

**HOUSE . . . . . No. 02035**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Garrett J. Bradley***

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*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 to repeal no fault motor vehicle insurance.

\_\_\_\_\_  
PETITION OF:

NAME:

*Garrett J. Bradley*

DISTRICT/ADDRESS:

*3rd Plymouth*

# HOUSE . . . . . No. 02035

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 2035) of Bradley relative to repealing no-fault motor vehicle insurance laws Joint Committee on Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 861 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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 chapter 90 of the General Laws, as appearing in the 2008 Official
- 2 Edition, is hereby amended by striking lines 68 through 133 in their entirety.
- 3 SECTION 2. Section thirty-four M of said chapter 90 is hereby repealed.
- 4 SECTION 3. Section thirty-four N of said chapter 90 is hereby repealed.
- 5 SECTION 4. The second paragraph of section 113C of chapter 175 of the General Laws, as
- 6 appearing in the 2008 Official Edition, is hereby amended by striking out the words “of medical
- 7 coverage, so-called, to a limit of at least five thousand dollars” and by inserting in place thereof

8 the following words:— “of medical and wage protection coverages, each to a limit of no less  
9 than five thousand dollars, and up to limits of at least one hundred thousand dollars.”

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

12 (A) Insurance companies undertaking to issue motor vehicle liability policies or bonds, both as  
13 defined in section 34A of chapter 90, shall cooperate in the preparation and submission of a plan  
14 which shall provide motor vehicle insurance to applicants who have been unable to obtain  
15 insurance through the method by which insurance is voluntarily made available; except that the  
16 plan shall provide that no insurance company shall be required to issue such policy or execute  
17 such bond if:

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

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

23 Such a plan shall provide for the fair and equitable apportionment among such insurance  
24 companies of premiums, losses or expenses, or any combination thereof.

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

26 (1) Bodily injury liability and property damage liability coverage in at least the minimum  
27 amounts required by law.

28 (2) Medical payment coverage to a limit of at least five thousand dollars and up to limits of at  
29 least one hundred thousand dollars;

30 (3) Wage protection coverage to limits of no less than five thousand dollars and up to limits of at  
31 least one hundred thousand dollars;

32 (4) Increased limits of bodily injury liability coverage in an amount to bring the total bodily  
33 injury liability coverage available 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 bring the total property damage  
36 liability coverage available for any one accident to fifty thousand dollars;

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

38 (7) Physical damage insurance, which shall mean: (a) collision coverage or limited collision  
39 coverage, (b) fire and theft coverage, or (c) comprehensive coverage, so-called, as those  
40 coverages are defined in section 34A and 34O of chapter 9O and section 113 of this chapter. The  
41 plan shall permit the refusal of collision, fire, theft or comprehensive coverage or the charging of  
42 rates at the discretion of the insurer, under the following circumstances:

43 (i) comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or  
44 owned by persons convicted within the most recent five year period of any category of vehicular  
45 homicide, auto insurance related fraud, or motor vehicle theft;

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

49 (iii) Collision coverage on a vehicle customarily driven by or owned by persons who have been  
50 involved in four or more accidents in which such person has been deemed to be at fault in excess  
51 of fifty percent within the three years immediately preceding the effective date of the policy;

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

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

58 (vi) Comprehensive, fire and theft or collision coverage on any motor vehicle for which a  
59 salvage title has been issued by the registrar of motor vehicles unless a new certificate of title has  
60 been issued pursuant to section 20 D of chapter 90 D; or

61 (vii) Comprehensive, fire and theft or collision coverage on a high-theft vehicle which does not  
62 have at least a minimum antitheft or auto recovery device as prescribed by the commissioner of  
63 insurance. The commissioner may designate as a “high-theft vehicle” any vehicle, classified  
64 according to make, model and year of manufacture, which has both above-average incidence of  
65 theft and above-average original sales price, and may prescribe appropriate anti-theft or auto  
66 recovery devices for such vehicles.

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

69 Section 113V. Every policy issued or delivered in the commonwealth shall be deemed to provide  
70 medical payments coverage in limits of at least five thousand dollars unless the policyholder  
71 affirmatively elects to purchase no such coverage for himself and for members of his household.

