

SENATE NO. 641

AN ACT TO ESTABLISH CONSUMER CHOICE IN AUTOMOBILE 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.

2 The purpose of this act is to restructure the Massachusetts automobile insurance system by the addition
3 of an option of a full no-fault bodily injury insurance policy to our current limited no-fault policy.

4 This bill is filed in conjunction with three other bills, the intentions of which are:

5 to establish a special research commission to evaluate competition in the automobile
6 insurance market;

7 to limit liability settlements for uninsured motorists (commonly known as “no-pay, no-
8 play”); and,

9 to increase the funding and staffing of the Division of Insurance.

10

11 Many other concerns, such as the handling of group coverages, increased penalties for insurance
12 fraud, regulation of medical providers, and formation of an insurance consumers’ association, are
13 likely to be the subjects of other bills to be submitted to the Joint Committee on Financial Services and
14 to the Legislature. The absence of any mention of those other concerns in these four bills is in no way
15 intended to minimize the significance of these other concerns or to indicate either approval or

16 disapproval of the changes proposed in those other bills. Rather, it is the stated intent of this bill to
17 focus attention solely on the specific areas of choice/no-fault and its greater affordability for all
18 insureds and especially for urban motorists, with the objective that these specific features be
19 incorporated into the final composite proposed legislation of the Joint Committee on Financial
20 Services, along with any others of the above-mentioned concerns, for presentation to the Legislature
21 for their consideration and approval.

22 SECTION 2. In order to apply the relevant definitions to the new sections added herein, Section 34A
23 of Chapter 90 of the General Laws of Massachusetts, as appearing in the 2004 Official Edition, is
24 hereby amended by striking out, in line 2, the words "thirty-four N" and inserting in place thereof the
25 words: "thirty-four W".

26 SECTION 3. In order to add new definitions to the General Laws, Section 34A of Chapter 90, as
27 above, is hereby further amended by inserting the following:

28 After line 2, add the following:

29 "Accidental bodily injury": bodily injury, sickness, disease, or death resulting
30 therefrom, arising out of the ownership, operation, or use of a motor vehicle, or while occupying such
31 vehicle, which is accidental as to the person injured.

32 After line 24, add the following:

33 "Economic loss": objectively verifiable pecuniary loss caused by an accident for
34 reasonable and necessary medical and rehabilitation expenses, loss of earnings, funeral costs, and
35 replacement services loss.

36 "Economic-loss litigation option": optional coverage to allow full PIP insureds to claim
37 against their own company for economic losses in excess of their chosen full PIP coverage.

38 “Full personal injury protection” (or “full PIP”): a personal injury protection policy
39 which does not include recovery for pain and suffering as described in Section 6D of Chapter 231,
40 except as described in Section 34W of Chapter 90, and for which the minimum level of coverage per
41 person, as referred to above, is twenty thousand dollars (\$20,000).

42 After line 30, add the following:

43 “Hybrid personal injury protection” (or “hybrid PIP”), a personal injury protection
44 policy which includes recovery for pain and suffering as described in Section 6D of Chapter 231; the
45 so-called no-fault system in effect up through the year 2006 CE, with a monetary threshold of two
46 thousand dollars (\$2000) and a maximum level of coverage per person of eight thousand dollars
47 (\$8000).

48 After line 121, add the following:

49 “Noneconomic loss”, subjective nonmonetary loss recognized under applicable
50 Massachusetts law.

51 After line 243, add the following:

52 “Tort maintenance coverage”: insurance coverage required of an insured who chooses
53 the hybrid PIP insurance coverage whereby that insured may claim for liability based on fault above
54 any relevant tort threshold against their own insurer to the extent of the coverage.

55 “Uncompensated economic loss”: that portion of economic loss arising out of an
56 accidental bodily injury of an insured person that exceeds any benefits provided by personal injury
57 protection coverage and collateral sources.

58 SECTION 4. In order to establish the minimum personal injury protection limits, Section 34A of
59 Chapter 90, as above, is hereby further amended by striking out, in line 155, the words "of at least

60 eight thousand dollars" and inserting in place thereof the following words: "of the amount specified
61 herein below".

