HOUSE DOCKET, NO. 2568 FILED ON: 1/19/2017

HOUSE . . . . . No. 2339

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

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 amending laws relative to certain judicial procedures.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Jeffrey N. Roy	*10th Norfolk*	*1/19/2017*
Claire D. Cronin	*11th Plymouth*	*2/3/2017*
Paul McMurtry	*11th Norfolk*	*1/19/2017*

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HOUSE . . . . . No. 2339

By Mr. Roy of Franklin, a petition (accompanied by bill, House, No. 2339) of Jeffrey N. Roy, Claire D. Cronin and Paul McMurtry relative to certain judicial procedures. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1182* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act amending laws relative to certain judicial procedures.

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. The fourth paragraph of section 34M of chapter 90 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following two sentences:- If after the commencement of any such action, but before judgment, the insurer makes payment of the amount that is due and payable, the court may still assess costs and reasonable attorney's fees for the bringing and prosecuting of the action, but only up until the time of such payment. Interest, running from the commencement of the action shall be assessed on all amounts adjudged to be due and payable in any such action, at the same rate as interest is assessed for breach of contract actions in the commonwealth.

SECTION 2. Section 70A of chapter 111 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following sentence:- The expense of any

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

SECTION 3. Chapter 111 of the General Laws, as so appearing, is hereby amended by inserting after section 70D the following section:-

Section 70D ½. Notwithstanding the provisions of sections 70A to 70D, inclusive, and any contractual term to the contrary, no health maintenance organization or group or individual medical insurer or disability insurer which has provided benefits for covered services to a person insured in an accident shall have a lien or right of reimbursement or subrogation claim or claims of recoupment no matter how designated upon any recovery or sum had or collected or to be collected, whether by judgment or by settlement or compromise from another person as damages on account of such injuries, for more than the proportionate share of said recovery or sum subject to its lien, right or reimbursement, subrogation claim or claims of recoupment which the amount of benefits so provided for covered services bears to the complete value of the injured person's tort damages.

Either the entity which provided benefits or the injured person may petition the court in which the accident case is pending, or in a court in which such case could be properly filed had settlement not been attained before commencement of suit, for a determination of the

reasonableness of the settlement and the fair allocation of amounts payable thereunder. A hearing on such petition shall adhere to the same procedural requirement as provided in section 15 of chapter 152.

SECTION 4. Chapter 231 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after section 72 the following section:-

Section 72A. In any action in which an injured person enters into a settlement with, or obtains a judgment upon trial from a third party and benefits for such person's injuries have been paid under chapter 152, and the injured person and the insurer paying said benefits do not agree to the amount each is entitled to recover out of such settlement or judgment, there shall be a just and reasonable apportionment thereof in accordance with this section; provided, however if the settlement, judgment or funds available to satisfy the judgment are less than the amount of plaintiff's total damages, the court or other authority authorized to approve settlements under section 15 of chapter 152 may reduce after a hearing the amount of said insurer's lien in the action, after evaluation of the plaintiff's total cognizable damages at law. Except in the case of a final judgment, where the plaintiff is dissatisfied with the apportionment by the court, he may withdraw his consent to the settlement.

SECTION 5. Said chapter 231 is hereby further amended by inserting after section 85AA the following section:-

Section 85BB. Any waiver, disclaimer, exclusion or limitation of liability in an employment application or other document purporting to release any third party from liability for injuries or death, whether in tort or contract, to an employee shall be void as against public policy, and no employee or employment applicant shall be required to agree to such waiver,

disclaimer, exclusion or limitation of liability as a condition of his or her hiring or continued employment. The term “employee” as used in this section shall be as defined in section 1 of chapter 152, and shall include dependents of such employee, also as so defined, except that it shall not exclude an independent contractor, or any employee thereof, providing labor or materials to another. Any employer who violates this section shall be liable for a penalty equal to 2 times the average weekly wage in the commonwealth plus the attorney’s fees and costs incurred by the employee in any action involving a determination of the rights of the employee under this section.