

HOUSE No. 910

By Mr. Bradley of Hingham, petition of Garrett J. Bradley for legislation to repeal the law relative to no-fault motor vehicle insurance. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO REPEAL NO FAULT MOTOR VEHICLE INSURANCE.

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 34A of said Chapter 90 is hereby
2 amended by striking lines 68 through 133 in their entirety.

1 SECTION 2. Section thirty-four M of said Chapter ninety is
2 hereby repealed.

1 SECTION 3. Section thirty-four N of said Chapter ninety is
2 hereby repealed.

1 SECTION 4. The second paragraph of Section 113C of said
2 Chapter 175 is hereby amended by striking out the words “of
3 medical coverage, so-called, to a limit of at least five thousand
4 dollars” and by inserting in place thereof the following words:—
5 “of medical and wage protection coverages, each to a limit of no
6 less than five thousand dollars, and up to limits of at least one
7 hundred thousand dollars.”

1 SECTION 5. Section 113H of said Chapter 175 is hereby
2 amended by striking out subsection (A) and inserting in place
3 thereof the following subsection:—

4 (A) Insurance companies undertaking to issue motor vehicle
5 liability policies or bonds, both as defined in Section 34A of

6 Chapter 90, shall cooperate in the preparation and submission of a
7 plan which shall provide motor vehicle insurance to applicants
8 who have been unable to obtain insurance through the method by
9 which insurance is voluntarily made available; except that the
10 plan shall provide that no insurance company shall be required to
11 issue such policy or execute such bond if:

12 (1) The applicant or any person who usually drives the motor
13 vehicle has failed to pay an insurance company any motor vehicle
14 insurance premiums due or contracted during the preceding twelve
15 months; or

16 (2) Any person who usually drives the motor vehicle does not
17 hold or is not eligible to obtain an operator's license; or

18 Such a plan shall provide for the fair and equitable apportion-
19 ment among such insurance companies of premiums, losses or
20 expenses, or any combination thereof.

21 Such a plan shall provide that at least the following coverages
22 be made available to the applicant:

23 (1) Bodily injury liability and property damage liability cov-
24 erage in at least the minimum amounts required by law.

25 (2) Medical payment coverage to a limit of at least five thou-
26 sand dollars and up to limits of at least one hundred thousand dol-
27 lars;

28 (3) Wage protection coverage to limits of no less than five thou-
29 sand dollars and up to limits of at least one hundred thousand dol-
30 lars;

31 (4) Increased limits of bodily injury liability coverage in an
32 amount to bring the total bodily injury liability coverage available
33 for any one accident to two hundred fifty thousand dollars per
34 person and five hundred thousand dollars per accident.

35 (5) Increased property damage liability limits in an amount to
36 bring the total property damage liability coverage available for
37 any one accident to fifty thousand dollars;

38 (6) Uninsured motorist limits in an amount up to the bodily
39 injury liability limits of the policy;

40 (7) Physical damage insurance, which shall mean: (a) collision
41 coverage or limited collision coverage, (b) fire and theft coverage,
42 or (c) comprehensive coverage, so-called, as those coverages are
43 defined in Section 34A and 34O of Chapter 90 and Section 1130
44 of this Chapter. The plan shall permit the refusal of collision, fire,

45 theft or comprehensive coverage or the charging of rates at the
46 discretion of the insurer, under the following circumstances:

47 (i) comprehensive, fire and theft or collision coverage on a
48 vehicle customarily driven by or owned by persons convicted
49 within the most recent five year period of any category of vehic-
50 ular homicide, auto insurance related fraud, or motor vehicle theft;

51 (ii) comprehensive, fire and theft or collision coverage on a
52 vehicle customarily driven by or owned by persons who have,
53 within the most recent five year period, made an intentional and
54 material misrepresentation in making claim under such coverages;

