HOUSE DOCKET, NO. 166 FILED ON: 1/11/2011

HOUSE . . . . . No. 276

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	
Ellen Story	*3rd Hampshire*
John K. M. Hayes	*5 Colonial Terrace Belmont, MA 02478*
Anne M. Paulsen	*90 School Street Belmont, MA 02478*
Michael S. Dukakis	*85 Perry Street Brookline, MA 02446*

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HOUSE . . . . . No. 276

By Mr. Brownsberger of Belmont, a petition (accompanied by bill, House, No. 276) of William N. Brownsberger, Ellen Story and others relative to hybrid automobile insurance policies. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *877* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. Section 34A of Chapter 90 of the General Laws of Massachusetts, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 2, the words "thirty-four N" and inserting in place thereof the words: "thirty-four W".

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

After line 2, add the following:

"Accidental bodily injury": bodily injury, sickness, disease, or death resulting therefrom, arising out of the ownership, operation, or use of a motor vehicle, or while occupying 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 rea-sonable and necessary medical and rehabilitation expenses, loss of earnings, funeral costs,
13 and replacement services loss.

14 “Economic-loss litigation option”: optional coverage to allow full personal injury
15 pro-tection 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
18 policy which does not include recovery for pain and suffering as described in Section 6D of
19 Chapter 231, except as described in Section 34W of Chapter 90, and for which the minimum
20 level of 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
23 protection poli-cy which includes recovery for pain and suffering as described in Section 6D of
24 Chapter 231; the so-called no-fault system in effect up through the year 2008 CE, with a
25 monetary threshold of two thousand dollars ($2000) and a maximum level of coverage per
26 person of eight thousand dollars ($8000).

27 After line 121, add the following:

28 “Noneconomic loss”, subjective nonmonetary loss recognized under applicable
29 Massa-chusetts law.

30 After line ¬¬¬243, add the following:

31 “Tort maintenance coverage”: insurance coverage required of an insured who
32 chooses the hybrid PIP insurance coverage whereby that insured may claim for liability based on
33 fault above 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 acci-dental 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
38 striking out, in line 155, the words "of at least eight thousand dollars" and inserting in place
39 thereof the follow-ing 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 com-
45 pany 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 fol-lowing new sections:

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

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

71 (b) A choice by one named insured binds all the other insureds listed on that
72 policy and 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
74 different named insured, each such person shall have the right to choose either a hybrid personal

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

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

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

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

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

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

100

101 Section 34T. Priority of claims.

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

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

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

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

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

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

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

125 Section 34U. Verification of entitlement benefits.

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

129 (b) Every physician, hospital, clinic, or other medical institution providing,
130 before or after an injury resulting from a motor vehicle accident, upon which a claim for personal
131 injury protection benefits is based, any products, services, or treatment in relation to that or any
132 other injury, or in relation to a condition claimed to be connected with that or any other injury
133 shall, if requested to do so by the personal injury protection insurer against whom the claim has
134 been made, furnish a written report of the history, condition, and treatment, and the dates and
135 cost of such treatment, of the injured person. Such information shall be provided together with a
136 sworn statement that the treatment of services rendered were reasonable and necessary with
137 respect to the injury sustained and identifying which portion of the expense for such treatment or
138 services was incurred as a result of such injury. Every such physician, hospital, clinic, or other

139 medical institution shall also promptly produce and permit the inspection and copying of its
140 records re-garding such history, condition, and treatment, and the dates and costs of treatment.
141 The sworn statement required under this section shall read as follows:

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

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

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

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

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

161 (b) A person whose policy is deemed to incorporate the traditional liability policy re-
162 quirements under subsection (a) shall be deemed to be a traditional liability policy insured. A
163 person whose policy is deemed to incorporate the personal injury protection policy requirements
164 under subsection (a) shall be deemed to be a personal injury protection insured subject to this act.
165 If a policy under subsection (a) also provides coverage in excess of or in addition to that required
166 for a traditional liability or a personal injury protection policy, that excess or additional coverage
167 shall also apply.

168 Section 34W. Tort maintenance system.

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

174

175

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

178 Section 3D. The Commissioner of Insurance shall conduct, or cause the insurance
179 companies to conduct, effective ongoing informational programs in order to assist the public to
180 understand the choices of hybrid personal injury protection and full personal injury protection
181 available to an insurer or obligor relative to automobile insurance, as described in Chapter 90,

182 and the ramifications of these choices. Such informational programs shall include, but not be
183 limited to, information relative to the comparative costs of insurance under the hybrid personal
184 injury pro-tection policy and the full personal injury protection policy, and the benefits, rights,
185 and obliga-tions of insurers and insureds under each such policy.

186 The Commissioner of Insurance shall prepare a standardized form or forms on which an
187 in-sured or obligor as above shall indicate, by initialing or in some other affirmative manner, that
188 said insured or obligor understands the choices available to him or her, as described in said
189 Chapter 90, and voluntarily accepts the ramifications of the selected choice. Said form or forms
190 shall include the information relative to comparative costs, benefits, rights, and obligations de-
191 scribed above. The Commissioner shall distribute a sample copy of such form or forms to all
192 companies licensed to do motor vehicle insurance business in the Commonwealth. A copy of
193 such form or forms shall be required to be completed as part of any new motor vehicle insurance
194 contract, and of any change of choice of policy in such contract, between the company and the
195 insured or obligor.

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

198 Similarly, such insurers shall offer additional personal injury protection coverages
199 beyond that required by section thirty-four A of chapter ninety, to bring such benefit levels up to
200 fifty thousand dollars ($50,000), one hundred thousand dollars ($100,000), two hundred and fifty
201 thousand dollars ($250,000), five hundred thousand dollars ($500,000), and one million dollars
202 ($1,000,000) for all eligible victims, and any other amounts determined by the Commissioner of
203 Insurance to be reasonable.

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

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

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

210 By adding after the words "a plaintiff" in line 4 the words:

211 "insured under a hybrid personal injury protection policy as described in section
212 34A of Chapter 90";.

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

214 "A plaintiff insured under a full personal injury protection policy as described in section
215 34A of Chapter 90 is not eligible to recover for damages for pain and suffering, except under the
216 provisions of any applicable economic-loss litigation option."

217 SECTION 9. The provisions of this act are severable, and if any part of this act shall be
218 ad-judged unconstitutional or otherwise invalid by any court of competent jurisdiction, the
219 validity of the remaining parts shall not be affected thereby.

220 SECTION 10. This act shall take effect nine (9) months from the date of its enactment,
221 or on January first of the year two thousand and twelve (2012), whichever date is later, except
222 that any preparatory actions necessary to permit the other sections of this act to be effective on
223 that date shall be allowed to proceed prior to that date.