62 SECTION 5. In order to allow personal injury protection insureds to pursue litigation for economic
63 losses above their policy limits and for noneconomic as well as economic losses under certain
64 circumstances, Section 34M of Chapter 90, as above, is hereby amended by adding after line 132 the
65 following words:

66 "Companies shall offer to full personal injury protection ("full PIP") insureds an optional
67 economic-loss litigation coverage. This coverage will allow the full PIP insured who is involved in an
68 accident the right to pursue a bodily-injury claim based on fault against his/her own company for
69 uncompensated economic loss beyond the limit of his/her own full PIP policy. The claim and any
70 resulting award will be for economic loss only and will not include noneconomic loss. The claim and
71 any resulting award may also include a provision for litigation expenses, not to exceed fifty per cent
72 (50%) of the uncompensated economic loss. The limits of such economic-loss litigation coverage
73 shall be as described in Section 113C of Chapter 175 of the General Laws, as modified by Section 8 of
74 this act.

75 "A personal injury protection insured may claim for both economic and noneconomic losses from
76 an uninsured motorist who is liable for damages caused by the accident, from a motorist who was
77 under the influence of alcohol or illegal drugs at the time of the accident and whose conduct was the
78 proximate cause of the accident, from a person who caused an injury while seeking to intentionally
79 injure another person, and from any other person who is not affected by the limitations on tort rights
80 and liabilities of this chapter and whose conduct was the proximate cause of the accident."

81 SECTION 6. In order to add new sections to Chapter 90 relative to the choice of hybrid personal
82 injury protection or full personal injury protection, to the priority of claims, to the verification of

83 benefits, to proceedings involving out-of-state policies, and to the tort maintenance coverage, Chapter
84 90, as above, is hereby amended by adding after Section 34R the following new sections:

85 Section 34S. Choice of a hybrid personal injury protection policy or a full personal injury
86 protection policy.

87 (a) Upon the earliest and first renewal of any applicable motor vehicle insurance
88 policy on or after the effective date of this act, or prior to the issuance of a policy required by this act,
89 a choice must be made of a hybrid personal injury protection policy or of a full personal injury
90 protection policy as described in section 34A. A choice made pursuant to this act is binding with
91 respect to any continuation, renewal, or reinstatement of an applicable motor vehicle insurance policy,
92 and continues with respect to any policy or policies which extend, change, supersede, or replace the
93 policy unless a named insured subsequently makes a different choice in writing. A choice by a named
94 insured shall be on a form approved by the commissioner of insurance and provided by the insurer.

95 (b) A choice by one named insured binds all the other insureds listed on that policy
96 and all other resident relatives pursuant to the rules of subsection (c) below.

97 (c) (1) If there are two or more policies in the household, each with a different
98 named insured, each such person shall have the right to choose either a hybrid personal injury
99 protection policy or a full personal injury protection for himself or herself. That person's choice shall
100 determine that person's right no matter which vehicle he or she is occupying or which vehicle he or she
101 might be struck by. The rights of all resident relatives of those named insureds who are not motor
102 vehicle owners shall be governed by the choice applicable to the motor vehicle which they were
103 occupying at the time of injury, if that vehicle was owned by a resident relative.

104 (2) In the event of a bodily injury occurring after the effective date of this law, but
105 prior to the effective date of the earliest and first renewal of a motor vehicle insurance policy requiring
106 a choice, the hybrid personal injury protection policy will be applicable.

107 (3) In the event of a conflicting choice within the household creating questions as to
108 the applicability of a hybrid personal injury protection policy or a full personal injury protection
109 policy, the personal injury protection policy will be applicable.

110 (d) The choice between a hybrid personal injury protection policy and a full
111 personal injury protection policy shall be applicable to every motor vehicle of the owner. In the event
112 an owner of more than one vehicle chooses different alternatives, the latest choice prior to the accident
113 giving rise to a claim governs and, in the event of simultaneous choices, the hybrid personal injury
114 protection policy governs. If any person fails to choose prior to a motor vehicle accident, and
115 subsection (c) (2) above does not apply, he or she is conclusively presumed to have chosen the hybrid
116 personal injury protection policy as described in Section 34A.

117 (e) Said choice or otherwise being bound to a hybrid personal injury protection
118 policy or full personal injury protection policy shall be considered voluntary. Provided that the
119 insured shall have completed the form described in Section 17 of this act, no agent, broker, insurer, or
120 employee of an agent, broker, or insurer shall be held liable for damages resulting from the election or
121 failure to elect, unless that person's conduct is or was willful or wanton.

