

HOUSE No. 861

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to repeal no fault motor vehicle 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 said chapter 90 is hereby amended by striking lines 68
2 through 133 in their entirety.

3 SECTION 2. Section thirty-four M of said chapter ninety is hereby repealed.

4 SECTION 3. Section thirty-four N of said chapter ninety is hereby repealed.

5 SECTION 4. The second paragraph of section 113C of said chapter 175 is hereby
6 amended by striking out the words “of medical coverage, so-called, to a limit of at least five
7 thousand dollars” and by inserting in place thereof the following words:— “of medical and wage
8 protection coverages, each to a limit of no less than five thousand dollars, and up to limits of at
9 least one hundred thousand dollars.”

10 SECTION 5. Section 113H of said chapter 175 is hereby amended by striking out
11 subsection (A) and inserting in place thereof the following subsection:—

12 (A) Insurance companies undertaking to issue motor vehicle liability policies or bonds,
13 both as defined in section 34A of chapter 90, shall cooperate in the preparation and submission

14 of a plan which shall provide motor vehicle insurance to applicants who have been unable to
15 obtain insurance through the method by which insurance is voluntarily made available; except
16 that the plan shall provide that no insurance company shall be required to issue such policy or
17 execute such bond if:

18 (1) The applicant or any person who usually drives the motor vehicle has failed to pay an
19 insurance company any motor vehicle insurance premiums due or contracted during the
20 preceding twelve months; or

21 (2) Any person who usually drives the motor vehicle does not hold or is not eligible to
22 obtain an operator's license; or

23 Such a plan shall provide for the fair and equitable apportionment among such insurance
24 companies of premiums, losses or expenses, or any combination thereof.

25 Such a plan shall provide that at least the following coverages be made available to the
26 applicant:

27 (1) Bodily injury liability and property damage liability coverage in at least the minimum
28 amounts required by law.

29 (2) Medical payment coverage to a limit of at least five thousand dollars and up to limits
30 of at least one hundred thousand dollars;

31 (3) Wage protection coverage to limits of no less than five thousand dollars and up to
32 limits of at least one hundred thousand dollars;

33 (4) Increased limits of bodily injury liability coverage in an amount to bring the total
34 bodily injury liability coverage available for any one accident to two hundred fifty thousand
35 dollars per person and five hundred thousand dollars per accident.

36 (5) Increased property damage liability limits in an amount to bring the total property
37 damage liability coverage available for any one accident to fifty thousand dollars;

38 (6) Uninsured motorist limits in an amount up to the bodily injury liability limits of the
39 policy;

40 (7) Physical damage insurance, which shall mean: (a) collision coverage or limited
41 collision coverage, (b) fire and theft coverage, or (c) comprehensive coverage, so-called, as those
42 coverages are defined in section 34A and 34O of chapter 9O and section 1130 of this chapter.
43 The plan shall permit the refusal of collision, fire, theft or comprehensive coverage or the
44 charging of rates at the discretion of the insurer, under the following circumstances:

45 (i) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by
46 or owned by persons convicted within the most recent five year period of any category of
47 vehicular homicide, auto insurance related fraud, or motor vehicle theft;

48 (ii) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by
49 or owned by persons who have, within the most recent five year period, made an intentional and
50 material misrepresentation in making claim under such coverages;

51 (iii) Collision coverage on a vehicle customarily driven by or owned by persons who
52 have been involved in four or more accidents in which such person has been deemed to be at

53 fault in excess of fifty percent within the three years immediately preceding the effective date of
54 the policy;

55 (iv) Comprehensive or fire and theft coverages on a vehicle customarily driven by or
56 owned by persons who have two or more total theft or fire claims after January 1, 1984 and
57 within the three years immediately preceding the effective date of the policy;

58 (v) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven,
59 or owned by persons convicted one time within the most recent three year period of any category
60 of driving while under the influence of alcohol or drugs;

61 (vi) Comprehensive, fire and theft or collision coverage on any motor vehicle for which a
62 salvage title has been issued by the registrar of motor vehicles unless a new certificate of title has
63 been issued pursuant to section twenty D of chapter ninety D; or

64 (vii) Comprehensive, fire and theft or collision coverage on a high-theft vehicle which
65 does not have at least a minimum antitheft or auto recovery device as prescribed by the
66 commissioner of insurance. The commissioner may designate as a “high-theft vehicle” any
67 vehicle, classified according to make, model and year of manufacture, which has both above-
68 average incidence of theft and above-average original sales price, and may prescribe appropriate
69 anti-theft or auto recovery devices for such vehicles.

