HOUSE DOCKET, NO. 605 FILED ON: 1/26/2021

HOUSE . . . . . No. 1860

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:
Jeffrey N. Roy	*10th Norfolk*	*1/26/2021*

HOUSE DOCKET, NO. 605 FILED ON: 1/26/2021

HOUSE . . . . . No. 1860

By Mr. Roy of Franklin, a petition (accompanied by bill, House, No. 1860) 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-Second General Court
(2021-2022)

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:

SECTION 1. Section 70A of chapter 111 of the General Laws, as appearing in the 2018 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 2. 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 3. Chapter 231 of the General Laws, as appearing in the 2018 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.