

HOUSE No. 01301

The Commonwealth of Massachusetts

PRESENTED BY:

William C. Galvin and

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 passage of the accompanying bill:

An Act relative to patient care access

.

PETITION OF:

NAME:

William C. Galvin

DISTRICT/ADDRESS:

6th Norfolk

HOUSE No. 01301

By Mr. William C. Galvin of Canton, petition (accompanied by bill, House, No. 01301) of William C. Galvin relative to patient safety, medical error reporting and medical malpractice..
Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1389 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2004 official edition is hereby amended
2 on line 140 after the word “occasions” the following: For purposes of this subsection, the
3 offering of expert testimony in any action for malpractice, negligence, error, omission, mistake,
4 or unauthorized rendering of professional services against a physician licensed pursuant to
5 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 addition of
7 the following new section:

8 Section 193 V: Every insurer or risk management organization which provides insurance to a
9 physician licensed under Chapter 112 of the Massachusetts General Laws shall make an annual
10 report to the Betsy Lehman Center for Patient Safety and Medical Error Reduction established by
11 Chapter 177 of the Acts of 2001. Said report shall list the top ten categories of losses, claims or
12 actions for damage for personal injuries alleged to have been caused by error, omission or
13 negligence in the performance by physicians of medical services the company incurred during
14 the previous calendar year. Said report shall also identify the top ten defendant specialties as to
15 cost and frequency of cases in the prior year. Where applicable, organizations shall include
16 reports outlining losses and claims for non-physician health care providers as well. Reports shall
17 include completed cases and settlements only and shall include no information identifying
18 providers or patients. Reports shall be provided to the center at its request under annual timelines
19 and reporting requirements established by the center with the input of the advisory committee
20 established in Chapter 6A Section 16 E (C). The Center shall use this information in the
21 development of evidence-based best practices to reduce medical errors and enhance patient
22 safety as required by Chapter 6A Section 16 E (e) 1 to increase awareness of error prevention
23 strategies through public and professional education as required by Chapter 6A Section 16 E (e)
24 4.

25 Section 3. Section 60G of Chapter 231 of the General Laws as appearing in 2000 official
26 addition is amended by striking in lines 10 and 11 the following: “prior to the judgment” and
27 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 is hereby amended by adding after section 60J, the
30 following new section:

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

35 Section 5. Chapter 231 of the General Laws is hereby amended by adding after section 60K,
36 the following new section:

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

49 (b)(1) The judgment ordering the payment of future damages by periodic payments shall specify
50 the recipient or recipients of the payments, the dollar amount of the payments, the interval
51 between payments, and the number of payments or the period of time over which payments shall

52 be made. Such payments shall only be subject to modification in the event of the death of the
53 judgment creditor.

54 (2) In the event that the court finds that the defendant has exhibited a continuing pattern of
55 failing to make the payments, as specified in paragraph (1), the court shall find the defendant in
56 contempt of court and, in addition to the required periodic payments, shall order the defendant to
57 pay the plaintiff all damages caused by the failure to make such periodic payments, including
58 court costs and attorney's fees.

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

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

68 Section 6. Said chapter 231 is hereby amended by inserting after section 60L the following
69 section:—

70 Section 60M. In any action for malpractice, negligence, error, omission, mistake or unauthorized
71 rendering of professional services against a provider of health care, in which a verdict is rendered
72 or a finding made or an order for judgment made for pecuniary damages for personal injuries to
73 the plaintiff or for consequential damages, there shall be added by the clerk of the court to the

74 amount of damages interest thereon, at a rate to be determined as set forth below rather than the
75 rate specified in section 6B of chapter 231, from the date of the commencement of the action
76 even though such interest brings the amount of the verdict or finding beyond the maximum
77 liability imposed by law. For all judgments entered after the effective date of this act, the rate of
78 interest to be applied by the clerk shall be at a rate equal to the weekly average 1-year constant
79 maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System
80 for the calendar week preceding the date of judgment. At no point shall the rate of interest
81 established by this section exceed the rate of interest set forth in said section 6B of chapter 231.

82 Section 7. Chapter 231 of the General Laws is hereby amended by adding the following section:

83 Section 60N. In any action for malpractice, error, omission, mistake or the unauthorized
84 rendering of professional services against a provider of health care, the liability of each
85 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
86 only for the amount of damages allocated to that defendant in direct proportion to that
87 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
88 for that amount.