122 Section 34T. Priority of claims.

123 Subject to the provisions of Section 34S above, the priority of claims applicable to an injury
124 shall be as follows:

125 (a) The priority of claims shall be as follows:

126 (1) An occupant of a motor vehicle who suffers bodily injury shall be
127 covered by the motor vehicle insurance policy under which he or she is insured as a named insured or
128 resident relative.

129 (2) In the event that an occupant is not insured under a motor vehicle insurance
130 policy in (1) above, the occupant shall be covered under the owner's motor vehicle insurance policy.

131 (3) In the event that neither (1) nor (2) above apply, the occupant shall be
132 covered under the operator's motor vehicle insurance policy. Provided, however, if the injury occurs
133 in a motor vehicle being used in the business of transporting people for a fee, or in a motor vehicle
134 furnished by the injured person's employer, the injured person has the choice of claiming under the
135 personal injury protection policy applicable to the vehicle instead of his or her own coverage.

136 (b) Once said choice is exercised by the injured person as set forth in subsection (a)
137 above, then in no event shall the limit of liability for any applicable uninsured motorists coverage be
138 added to or stacked upon the personal injury protection policy which applies to the injured person's
139 choice.

140 (c) An insurer may exclude coverage under a personal injury protection policy where the
141 named insured or any resident relative who does not own a motor vehicle is injured while occupying a
142 motor vehicle owned by the named insured but which is not described in that insurance policy's
143 declaration page.

144 Section 34U. Verification of entitlement benefits.

145 (a) Every employer shall furnish the information on a form approved by the commissioner
146 regarding an employee who has filed a claim for personal injury protection benefits if a request is
147 made by an insurer providing such benefits under this chapter.

148 (b) Every physician, hospital, clinic, or other medical institution providing, before
149 or after an injury resulting from a motor vehicle accident, upon which a claim for personal injury
150 protection benefits is based, any products, services, or treatment in relation to that or any other injury,
151 or in relation to a condition claimed to be connected with that or any other injury shall, if requested to
152 do so by the personal injury protection insurer against whom the claim has been made, furnish a
153 written report of the history, condition, and treatment, and the dates and cost of such treatment, of the
154 injured person. Such information shall be provided together with a sworn statement that the treatment
155 of services rendered were reasonable and necessary with respect to the injury sustained and identifying
156 which portion of the expense for such treatment or services was incurred as a result of such injury.
157 Every such physician, hospital, clinic, or other medical institution shall also promptly produce and
158 permit the inspection and copying of its records regarding such history, condition, and treatment, and
159 the dates and costs of treatment. The sworn statement required under this section shall read as follows:

160 "Under penalty of perjury I declare that I have read the foregoing and the facts alleged are true,
161 to the best of my knowledge and belief."

162 No cause of action for violation of a physician-patient privilege or invasion of the right
163 of privacy is allowed against any physician, hospital, clinic, or other medical institution complying
164 with the provisions of this section. The person requesting records and a sworn statement under this
165 subsection shall pay all reasonable costs connected therewith.

166 (c) In the event of any dispute regarding the personal injury protection insurer's
167 right to discovery of facts about an injured person, a court of record may enter an order for such
168 discovery as justice requires.

169 Section 34V. Out-of-state policies.

170 (a) Each insurer authorized to transact or transacting business in this state shall file
171 with the commissioner, as a condition of its continued transactions of business with the
172 Commonwealth, a form approved by the commissioner declaring that any contract of motor vehicle
173 liability insurance, wherever issued, covering the maintenance or use of a motor vehicle while the
174 motor vehicle is in this state is deemed to provide the insurance required for traditional liability
175 policies issued in this state, unless the named insured, prior to a motor vehicle accident within this
176 state, has chosen a personal injury protection policy under this chapter in which case the out-of-state
177 policy is deemed to provide the insurance required for a personal injury protection policy. Any
178 nonadmitted insurer may also file such a form.

179 (b) A person whose policy is deemed to incorporate the traditional liability
180 policy requirements under subsection (a) shall be deemed to be a traditional liability
181 policy insured. A person whose policy is deemed to incorporate the personal injury
182 protection policy requirements under subsection (a) shall be deemed to be a personal
183 injury protection insured subject to this act. If a policy under subsection (a) also
184 provides coverage in excess of or in addition to that required for a traditional liability or
185 a personal injury protection policy, that excess or additional coverage shall also apply.

