

**HOUSE . . . . . No. 4176**

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Substituted by the House, on motion of Mr. Bradley of Hingham, for a bill with the same title (House, No. 2287). June 14, 2012.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Twelve**  
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An Act to prohibit the use of certain liability waivers as against public policy.

*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. Chapter 231 of the General Laws, as appearing the 2008 Official Edition, is  
2 hereby amended by inserting after section 85AA the following section:-

3           Section 85BB. Any waiver, disclaimer, exclusion or limitation of liability in an  
4 employment application or other document purporting to release any third party from liability for  
5 injuries or death, whether in tort or contract, to an employee shall be void as against public  
6 policy, and no employee or employment applicant shall be required to agree to such waiver,  
7 disclaimer, exclusion or limitation of liability as a condition of his or her hiring or continued  
8 employment. The term “employee” as used in this paragraph shall be as defined in section one  
9 of chapter 152, and shall include dependents of such employee, also as so defined, except that it  
10 shall not exclude an independent contractor, or any employee thereof, providing labor or  
11 materials to another. Any employer who violates the provisions of this paragraph shall be liable  
12 for a penalty equal to two times the average weekly wage in the commonwealth plus the

13 attorney's fees and costs incurred by the employee in any action involving a determination of the  
14 rights of the employee under this section.

15 SECTION 2. Section 70A of chapter 111 of the General Laws, as appearing in the 2008  
16 Official Edition, is hereby amended by inserting after the first sentence the following sentence:-

17 The expense of any attorney's fees and costs incurred in enforcing the liability of the  
18 tortfeasor and in obtaining such judgment, compromise or settlement shall be divided between  
19 the health maintenance organization, or hospital, medical or dental service corporation and the  
20 injured person in proportion to the amounts received by them from any such judgment,  
21 settlement or compromise. If the settlement, judgment or funds available to satisfy the judgment  
22 are less than the amount of plaintiff's total damages, the court may reduce after a hearing the  
23 amount of said insurer's lien in the action, after evaluation of the plaintiff's total cognizable  
24 damages at law.

25 SECTION 3. Section 13B of chapter 231 of the General Laws, as so appearing is hereby  
26 amended by adding the following sentence:-

27 In civil actions in the superior court, plaintiffs, through their counsel, may ask at trial for  
28 a specific monetary amount for damages.

29 SECTION 4. Said chapter 231 is hereby further amended by inserting after section 72  
30 the following section:-

31 Section 72A. In any action in which an injured person enters into a settlement with, or  
32 obtains a judgment upon trial from a third party and benefits for his injuries have been paid  
33 under chapter 152, and the injured person and the insurer paying said benefits do not agree to the

34 amount each is entitled to recover out of such settlement or judgment, there shall be a just and  
35 reasonable apportionment thereof in accordance with this section. If the settlement, judgment or  
36 funds available to satisfy the judgment are less than the amount of plaintiff's total damages, the  
37 court or other authority authorized to approve settlements under section 15 of chapter 152 may  
38 reduce after a hearing the amount of said insurer's lien in the action, after evaluation of the  
39 plaintiff's total cognizable damages at law. Except in the case of a final judgment, where the  
40 plaintiff is dissatisfied with the apportionment by the court, he may withdraw his consent to the  
41 settlement.

42 SECTION 5. Section 28 of Chapter 234 of the General Laws is hereby amended by  
43 inserting the following after the second paragraph:

44 Notwithstanding the above, in all jury trials, both criminal and civil, the following  
45 procedures shall govern.

46 (1) In addition to whatever jury voir dire of the jury venire is conducted by the court, and  
47 subject to the provisions in subparagraph (3) of this act for the Commonwealth in  
48 criminal cases involving multiple defendants, the court shall permit, upon the request of any  
49 party or any party's attorney, the party or the party's attorney to conduct, under the direction of  
50 the court, an oral examination of the jury venire.

51 (2) The court may impose reasonable limitations upon the questions allowed during such  
52 examination. Additional time may be granted in the discretion of the court.

53 (3) In criminal cases involving multiple defendants, the Commonwealth shall be entitled

54 to the same amount of time as that to which all defendants together are entitled.

55 (4) This act shall not limit the number of peremptory challenges a party is entitled to by

56 statute or court rule.