

**HOUSE . . . . . No. 1339**

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The Commonwealth of Massachusetts

PRESENTED BY:

*William C. Galvin*

*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 relative to patient care access.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

*William C. Galvin*

*6th Norfolk*

*Louis L. Kafka*

*8th Norfolk*

**HOUSE . . . . . No. 1339**

By Mr. Galvin of Canton, a petition (accompanied by bill, House, No. 1339) of William C. Galvin and Louis L. Kafka relative to patient safety, medical error reporting and medical malpractice. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1301 OF 2011-2012.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act relative to patient care access.

*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 5 of Chapter 112 as appearing in the 2010 official edition is hereby  
2 amended on line 140 after the word “occasions” the following: For purposes of this subsection,  
3 the offering of expert testimony in any action for malpractice, negligence, error, omission,  
4 mistake, or unauthorized rendering of professional services against a physician licensed pursuant  
5 to section 2 of Chapter 112 of the general laws, shall constitute the practice of medicine.

6 Section 2. Chapter 175 of the Massachusetts General Laws is hereby amended by the  
7 addition of the following new section:

8 Section 193 V: Every insurer or risk management organization which provides insurance  
9 to a physician licensed under Chapter 112 of the Massachusetts General Laws shall make an  
10 annual report to the Betsy Lehman Center for Patient Safety and Medical Error Reduction  
11 established by Chapter 177 of the Acts of 2001. Said report shall list the top ten categories of  
12 losses, claims or actions for damage for personal injuries alleged to have been caused by error,  
13 omission or negligence in the performance by physicians of medical services the company  
14 incurred during the previous calendar year. Said report shall also identify the top ten defendant  
15 specialties as to cost and frequency of cases in the prior year. Where applicable, organizations  
16 shall include reports outlining losses and claims for non-physician health care providers as well.  
17 Reports shall include completed cases and settlements only and shall include no information

18 identifying providers or patients. Reports shall be provided to the center at its request under  
19 annual timelines and reporting requirements established by the center with the input of the  
20 advisory committee established in Chapter 12C Section 15 (c). The Center shall use this  
21 information in the development of evidence-based best practices to reduce medical errors and  
22 enhance patient safety as required by Chapter 12C Section 15 (e) (1) to increase awareness of  
23 error prevention strategies through public and professional education as required by Chapter 12C  
24 Section 15 (e) (4).

25 Section 3. Section 60G (a) of Chapter 231 of the General Laws as appearing in 2010  
26 official addition is amended by striking in lines 10 and 11 the following: “prior to the judgment”  
27 and adding in lines 12 and 27 after the word “compensated” the following: , replaceable,  
28 compensable or indemnifiable.

29 Section 4. Chapter 231 of the General Laws, as most recently amended by Chapter 224  
30 of the Acts of 2012, is hereby amended by adding after section 60L, the following new sections:

31 Section 60M. In any action for malpractice, error or mistake against a provider of health  
32 licensed pursuant to section 2 of Chapter 112, including actions pursuant to section 60B of this  
33 Chapter, an expert witness shall be board certified in the same specialty as the defendant licensed  
34 pursuant to section 2 of Chapter 112.

35 Section 60N. In every action for malpractice, negligence, error, omission, mistake or the  
36 unauthorized rendering of professional services against a provider of health care where the court  
37 shall, at the request of either party, (a) Enter a judgment ordering that money damages or its  
38 equivalent for future damages of the judgment creditor be paid in whole or in part by periodic  
39 payments rather than by a lump-sum payment if the award equals or exceeds fifty thousand  
40 dollars (\$50,000) in future damages. In entering a judgment ordering of the payment of future  
41 damages by periodic payments, the court shall make a specific finding as to the dollar amount of  
42 periodic payments which will compensate the judgment creditor for such future damages, the  
43 court shall require the defendant who is not adequately insured to post security adequate to  
44 assure full payment of such damages awarded by the judgment. Upon termination of periodic  
45 payments of future damages, the court shall order the return of this security, or so much as  
46 remains, to the defendant.

47 (b)(1) The judgment ordering the payment of future damages by periodic payments shall  
48 specify the recipient or recipients of the payments, the dollar amount of the payments, the  
49 interval between payments, and the number of payments or the period of time over which  
50 payments shall be made. Such payments shall only be subject to modification in the event of the  
51 death of the judgment creditor.

52 (2) In the event that the court finds that the defendant has exhibited a continuing pattern  
53 of failing to make the payments, as specified in paragraph (1), the court shall find the defendant  
54 in contempt of court and, in addition to the required periodic payments, shall order the defendant

55 to pay the plaintiff all damages caused by the failure to make such periodic payments, including  
56 court costs and attorney's fees.

57 ( c ) However, money damages awarded for loss of future earnings shall not be reduced  
58 or payments terminated by reason of the death of the plaintiff, but shall be paid to persons to  
59 whom the plaintiff owed a duty of support, as provided by law, immediately prior to his death.  
60 In such cases the court which rendered the original judgment, may, upon petition of any party in  
61 interest, modify the judgment to award and apportion the unpaid future damages in accordance  
62 with this subdivision.

63 (d) Following the occurrence or expiration of all obligations specified in the periodic  
64 payment judgment, any obligation of the defendant to make future payments shall cease and any  
65 security given, pursuant to section (a) shall revert to the defendant.

66 Section 60O. In any action for malpractice, error, omission, mistake or the unauthorized  
67 rendering of professional services against a provider of health care, the liability of each  
68 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable  
69 only for the amount of damages allocated to that defendant in direct proportion to that  
70 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant  
71 for that amount.