72 The medical payment coverage provision of a motor vehicle liability policy or bond shall provide  
73 for payment, without regard to negligence or gross negligence or fault of any kind, to the named  
74 insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond,  
75 members of the insured's or obligor's household, any authorized operator or passenger of the  
76 insured's or obligor's motor vehicle, including a guest occupant, and pedestrian struck by the  
77 insured's or obligor's motor vehicle, of all reasonable expenses incurred within two years from  
78 the date of accident for necessary medical, surgical, x-ray, and dental services, including  
79 prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services;  
80 provided, however, that no such payment shall be required to the extent such payment has been  
81 made by a health insurance policy or other contract with an insurance company, health  
82 maintenance organization, a non-profit hospital or medical service corporation or any other third  
83 party compensation system which is designated by the commissioner of insurance as providing  
84 the acceptable level of benefits. Nothing in this section shall be construed to limit in any way, an  
85 individual's choice of a physician, hospital, or other health care provider or course of medical  
86 treatment.

87 The medical payments coverage of two or more policies may be added together, combined, or  
88 stacked if required to pay an injured person's reasonable and necessary medical expenses. All  
89 such expenses shall be submitted first to the named insured's policy covering the vehicle the  
90 person was occupying when injured or, if the injured person was a pedestrian, to the named

91 insured's policy covering the vehicle which struck the individual. An insured who is not a named  
92 insured on any policy providing medical payments coverage shall next submit a claim to the  
93 policies of resident relatives; provided, however, if there are two or more policies which provide  
94 such coverage and if the claim does not exceed the combined total of all such policies, a pro rata  
95 contribution will be made. If there are two or more policies which provide such coverage and if  
96 the claim exceeds the combined total of all such policies, the limit of all policies will be paid. A  
97 person who is named insured on a policy providing medical payments coverage shall next submit  
98 a claim:

99 (a) to the policy on which such person is named insured; provided, however, if there are two or  
100 more such policies which provide such coverage a pro rata contribution will be made if the claim  
101 does not exceed the combined total of all such policies. If the claim exceeds the combined total  
102 of all such policies the limit of all policies will be paid.

103 (b) to the policy of resident relatives. If there are two or more policies which provide such  
104 coverage and if the claim does not exceed the combined total of all such policies, a pro rata  
105 contribution will be made. If the claim exceeds the combined total of all such policies the limit of  
106 all policies will be paid.

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

108 Section 113W. Every policy issued or delivered in the Commonwealth shall be deemed to  
109 provide wage protection coverage in limits of at least five thousand dollars unless the  
110 policyholder affirmatively elects to purchase no such coverage for himself and for members of  
111 his household.

112 The wage protection coverage shall provide for payment to the named insured in any such motor  
113 vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's  
114 or obligor's household, any authorized operator or passenger of the insured's or obligor's motor  
115 vehicle, including a guest occupant, and any pedestrian struck by the insured's or obligor's motor  
116 vehicle, unless any of the aforesaid is a person entitled to payments or benefits under the  
117 provisions of chapter one hundred and fifty-two, in the case of persons employed or self-  
118 employed at the time of any accident of any amounts actually lost by reason of inability to work  
119 and earn wages or salary or their equivalent, but not other income, that would otherwise have  
120 been earned in the normal course of any injured person's employment, and for payments in fact  
121 made to others, not members of the injured person's household and reasonably incurred in  
122 obtaining from those others ordinary and necessary services in lieu of those that had he not been  
123 injured, the insured person would have performed not for income but for the benefit of himself  
124 and/or members of his household, and in the case of persons not employed or self-employed at  
125 the time of any accident of any loss by reason of diminution of earning power and for payments  
126 in fact made to others, not members of the injured person's household and reasonably incurred in  
127 obtaining from those others ordinary and necessary services in lieu of those that, had he not been  
128 injured, the injured person would have performed not for income but for the benefit of himself  
129 and/or members of this household, as a result of bodily injury, sickness or disease, including  
130 death at any time resulting there from, caused by accident and not suffered intentionally while in  
131 or upon, or while entering into or alighting from, or being struck as a pedestrian by, the insured's  
132 or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind,  
133 to the amount or limit of at least five thousand dollars on account of injury to or death of any  
134 person, except that payments for loss of wages or salary or their equivalent or, in the case of