55 (iii) Collision coverage on a vehicle customarily driven by or
56 owned by persons who have been involved in four or more acci-
57 dents in which such person has been deemed to be at fault in
58 excess of fifty percent within the three years immediately pre-
59 ceding the effective date of the policy;

60 (iv) Comprehensive or fire and theft coverages on a vehicle
61 customarily driven by or owned by persons who have two or more
62 total theft or fire claims after January 1, 1984 and within the three
63 years immediately preceding the effective date of the policy;

64 (v) Comprehensive, fire and theft or collision coverage on a
65 vehicle customarily driven, or owned by persons convicted one
66 time within the most recent three year period of any category of
67 driving while under the influence of alcohol or drugs;

68 (vi) Comprehensive, fire and theft or collision coverage on any
69 motor vehicle for which a salvage title has been issued by the reg-
70 istrar of motor vehicles unless a new certificate of title has been
71 issued pursuant to Section twenty D of Chapter ninety D; or

72 (vii) Comprehensive, fire and theft or collision coverage on a
73 high-theft vehicle which does not have at least a minimum
74 antitheft or auto recovery device as prescribed by the commis-
75 sioner of insurance. The commissioner may designate as a “high-
76 theft vehicle” any vehicle, classified according to make, model
77 and year of manufacture, which has both above-average incidence
78 of theft and above-average original sales price, and may prescribe
79 appropriate anti-theft or auto recovery devices for such vehicles.

1 SECTION 6. Chapter 175 of the General Laws is hereby
2 amended by adding the following section:—

3 Section 113V. Every policy issued or delivered in the Common-
4 wealth shall be deemed to provide medical payments coverage in

5 limits of at least five thousand dollars unless the policyholder
6 affirmatively elects to purchase no such coverage for himself and
7 for members of his household.

8 The medical payment coverage provision of a motor vehicle
9 liability policy or bond shall provide for payment, without regard
10 to negligence or gross negligence or fault of any kind, to the
11 named insured in any such motor vehicle liability policy, the
12 obligor of any motor vehicle liability bond, members of the
13 insured's or obligor's household, any authorized operator or pas-
14 senger of the insured's or obligor's motor vehicle, including a
15 guest occupant, and pedestrian struck by the insured's or obligor's
16 motor vehicle, of all reasonable expenses incurred within two
17 years from the date of accident for necessary medical, surgical, x-
18 ray, and dental services, including prosthetic devices and neces-
19 sary ambulance, hospital, professional nursing, and funeral
20 services; provided, however, that no such payment shall be
21 required to the extent such payment has been made by a health
22 insurance policy or other contract with an insurance company,
23 health maintenance organization, a non-profit hospital or medical
24 service corporation or any other third party compensation system
25 which is designated by the commissioner of insurance as pro-
26 viding the acceptable level of benefits. Nothing in this section
27 shall be construed to limit in any way, an individual's choice of a
28 physician, hospital, or other health care provider or course of
29 medical treatment.

30 The medical payments coverage of two or more policies may be
31 added together, combined, or stacked if required to pay an injured
32 person's reasonable and necessary medical expenses. All such
33 expenses shall be submitted first to the named insured's policy
34 covering the vehicle the person was occupying when injured or, if
35 the injured person was a pedestrian, to the named insured's policy
36 covering the vehicle which struck the individual. An insured who
37 is not a named insured on any policy providing medical payments
38 coverage shall next submit a claim to the policies of resident rela-
39 tives; provided, however, if there are two or more policies which
40 provide such coverage and if the claim does not exceed the com-
41 bined total of all such policies, a pro rata contribution will be
42 made. If there are two or more policies which provide such cov-
43 erage and if the claim exceeds the combined total of all such poli-

44 cies, the limit of all policies will be paid. A person who is named
45 insured on a policy providing medical payments coverage shall
46 next submit a claim:

47 (a) to the policy on which such person is named insured; pro-
48 vided, however, if there are two or more such policies which pro-
49 vide such coverage a pro rata contribution will be made if the
50 claim does not exceed the combined total of all such policies. If
51 the claim exceeds the combined total of all such policies the limit
52 of all policies will be paid.