70 SECTION 6. Chapter 175 of the General Laws is hereby amended by adding the
71 following section:—

72 Section 113V. Every policy issued or delivered in the commonwealth shall be deemed to
73 provide medical payments coverage in limits of at least five thousand dollars unless the

74 policyholder affirmatively elects to purchase no such coverage for himself and for members of
75 his household.

76 The medical payment coverage provision of a motor vehicle liability policy or bond shall
77 provide for payment, without regard to negligence or gross negligence or fault of any kind, to the
78 named insured in any such motor vehicle liability policy, the obligor of any motor vehicle
79 liability bond, members of the insured's or obligor's household, any authorized operator or
80 passenger of the insured's or obligor's motor vehicle, including a guest occupant, and pedestrian
81 struck by the insured's or obligor's motor vehicle, of all reasonable expenses incurred within two
82 years from the date of accident for necessary medical, surgical, x-ray, and dental services,
83 including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral
84 services; provided, however, that no such payment shall be required to the extent such payment
85 has been made by a health insurance policy or other contract with an insurance company, health
86 maintenance organization, a non-profit hospital or medical service corporation or any other third
87 party compensation system which is designated by the commissioner of insurance as providing
88 the acceptable level of benefits. Nothing in this section shall be construed to limit in any
89 way, an individual's choice of a physician, hospital, or other health care provider or course of
90 medical treatment.

91 The medical payments coverage of two or more policies may be added together,
92 combined, or stacked if required to pay an injured person's reasonable and necessary medical
93 expenses. All such expenses shall be submitted first to the named insured's policy covering the
94 vehicle the person was occupying when injured or, if the injured person was a pedestrian, to the
95 named insured's policy covering the vehicle which struck the individual. An insured who is not a

96 named insured on any policy providing medical payments coverage shall next submit a claim to
97 the policies of resident relatives; provided, however, if there are two or more policies which
98 provide such coverage and if the claim does not exceed the combined total of all such policies, a
99 pro rata contribution will be made. If there are two or more policies which provide such coverage
100 and if the claim exceeds the combined total of all such policies, the limit of all policies will be
101 paid. A person who is named insured on a policy providing medical payments coverage shall
102 next submit a claim:

103 (a) to the policy on which such person is named insured; provided, however, if there are
104 two or more such policies which provide such coverage a pro rata contribution will be made if
105 the claim does not exceed the combined total of all such policies. If the claim exceeds the
106 combined total of all such policies the limit of all policies will be paid.

107 (b) to the policy of resident relatives. If there are two or more policies which provide
108 such coverage and if the claim does not exceed the combined total of all such policies, a pro rata
109 contribution will be made. If the claim exceeds the combined total of all such policies the limit of
110 all policies will be paid.

111 SECTION 7. Said Chapter 175 is hereby amended by adding the following section:—

112 Section 113W. Every policy issued or delivered in the Commonwealth shall be deemed to
113 provide wage protection coverage in limits of at least five thousand dollars unless the
114 policyholder affirmatively elects to purchase no such coverage for himself and for members of
115 his household.

116 The wage protection coverage shall provide for payment to the named insured in any
117 such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of

118 the insured's or obligor's household, any authorized operator or passenger of the insured's or
119 obligor's motor vehicle, including a guest occupant, and any pedestrian struck by the insured's or
120 obligor's motor vehicle, unless any of the aforesaid is a person entitled to payments or benefits
121 under the provisions of chapter one hundred and fifty-two, in the case of persons employed or
122 self-employed at the time of any accident of any amounts actually lost by reason of inability to
123 work and earn wages or salary or their equivalent, but not other income, that would otherwise
124 have been earned in the normal course of any injured person's employment, and for payments in
125 fact made to others, not members of the injured person's household and reasonably incurred in
126 obtaining from those others ordinary and necessary services in lieu of those that had he not been
127 injured, the insured person would have performed not for income but for the benefit of himself
128 and/or members of his household, and in the case of persons not employed or self-employed at
129 the time of any accident of any loss by reason of diminution of earning power and for payments
130 in fact made to others, not members of the injured person's household and reasonably incurred in
131 obtaining from those others ordinary and necessary services in lieu of those that, had he not been
132 injured, the injured person would have performed not for income but for the benefit of himself
133 and/or members of this household, as a result of bodily injury, sickness or disease, including
134 death at any time resulting there from, caused by accident and not suffered intentionally while in
135 or upon, or while entering into or alighting from, or being struck as a pedestrian by, the insured's
136 or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind,
137 to the amount or limit of at least five thousand dollars on account of injury to or death of any
138 person, except that payments for loss of wages or salary or their equivalent or, in the case of
139 persons not employed, loss by reason of diminution of earning power, shall be limited to
140 amounts actually lost by reason of the accident and further limited (1) in the case of persons