135 persons not employed, loss by reason of diminution of earning power, shall be limited to  
136 amounts actually lost by reason of the accident and further limited (1) in the case of persons  
137 entitled to wages or salary or their equivalent under any program for continuation of said wages  
138 or salary or their equivalent to any amount that, together with any payments due under such a  
139 program, will provide seventy-five percent of the greater of any such person's average weekly  
140 wage or salary or its equivalent for the year immediately preceding the accident or the person's  
141 average weekly wage or salary at the time of the accident provided that the insurer shall  
142 reimburse those wage continuation programs or their equivalent which provide for accumulated  
143 benefits which can be converted into either cash or additional retirement credit for the amount  
144 said program or its equivalent actually pays to the insured, not to exceed seventy-five percent of  
145 the greater of the insured's average weekly wages or salary or its equivalent for the year  
146 immediately preceding the accident or the insured's average weekly wage or salary at the time of  
147 the accident, or (2) in the case of persons not entitled to wages or salary or their equivalent under  
148 any program for continuation of said wages or salary or their equivalent to any amount that will  
149 provide seventy-five percent of the greater of any such person's average weekly wage or salary  
150 or its equivalent for the year immediately preceding the accident or the person's average weekly  
151 wage or salary at the time of the accident. In any case where amounts paid for loss of wage,  
152 salary or their equivalent are reduced as a result of any program for continuation of the same and  
153 such reduction produces a subsequent loss, as when the limit of any such program for  
154 continuation of wage or salary of their equivalent is exhausted with the result that an injured  
155 person cannot recover for a later injury or illness as he would have been entitled to but for such a  
156 reduction, such subsequent loss to an amount equaling the reduction in payments made in  
157 accordance with this section shall, if incurred within one year after the receipt of the last benefit

158 provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a  
159 result of the injury to which wage protection coverage applied. In all cases where an insured is  
160 compensated under such a wage continuation program and also recovers these benefits from  
161 another source, he shall be entitled to reimburse the wage continuation program with no loss in  
162 standing under such a program. Coverage under this section shall also provide for payment, to  
163 the named insured or obligor and members of their households, all amounts defined in this  
164 section in any case where such persons incur such expense or loss as a result of such injury while  
165 in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle  
166 not insured by a policy or bond providing such coverage.

167 The wage protection coverage of two or more policies may be added together, combined or  
168 stacked if required to compensate an injured person for lost wages, salary or their equivalent or a  
169 loss by reason of diminution of earning power. All such losses shall be submitted first to the  
170 named insured's policy covering the vehicle the person was occupying when injured or, if the  
171 injured person was a pedestrian, to the named insured's policy covering the vehicle which struck  
172 the individual. An insured who is not a named insured on any policy providing wage protection  
173 coverage shall next submit a claim to the policies of resident relatives. If there are two or more  
174 policies which provide such coverage and if the claim does not exceed the combined total of all  
175 such policies, a pro rata contribution will be made. If there are two or more policies which  
176 provide such coverage and the claim exceeds the combined total of all such policies, the limit of  
177 all policies will be paid. A person who is named insured on a policy providing wage protection  
178 coverage shall next submit a claim:

179 (a) To the policy on which such person is the named insured; provided, however, if there are two  
180 or more such policies which provide such coverage a pro rata contribution will be made if the

181 claim does not exceed the combined total of all such policies. If the claim exceeds the combined  
182 total of all such policies, the limit of all policies will be paid.

183 (b) To the policy of resident relatives. If there are two or more policies which will provide such  
184 coverage and if the claim does not exceed the combined total of all such policies, a pro rata  
185 contribution will be made. If the claim exceeds the combined total of all such policies, the limit  
186 of all policies will be paid.

187 Each insurer providing coverage under this section shall issue to any person purchasing a motor  
188 vehicle liability policy or bond, at his option, a policy endorsement, approved as to content by  
189 the commissioner of insurance and subject to such other regulations regarding said endorsement  
190 as the commissioner may from time to time make after appropriate hearing, which shall provide  
191 that there shall be deducted from amounts that would otherwise be or become due to the  
192 policyholder alone or to the policyholder and members of his household, as the policyholder  
193 elects, an amount of either one hundred dollars, two hundred and fifty dollars, five hundred  
194 dollars, one thousand five hundred dollars, or two thousand five hundred dollars, again as the  
195 policyholder elects, said amount to be deducted from the amount otherwise due each person  
196 subject to the deduction.

197 SECTION 8. Section 6D of chapter 231 of the General Laws is hereby repealed.

198 SECTION 9. Sections 1, 2, 3, 4, 5, 6 and 7 shall take effect and apply to policies or bonds issued  
199 or renewed on or after January 1, 2012. Section 8 shall take effect and apply to causes of action  
200 that accrue on or after January 1, 2012.