186 Section 34W. Tort maintenance system.

187 (a) Every insurer offering hybrid personal injury protection coverage shall offer,
188 and every insured who chooses hybrid personal injury protection shall be required to purchase tort
189 maintenance coverage at a level that is at least equivalent to the minimum required bodily injury level.
190 Such coverage shall allow such insured to claim against their own insurer for liability based on fault
191 above the relevant tort threshold up to the extent of the coverage.

192 SECTION 7. In order that consumers become as fully aware as possible of the consequences of the
193 choices of hybrid personal injury protection and full personal injury protection, Chapter 175 of the
194 General Laws, as above, is hereby amended by adding after Section 3C the following new section:

195 Section 3D. The Commissioner of Insurance shall conduct, or cause the insurance companies
196 to conduct, effective ongoing informational programs in order to assist the public to understand the
197 choices of hybrid personal injury protection and full personal injury protection available to an insurer
198 or obligor relative to automobile insurance, as described in Chapter 90, and the ramifications of these
199 choices. Such informational programs shall include, but not be limited to, information relative to the
200 comparative costs of insurance under the hybrid personal injury protection policy and the full personal
201 injury protection policy, and the benefits, rights, and obligations of insurers and insureds under each
202 such policy.

203 The Commissioner of Insurance shall prepare a standardized form or forms on which an
204 insured or obligor as above shall indicate, by initialing or in some other affirmative manner, that said
205 insured or obligor understands the choices available to him or her, as described in said Chapter 90, and
206 voluntarily accepts the ramifications of the selected choice. Said form or forms shall include the
207 information relative to comparative costs, benefits, rights, and obligations described above. The
208 Commissioner shall distribute a sample copy of such form or forms to all companies licensed to do
209 motor vehicle insurance business in the Commonwealth. A copy of such form or forms shall be
210 required to be completed as part of any new motor vehicle insurance contract, and of any change of
211 choice of policy in such contract, between the company and the insured or obligor.

212 SECTION 8. In order to allow optional higher personal injury protection benefit levels, Section 113C
213 of Chapter 175 of the General Laws, as above, is hereby amended by inserting after line 26 the
214 following words:

215 Similarly, such insurers shall offer additional personal injury protection coverages beyond that
216 required by section thirty-four A of chapter ninety, to bring such benefit levels up to fifty thousand
217 dollars (\$50,000), one hundred thousand dollars (\$100,000), two hundred and fifty thousand dollars
218 (\$250,000), five hundred thousand dollars (\$500,000), and one million dollars (\$1,000,000) for all
219 eligible victims, and any other amounts determined by the Commissioner of Insurance to be
220 reasonable.

221 Such insurers shall also offer economic-loss litigation coverages to bring the total of an
222 insured's full personal injury protection coverage and economic-loss litigation coverage up to the same
223 limits as prescribed in the paragraph above.

224 Companies may offer other coverage limits in addition to those of the paragraphs above.

225 SECTION 9. In order to void the current monetary and verbal thresholds for full personal injury
226 protection policies while maintaining them for hybrid personal injury protection policies, Section 6D
227 of Chapter 231 of the General Laws, as above, is hereby amended as follows:

228 By adding after the words "a plaintiff" in line 4 the words:

229 "insured under a hybrid personal injury protection policy as described in section 34A of
230 Chapter 90";.

231 By adding at the end of the current section the words:

232 "A plaintiff insured under a full personal injury protection policy as described in
233 section 34A of Chapter 90 is not eligible to recover for damages for pain and suffering, except under
234 the provisions of any applicable economic-loss litigation option."

235 SECTION 10. The provisions of this act are severable, and if any part of this act shall be adjudged
236 unconstitutional or otherwise invalid by any court of competent jurisdiction, the validity of the
237 remaining parts shall not be affected thereby.

238 SECTION 11. This act shall take effect nine (9) months from the date of its enactment, or on January
239 first of the year two thousand and eight, whichever date is later, except that any preparatory actions
240 necessary to permit the other sections of this act to be effective on that date shall be allowed to
241 proceed prior to that date.