141 entitled to wages or salary or their equivalent under any program for continuation of said wages
142 or salary or their equivalent to any amount that, together with any payments due under such a
143 program, will provide seventy-five percent of the greater of any such person's average weekly
144 wage or salary or its equivalent for the year immediately preceding the accident or the person's
145 average weekly wage or salary at the time of the accident provided that the insurer shall
146 reimburse those wage continuation programs or their equivalent which provide for accumulated
147 benefits which can be converted into either cash or additional retirement credit for the amount
148 said program or its equivalent actually pays to the insured, not to exceed seventy-five percent of
149 the greater of the insured's average weekly wages or salary or its equivalent for the year
150 immediately preceding the accident or the insured's average weekly wage or salary at the time of
151 the accident, or (2) in the case of persons not entitled to wages or salary or their equivalent under
152 any program for continuation of said wages or salary or their equivalent to any amount that will
153 provide seventy-five percent of the greater of any such person's average weekly wage or salary
154 or its equivalent for the year immediately preceding the accident or the person's average weekly
155 wage or salary at the time of the accident. In any case where amounts paid for loss of wage,
156 salary or their equivalent are reduced as a result of any program for continuation of the same and
157 such reduction produces a subsequent loss, as when the limit of any such program for
158 continuation of wage or salary or their equivalent is exhausted with the result that an injured
159 person cannot recover for a later injury or illness as he would have been entitled to but for such a
160 reduction, such subsequent loss to an amount equaling the reduction in payments made in
161 accordance with this section shall, if incurred within one year after the receipt of the last benefit
162 provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a
163 result of the injury to which wage protection coverage applied. In all cases where an insured is

164 compensated under such a wage continuation program and also recovers these benefits from
165 another source, he shall be entitled to reimburse the wage continuation program with no loss in
166 standing under such a program. Coverage under this section shall also provide for payment, to
167 the named insured or obligor and members of their households, all amounts defined in this
168 section in any case where such persons incur such expense or loss as a result of such injury while
169 in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle
170 not insured by a policy or bond providing such coverage.

171 The wage protection coverage of two or more policies may be added together, combined
172 or stacked if required to compensate an injured person for lost wages, salary or their equivalent
173 or a loss by reason of diminution of earning power. All such losses shall be submitted first to the
174 named insured's policy covering the vehicle the person was occupying when injured or, if the
175 injured person was a pedestrian, to the named insured's policy covering the vehicle which struck
176 the individual. An insured who is not a named insured on any policy providing wage protection
177 coverage shall next submit a claim to the policies of resident relatives. If there are two or more
178 policies which provide such coverage and if the claim does not exceed the combined total of all
179 such policies, a pro rata contribution will be made. If there are two or more policies which
180 provide such coverage and the claim exceeds the combined total of all such policies, the limit of
181 all policies will be paid. A person who is named insured on a policy providing wage protection
182 coverage shall next submit a claim:

183 (a) To the policy on which such person is the named insured; provided, however, if there
184 are two or more such policies which provide such coverage a pro rata contribution will be made
185 if the claim does not exceed the combined total of all such policies. If the claim exceeds the
186 combined total of all such policies, the limit of all policies will be paid.

187 (b) To the policy of resident relatives. If there are two or more policies which will
188 provide such coverage and if the claim does not exceed the combined total of all such policies, a
189 pro rata contribution will be made. If the claim exceeds the combined total of all such policies,
190 the limit of all policies will be paid.

191 Each insurer providing coverage under this section shall issue to any person purchasing a
192 motor vehicle liability policy or bond, at his option, a policy endorsement, approved as to content
193 by the commissioner of insurance and subject to such other regulations regarding said
194 endorsement as the commissioner may from time to time make after appropriate hearing, which
195 shall provide that there shall be deducted from amounts that would otherwise be or become due
196 to the policyholder alone or to the policyholder and members of his household, as the
197 policyholder elects, an amount of either one hundred dollars, two hundred and fifty dollars, five
198 hundred dollars, one thousand five hundred dollars, or two thousand five hundred dollars, again
199 as the policyholder elects, said amount to be deducted from the amount otherwise due each
200 person subject to the deduction.

201 SECTION 8. Section 6D of chapter 231 of the General Laws is hereby repealed.

202 SECTION 9. Sections 1, 2, 3, 4, 5, 6 and 7 shall take effect and apply to policies or bonds
203 issued or renewed on or after January 1, 2002. Section 8 shall take effect and apply to causes of
204 action that accrue on or after January 1, 2002.