

HOUSE No. 2035

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

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 repeal no fault motor vehicle insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>1/20/2011</i>

HOUSE No. 2035

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 2035) of Garrett J. Bradley relative to repealing no-fault motor vehicle insurance laws. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 861 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 chapter 90 of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by striking lines 68 through 133 in their entirety.

3 SECTION 2. Section thirty-four M of said chapter 90 is hereby repealed.

4 SECTION 3. Section thirty-four N of said chapter 90 is hereby repealed.

5 SECTION 4. The second paragraph of section 113C of chapter 175 of the General Laws,
6 as appearing in the 2008 Official Edition, is hereby amended by striking out the words “of
7 medical coverage, so-called, to a limit of at least five thousand dollars” and by inserting in place
8 thereof the following words:— “of medical and wage protection coverages, each to a limit of no
9 less than five thousand dollars, and up to limits of at 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 12 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 113 of this chapter. The
43 plan shall permit the refusal of collision, fire, theft or comprehensive coverage or the charging of
44 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 20 D of chapter 90 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 further amended by adding the following
112 section:—

113 Section 113W. Every policy issued or delivered in the Commonwealth shall be deemed to
114 provide wage protection coverage in limits of at least five thousand dollars unless the

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

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

138 to the amount or limit of at least five thousand dollars on account of injury to or death of any
139 person, except that payments for loss of wages or salary or their equivalent or, in the case of
140 persons not employed, loss by reason of diminution of earning power, shall be limited to
141 amounts actually lost by reason of the accident and further limited (1) in the case of persons
142 entitled to wages or salary or their equivalent under any program for continuation of said wages
143 or salary or their equivalent to any amount that, together with any payments due under such a
144 program, will provide seventy-five percent of the greater of any such person's average weekly
145 wage or salary or its equivalent for the year immediately preceding the accident or the person's
146 average weekly wage or salary at the time of the accident provided that the insurer shall
147 reimburse those wage continuation programs or their equivalent which provide for accumulated
148 benefits which can be converted into either cash or additional retirement credit for the amount
149 said program or its equivalent actually pays to the insured, not to exceed seventy-five percent of
150 the greater of the insured's average weekly wages or salary or its equivalent for the year
151 immediately preceding the accident or the insured's average weekly wage or salary at the time of
152 the accident, or (2) in the case of persons not entitled to wages or salary or their equivalent under
153 any program for continuation of said wages or salary or their equivalent to any amount that will
154 provide seventy-five percent of the greater of any such person's average weekly wage or salary
155 or its equivalent for the year immediately preceding the accident or the person's average weekly
156 wage or salary at the time of the accident. In any case where amounts paid for loss of wage,
157 salary or their equivalent are reduced as a result of any program for continuation of the same and
158 such reduction produces a subsequent loss, as when the limit of any such program for
159 continuation of wage or salary of their equivalent is exhausted with the result that an injured
160 person cannot recover for a later injury or illness as he would have been entitled to but for such a

161 reduction, such subsequent loss to an amount equaling the reduction in payments made in
162 accordance with this section shall, if incurred within one year after the receipt of the last benefit
163 provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a
164 result of the injury to which wage protection coverage applied. In all cases where an insured is
165 compensated under such a wage continuation program and also recovers these benefits from
166 another source, he shall be entitled to reimburse the wage continuation program with no loss in
167 standing under such a program. Coverage under this section shall also provide for payment, to
168 the named insured or obligor and members of their households, all amounts defined in this
169 section in any case where such persons incur such expense or loss as a result of such injury while
170 in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle
171 not insured by a policy or bond providing such coverage.

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

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

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

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

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

203 SECTION 9. Sections 1, 2, 3, 4, 5, 6 and 7 shall take effect and apply to policies or bonds
204 issued or renewed on or after January 1, 2012. Section 8 shall take effect and apply to causes of
205 action that accrue on or after January 1, 2012.