under which he or she is insured as a named insured or resident  
104 relative.

105 (2) In the event that an occupant is not insured under a motor vehicle insurance policy in  
106 (1) above, the occupant shall be covered under the owner's motor vehicle insurance policy.

107 (3) In the event that neither (1) nor (2) above apply, the occupant shall be covered under  
108 the operator's motor vehicle insurance policy. Provided, however, if the injury occurs in a motor  
109 vehicle being used in the business of transporting people for a fee, or in a motor vehicle  
110 furnished by the injured person's employer, the injured person has the choice of claiming under  
111 the personal injury protection policy applicable to the vehicle instead of his or her own coverage.

112 (b) Once said choice is exercised by the injured person as set forth in subsection (a)  
113 above, then in no event shall the limit of liability for any applicable uninsured motorists coverage  
114 be added to or stacked upon the personal injury protection policy which applies to the injured  
115 person's choice.

116 (c) An insurer may exclude coverage under a personal injury protection policy where the  
117 named insured or any resident relative who does not own a motor vehicle is injured while  
118 occupying a motor vehicle owned by the named insured but which is not described in that  
119 insurance policy's declaration page.

120 Section 34U. Verification of entitlement benefits.

121 (a) Every employer shall furnish the information on a form approved by the  
122 commissioner regarding an employee who has filed a claim for personal injury protection  
123 benefits if a request is made by an insurer providing such benefits under this chapter.

124 (b) Every physician, hospital, clinic, or other medical institution providing, before or after  
125 an injury resulting from a motor vehicle accident, upon which a claim for personal injury  
126 protection benefits is based, any products, services, or treatment in relation to that or any other  
127 injury, or in relation to a condition claimed to be connected with that or any other injury shall, if  
128 requested to do so by the personal injury protection insurer against whom the claim has been  
129 made, furnish a written report of the history, condition, and treatment, and the dates and cost of  
130 such treatment, of the injured person. Such information shall be provided together with a sworn  
131 statement that the treatment of services rendered were reasonable and necessary with respect to  
132 the injury sustained and identifying which portion of the expense for such treatment or services  
133 was incurred as a result of such injury. Every such physician, hospital, clinic, or other medical  
134 institution shall also promptly produce and permit the inspection and copying of its records  
135 regarding such history, condition, and treatment, and the dates and costs of treatment. The sworn  
136 statement required under this section shall read as follows:

137 "Under penalty of perjury I declare that I have read the foregoing and the facts alleged  
138 are true, to the best of my knowledge and belief."

139 No cause of action for violation of a physician-patient privilege or invasion of the right  
140 of privacy is allowed against any physician, hospital, clinic, or other medical institution  
141 complying with the provisions of this section. The person requesting records and a sworn  
142 statement under this subsection shall pay all reasonable costs connected therewith.

143 (c) In the event of any dispute regarding the personal injury protection insurer's right to  
144 discovery of facts about an injured person, a court of record may enter an order for such  
145 discovery as justice requires.

146 Section 34V. Out-of-state policies.

147 (a) Each insurer authorized to transact or transacting business in this state shall file with  
148 the commissioner, as a condition of its continued transactions of business with the  
149 Commonwealth, a form approved by the commissioner declaring that any contract of motor  
150 vehicle liability insurance, wherever issued, covering the maintenance or use of a motor vehicle  
151 while the motor vehicle is in this state is deemed to provide the insurance required for traditional  
152 liability policies issued in this state, unless the named insured, prior to a motor vehicle accident  
153 within this state, has chosen a personal injury protection policy under this chapter in which case  
154 the out-of-state policy is deemed to provide the insurance required for a personal injury  
155 protection policy. Any nonadmitted insurer may also file such a form.

156 (b) A person whose policy is deemed to incorporate the traditional liability policy  
157 requirements under subsection (a) shall be deemed to be a traditional liability policy insured. A  
158 person whose policy is deemed to incorporate the personal injury protection policy requirements

159 under subsection (a) shall be deemed to be a personal injury protection insured subject to this act.  
160 If a policy under subsection (a) also provides coverage in excess of or in addition to that required  
161 for a traditional liability or a personal injury protection policy, that excess or additional coverage  
162 shall also apply.