53 (b) to the policy of resident relatives. If there are two or more
54 policies which provide such coverage and if the claim does not
55 exceed the combined total of all such policies, a pro rata contribu-
56 tion will be made. If the claim exceeds the combined total of all
57 such policies the limit of all policies will be paid.

1 SECTION 7. Said Chapter 175 is hereby amended by adding
2 the following section:—

3 Section 113W. Every policy issued or delivered in the Com-
4 monwealth shall be deemed to provide wage protection coverage
5 in limits of at least five thousand dollars unless the policyholder
6 affirmatively elects to purchase no such coverage for himself and
7 for members of his household.

8 The wage protection coverage shall provide for payment to the
9 named insured in any such motor vehicle liability policy, the
10 obligor of any motor vehicle liability bond, members of the
11 insured's or obligor's household, any authorized operator or pas-
12 senger of the insured's or obligor's motor vehicle, including a
13 guest occupant, and any pedestrian struck by the insured's or
14 obligor's motor vehicle, unless any of the aforesaid is a person
15 entitled to payments or benefits under the provisions of Chapter
16 one hundred and fifty-two, in the case of persons employed or
17 self-employed at the time of any accident of any amounts actually
18 lost by reason of inability to work and earn wages or salary or
19 their equivalent, but not other income, that would otherwise have
20 been earned in the normal course of any injured person's employ-
21 ment, and for payments in fact made to others, not members of the
22 injured person's household and reasonably incurred in obtaining
23 from those others ordinary and necessary services in lieu of those
24 that had he not been injured, the insured person would have per-

25 formed not for income but for the benefit of himself and/or mem-
26 bers of his household, and in the case of persons not employed or
27 self-employed at the time of any accident of any loss by reason of
28 diminution of earning power and for payments in fact made to
29 others, not members of the injured person's household and reason-
30 ably incurred in obtaining from those others ordinary and neces-
31 sary services in lieu of those that, had he not been injured, the
32 injured person would have performed not for income but for the
33 benefit of himself and/or members of this household, as a result of
34 bodily injury, sickness or disease, including death at any time
35 resulting there from, caused by accident and not suffered inten-
36 tionally while in or upon, or while entering into or alighting from,
37 or being struck as a pedestrian by, the insured's or obligor's motor
38 vehicle, without regard to negligence or gross negligence or fault
39 of any kind, to the amount or limit of at least five thousand dollars
40 on account of injury to or death of any person, except that pay-
41 ments for loss of wages or salary or their equivalent or, in the case
42 of persons not employed, loss by reason of diminution of earning
43 power, shall be limited to amounts actually lost by reason of the
44 accident and further limited (1) in the case of persons entitled to
45 wages or salary or their equivalent under any program for continu-
46 ation of said wages or salary or their equivalent to any amount
47 that, together with any payments due under such a program, will
48 provide seventy-five percent of the greater of any such person's
49 average weekly wage or salary or its equivalent for the year
50 immediately preceding the accident or the person's average
51 weekly wage or salary at the time of the accident provided that the
52 insurer shall reimburse those wage continuation programs or their
53 equivalent which provide for accumulated benefits which can be
54 converted into either cash or additional retirement credit for the
55 amount said program or its equivalent actually pays to the insured,
56 not to exceed seventy-five percent of the greater of the insured's
57 average weekly wages or salary or its equivalent for the year
58 immediately preceding the accident or the insured's average
59 weekly wage or salary at the time of the accident, or (2) in the
60 case of persons not entitled to wages or salary or their equivalent
61 under any program for continuation of said wages or salary or
62 their equivalent to any amount that will provide seventy-five per-
63 cent of the greater of any such person's average weekly wage or

