

**HOUSE . . . . . No. 877**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**William N. Brownsberger**

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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 establish consumer choice in automobile insurance .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	24th Middlesex
Steven A. Tolman	Second Suffolk and Middlesex
John Hayes	5 Colonial Terra Belmont, MA 02478
Ellen Story	3rd Hampshire
Mary E. Grant	6th Essex
Anne M. Paulsen	90 School St. Belmont, MA 02478
Kay Khan	11th Middlesex
Jay R. Kaufman	15th Middlesex
Michael S. Dukakis	85 Perry Street Brookline, MA 02446

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 914 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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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. Section 34A of Chapter 90 of the General Laws of Massachusetts, as  
2 appearing in the 2006 Official Edition, is hereby amended by striking out, in line 2,  
3 the words "thirty-four N" and inserting in place thereof the words: "thirty-four W".

4 SECTION 2. Section 34A of Chapter 90, as above, is hereby further amended  
5 by inserting the following:

6 After line 2, add the following:

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

11 After line 24, add the following:

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

15           “Economic-loss litigation option”: optional coverage to allow full  
16 personal injury protection insureds to claim against their own company for  
17 economic losses in excess of their chosen full personal injury protection coverage.

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

23           After line 30, add the following:

24           “Hybrid personal injury protection” (or “hybrid PIP”), a personal  
25 injury protection policy which includes recovery for pain and suffering as  
26 described in Section 6D of Chapter 231; the so-called no-fault system in effect up  
27 through the year 2008 CE, with a monetary threshold of two thousand dollars  
28 (\$2000) and a maximum level of coverage per person of eight thousand dollars  
29 (\$8000).

30           After line 121, add the following:

31           “Noneconomic loss”, subjective nonmonetary loss recognized under  
32 applicable Massachusetts law.

33           After line 243, add the following:

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

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

41 SECTION 3.       Section 34A of Chapter 90, as above, is hereby further amended  
42 by striking out, in line 155, the words "of at least eight thousand dollars" and  
43 inserting in place thereof the following words: "of the amount specified herein  
44 below".

45 SECTION 4. Section 34M of Chapter 90, as above, is hereby amended by adding  
46 after line 132 the following words:

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

57 “A personal injury protection insured may claim for both economic and  
58 noneconomic losses from an uninsured motorist who is liable for damages caused  
59 by the accident, from a motorist who was under the influence of alcohol or illegal  
60 drugs at the time of the accident and whose conduct was the proximate cause of the  
61 accident, from a person who caused an injury while seeking to intentionally injure  
62 another person, and from any other person who is not affected by the limitations on  
63 tort rights and liabilities of this chapter and whose conduct was the proximate  
64 cause of the accident.”

65 SECTION 5. Chapter 90, as above, is hereby amended by adding after  
66 Section 34R the following new sections:

67 Section 34S. Choice of a hybrid personal injury protection policy or a  
68 full personal injury protection policy.

69 (a) Upon the earliest and first renewal of any applicable motor  
70 vehicle insurance policy on or after the effective date of this act, or prior to the  
71 issuance of a policy required by this act, a choice must be made of a hybrid  
72 personal injury protection policy or of a full personal injury protection policy as  
73 described in section 34A. A choice made pursuant to this act is binding with  
74 respect to any continuation, renewal, or reinstatement of an applicable motor  
75 vehicle insurance policy, and continues with respect to any policy or policies  
76 which extend, change, supersede, or replace the policy unless a named insured  
77 subsequently makes a different choice in writing. A choice by a named insured

78 shall be on a form approved by the commissioner of insurance and provided by the  
79 insurer.

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

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

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

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

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

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

115 Section 34T. Priority of claims.

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

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

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

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

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

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

136 (c) An insurer may exclude coverage under a personal injury protection  
137 policy where the named insured or any resident relative who does not own a motor

138 vehicle is injured while occupying a motor vehicle owned by the named insured  
139 but which is not described in that insurance policy's declaration page.

140 Section 34U. Verification of entitlement benefits.

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

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

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

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

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

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

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

190 Section 34W. Tort maintenance system.

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

197 SECTION 6. Chapter 175 of the General Laws, as above, is hereby amended  
198 by adding after Section 3C the following new section:

199 Section 3D. The Commissioner of Insurance shall conduct, or cause the  
200 insurance companies to conduct, effective ongoing informational programs in order  
201 to assist the public to understand the choices of hybrid personal injury protection  
202 and full personal injury protection available to an insurer or obligor relative to



203 automobile insurance, as described in Chapter 90, and the ramifications of these  
204 choices. Such informational programs shall include, but not be limited to,  
205 information relative to the comparative costs of insurance under the hybrid  
206 personal injury protection policy and the full personal injury protection policy, and  
207 the benefits, rights, and obligations of insurers and insureds under each such  
208 policy.

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

220 SECTION 7. Section 113C of Chapter 175 of the General Laws, as above, is  
221 hereby amended by inserting after line 26 the following words:

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

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

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

234 SECTION 8. Section 6D of Chapter 231 of the General Laws, as above, is  
235 hereby amended as follows:

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

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

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

240 "A plaintiff insured under a full personal injury protection policy as  
241 described in section 34A of Chapter 90 is not eligible to recover for damages for

242 pain and suffering, except under the provisions of any applicable economic-loss  
243 litigation option.”

244 SECTION 9. The provisions of this act are severable, and if any part of this act  
245 shall be adjudged unconstitutional or otherwise invalid by any court of competent  
246 jurisdiction, the validity of the remaining parts shall not be affected thereby.

247 SECTION 10. This act shall take effect nine (9) months from the date of its  
248 enactment, or on January first of the year two thousand and ten, whichever date is  
249 later, except that any preparatory actions necessary to permit the other sections of  
250 this act to be effective on that date shall be allowed to proceed prior to that date.