

HOUSE No. 1549

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 concerning equitable allocation of recovery proceeds for subrogation claims.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-----------------------|---------------------|------------------|
| <i>Jeffrey N. Roy</i> | <i>10th Norfolk</i> | <i>1/16/2019</i> |

HOUSE No. 1549

By Mr. Roy of Franklin, a petition (accompanied by bill, House, No. 1549) of Jeffrey N. Roy relative to equitable allocation of recovery proceeds for certain subrogation claims. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act concerning equitable allocation of recovery proceeds for subrogation claims.

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 70A of chapter 111 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by adding the following sentence:- The expense of any
3 attorney’s fees and costs incurred in enforcing the liability of the tortfeasor and in obtaining such
4 judgment, compromise or settlement shall be divided between the health maintenance
5 organization, or hospital, medical or dental service corporation and the injured person in
6 proportion to the amounts received by them from any such judgment, settlement or compromise.
7 If the settlement, judgment or funds available to satisfy the judgment are less than the amount of
8 plaintiff’s total damages, the court may reduce after a hearing the amount of said insurer’s lien in
9 the action, after evaluation of the plaintiff’s total cognizable damages at law.

10 SECTION 2. Chapter 111 of the General Laws, as so appearing, is hereby amended by
11 inserting after section 70D the following section:-

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

22 Either the entity which provided benefits or the injured person may petition the court in
23 which the accident case is pending, or in a court in which such case could be properly filed had
24 settlement not been attained before commencement of suit, for a determination of the
25 reasonableness of the settlement and the fair allocation of amounts payable thereunder. A hearing
26 on such petition shall adhere to the same procedural requirement as provided in section 15 of
27 chapter 152.

28 SECTION 3. Chapter 231 of the General Laws, as appearing in the 2012 Official Edition,
29 is hereby amended by inserting after section 72 the following section:-

30 Section 72A. In any action in which an injured person enters into a settlement with, or
31 obtains a judgment upon trial from a third party and benefits for such person's injuries have been
32 paid under chapter 152, and the injured person and the insurer paying said benefits do not agree
33 to the amount each is entitled to recover out of such settlement or judgment, there shall be a just

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