64 salary or its equivalent for the year immediately preceding the
65 accident or the person's average weekly wage or salary at the time
66 of the accident. In any case where amounts paid for loss of wage,
67 salary or their equivalent are reduced as a result of any program
68 for continuation of the same and such reduction produces a subse-
69 quent loss, as when the limit of any such program for continuation
70 of wage or salary of their equivalent is exhausted with the result
71 that an injured person cannot recover for a later injury or illness as
72 he would have been entitled to but for such a reduction, such sub-
73 sequent loss to an amount equaling the reduction in payments
74 made in accordance with this section shall, if incurred within one
75 year after the receipt of the last benefit provided under this
76 section, be treated as a loss of wages, salary or their equivalent
77 incurred as a result of the injury to which wage protection cov-
78 erage applied. In all cases where an insured is compensated under
79 such a wage continuation program and also recovers these benefits
80 from another source, he shall be entitled to reimburse the wage
81 continuation program with no loss in standing under such a pro-
82 gram. Coverage under this section shall also provide for payment,
83 to the named insured or obligor and members of their households,
84 all amounts defined in this section in any case where such persons
85 incur such expense or loss as a result of such injury while in,
86 upon, entering into or alighting from, or by being struck as a
87 pedestrian by, a motor vehicle not insured by a policy or bond
88 providing such coverage.

89 The wage protection coverage of two or more policies may be
90 added together, combined or stacked if required to compensate an
91 injured person for lost wages, salary or their equivalent or a loss
92 by reason of diminution of earning power. All such losses shall be
93 submitted first to the named insured's policy covering the vehicle
94 the person was occupying when injured or, if the injured person
95 was a pedestrian, to the named insured's policy covering the
96 vehicle which struck the individual. An insured who is not a
97 named insured on any policy providing wage protection coverage
98 shall next submit a claim to the policies of resident relatives. If
99 there are two or more policies which provide such coverage and if
100 the claim does not exceed the combined total of all such policies,
101 a pro rata contribution will be made. If there are two or more
102 policies which provide such coverage and the claim exceeds the

103 combined total of all such policies, the limit of all policies will be
104 paid. A person who is named insured on a policy providing wage
105 protection coverage shall next submit a claim:

106 (a) To the policy on which such person is the named insured;
107 provided, however, if there are two or more such policies which
108 provide such coverage a pro rata contribution will be made if the
109 claim does not exceed the combined total of all such policies. If
110 the claim exceeds the combined total of all such policies, the limit
111 of all policies will be paid.

112 (b) To the policy of resident relatives. If there are two or more
113 policies which will provide such coverage and if the claim does
114 not exceed the combined total of all such policies, a pro rata con-
115 tribution will be made. If the claim exceeds the combined total of
116 all such policies, the limit of all policies will be paid.

117 Each insurer providing coverage under this section shall issue
118 to any person purchasing a motor vehicle liability policy or bond,
119 at his option, a policy endorsement, approved as to content by the
120 commissioner of insurance and subject to such other regulations
121 regarding said endorsement as the commissioner may from time to
122 time make after appropriate hearing, which shall provide that
123 there shall be deducted from amounts that would otherwise be or
124 become due to the policyholder alone or to the policyholder and
125 members of his household, as the policyholder elects, an amount
126 of either one hundred dollars, two hundred and fifty dollars, five
127 hundred dollars, one thousand five hundred dollars, or two thou-
128 sand five hundred dollars, again as the policyholder elects, said
129 amount to be deducted from the amount otherwise due each
130 person subject to the deduction.

1 SECTION 8. Section 6D of Chapter 231 of the General Laws is
2 hereby repealed.

1 SECTION 9. Sections 1, 2, 3, 4, 5, 6 and 7 shall take effect and
2 apply to policies or bonds issued or renewed on or after January 1,
3 2002. Section 8 shall take effect and apply to causes of action that
4 accrue on or after January 1, 2002.