163 Section 34W. Tort maintenance system.

164 (a) Every insurer offering hybrid personal injury protection coverage shall offer, and  
165 every insured who chooses hybrid personal injury protection shall be required to purchase tort  
166 maintenance coverage at a level that is at least equivalent to the minimum required bodily injury  
167 level. Such coverage shall allow such insured to claim against their own insurer for liability  
168 based on fault above the relevant tort threshold up to the extent of the coverage.

169 SECTION 6. Chapter 175 of the General Laws, as above, is hereby amended by adding  
170 after Section 3C the following new section:

171 Section 3D. The Commissioner of Insurance shall conduct, or cause the insurance  
172 companies to conduct, effective ongoing informational programs in order to assist the public to  
173 understand the choices of hybrid personal injury protection and full personal injury protection  
174 available to an insurer or obligor relative to automobile insurance, as described in Chapter 90,  
175 and the ramifications of these choices. Such informational programs shall include, but not be  
176 limited to, information relative to the comparative costs of insurance under the hybrid personal  
177 injury protection policy and the full personal injury protection policy, and the benefits, rights,  
178 and obligations of insurers and insureds under each such policy.

179 The Commissioner of Insurance shall prepare a standardized form or forms on which an  
180 insured or obligor as above shall indicate, by initialing or in some other affirmative manner, that

181 said insured or obligor understands the choices available to him or her, as described in said  
182 Chapter 90, and voluntarily accepts the ramifications of the selected choice. Said form or forms  
183 shall include the information relative to comparative costs, benefits, rights, and obligations  
184 described above. The Commissioner shall distribute a sample copy of such form or forms to all  
185 companies licensed to do motor vehicle insurance business in the Commonwealth. A copy of  
186 such form or forms shall be required to be completed as part of any new motor vehicle insurance  
187 contract, and of any change of choice of policy in such contract, between the company and the  
188 insured or obligor.

189 SECTION 7. Section 113C of Chapter 175 of the General Laws, as above, is hereby  
190 amended by inserting after line 26 the following words:

191 Similarly, such insurers shall offer additional personal injury protection coverages  
192 beyond that required by section thirty-four A of chapter ninety, to bring such benefit levels up to  
193 fifty thousand dollars (\$50,000), one hundred thousand dollars (\$100,000), two hundred and fifty  
194 thousand dollars (\$250,000), five hundred thousand dollars (\$500,000), and one million dollars  
195 (\$1,000,000) for all eligible victims, and any other amounts determined by the Commissioner of  
196 Insurance to be reasonable.

197 Such insurers shall also offer economic-loss litigation coverages to bring the total of an  
198 insured's full personal injury protection coverage and economic-loss litigation coverage up to the  
199 same limits as prescribed in the paragraph above.

200 Companies may offer other coverage limits in addition to those of the paragraphs above.

201 SECTION 8. Section 6D of Chapter 231 of the General Laws, as above, is hereby  
202 amended as follows:

203 By adding after the words “a plaintiff” in line 4 the words:

204 “insured under a hybrid personal injury protection policy as described in section 34A of  
205 Chapter 90”;

206 By adding at the end of the current section the words:

207 “A plaintiff insured under a full personal injury protection policy as de-scribed in section  
208 34A of Chapter 90 is not eligible to recover for damages for pain and suffering, except under the  
209 provisions of any applicable economic-loss litigation option.”

210 SECTION 9. The provisions of this act are severable, and if any part of this act shall be  
211 adjudged unconstitutional or otherwise invalid by any court of competent jurisdiction, the  
212 validity of the remaining parts shall not be affected thereby.

213 SECTION 10. This act shall take effect nine (9) months from the date of its en-actment,  
214 or on January first of the year two thousand and fourteen (2014), whichever date is later, except  
215 that any preparatory actions necessary to permit the other sections of this act to be effective on  
216 that date shall be allowed to proceed prior to that date.