

HOUSE No. 877

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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 2006 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
8 therefrom, arising out of the ownership, operation, or use of a motor vehicle, or while occupying
9 such 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.

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

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

After line 30, add the following:

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

After line 121, add the following:

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

After line 243, add the following:

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

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

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

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

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

“A personal injury protection insured may claim for both economic and noneconomic losses from an uninsured motorist who is liable for damages caused by the accident, from a motorist who was under the influence of alcohol or illegal drugs at the time of the accident and whose conduct was the proximate cause of the accident, from a person who caused an injury while seeking to intentionally injure another person, and from any other person who is not

affected by the limitations on tort rights and liabilities of this chapter and whose conduct was the proximate cause of the accident.”

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

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

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

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

(c) (1) If there are two or more policies in the household, each with a different named insured, each such person shall have the right to choose either a hybrid personal injury protection policy or a full personal injury protection for himself or herself. That person's choice shall determine that person's right no matter which vehicle he or she is occupying or which vehicle he or she might be struck by. The rights of all resident relatives of those named

insureds who are not motor vehicle owners shall be governed by the choice applicable to the motor vehicle which they were occupying at the time of injury, if that vehicle was owned by a resident relative.

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

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

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

(e) Said choice or otherwise being bound to a hybrid personal injury protection policy or full personal injury protection policy shall be considered voluntary. Provided that the insured shall have completed the form described in Section 17 of this act, no agent, broker, insurer, or employee of an agent, broker, or insurer shall be held liable for damages resulting from the election or failure to elect, unless that person's conduct is or was willful or wanton.

Section 34T. Priority of claims.

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

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

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

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

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

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

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

Section 34U. Verification of entitlement benefits.

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

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

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

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

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

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

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

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

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

Section 34W. Tort maintenance system.

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

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

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

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

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

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

195 Similarly, such insurers shall offer additional personal injury protection coverages
196 beyond that required by section thirty-four A of chapter ninety, to bring such benefit levels up to
197 fifty thousand dollars (\$50,000), one hundred thousand dollars (\$100,000), two hundred and fifty
198 thousand dollars (\$250,000), five hundred thousand dollars (\$500,000), and one million dollars
199 (\$1,000,000) for all eligible victims, and any other amounts determined by the Commissioner of
200 Insurance to be reasonable.

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

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

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

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

208 “insured under a hybrid personal injury protection policy as described in section
209 34A of Chapter 90”;

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

211 “A plaintiff insured under a full personal injury protection policy as described in section
212 34A of Chapter 90 is not eligible to recover for damages for pain and suffering, except under the
213 provisions of any applicable economic-loss litigation option.”

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

217 SECTION 10. This act shall take effect nine (9) months from the date of its enactment, or
218 on January first of the year two thousand and ten, whichever date is later, except that any
219 preparatory actions necessary to permit the other sections of this act to be effective on that date
220 shall be allowed to proceed prior to that date.