

HOUSE No. 1233

By Messrs. Caples of Boston and Dwyer of Pittsfield, petition of Richard R. Caples and John J. Dwyer that provision be made for contribution among joint tort-feasors. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Two.

AN ACT PROVIDING FOR CONTRIBUTION AMONG TORT-FEASORS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 231 of the General Laws, is hereby amended
2 by adding section 85A: —

3 *Section 85A. 1. Interpretation.* — In this act (a)
4 Action — “Action” shall include counterclaim; (b)
5 Defendant — “Defendant” shall include a plaintiff
6 against whom a counterclaim is brought; (c) Plaintiff
7 — “Plaintiff” shall include a defendant who counter-
8 claims.

9 *2. Extent of Liability, Remedy Over.* — Where dam-
10 ages have been caused or contributed to by the fault
11 or neglect of two or more persons the court shall de-
12 termine the degree in which each of such persons is
13 at fault or negligent, and, except as provided by sub-
14 sections two and three, where two or more persons are
15 found at fault or negligent, they shall be jointly and
16 severally liable to the person suffering loss or damage

17 for such fault or negligence, but as between themselves,
18 in the absence of any contract expressed or implied,
19 each shall be liable to make contribution and indemnify
20 each other in the degree in which they are respectively
21 found to be at fault or negligent.

22 3. *Recovery as between Tort-feasors.* — A tort-feasor
23 may recover contribution or indemnity from any other
24 tort-feasor who is, or would, if sued, have been, liable
25 in respect to the damage to any person suffering
26 damage as a result of a tort by settling with the person
27 suffering such damage, and thereafter commencing
28 or continuing action against such other tort-feasor,
29 in which event the tort-feasor settling the damage
30 shall satisfy the court that the amount of the settle-
31 ment was reasonable, and in the event that the court
32 finds the amount of the settlement was excessive it
33 may fix the amount at which the claim should have
34 been settled.

35 4. *Adding Party Defendant.* — Whenever it appears
36 that any person not already a party to an action is
37 or may be wholly or partly responsible for the damages
38 claimed, such person may be added as a party de-
39 fendant, or may be made a third party to the action
40 upon such terms as may be deemed just.

41 5. *Jury to determine Degrees of Negligence of Parties.*
42 — In any action tried with a jury, the degree of fault
43 or negligence of the respective parties shall be a
44 question of fact for the jury.

45 6. *Limitation of Actions.* — Where an action is
46 commenced against a tort-feasor, or where a tort-feasor
47 settles with a person who has suffered damage as a
48 result of a tort, within the period of limitation pre-
49 scribed for the commencement of action by any rele-
50 vant statute, no proceedings for contribution or indem-

51 nity against another tort-feasor shall be defeated by
52 the operation of any statute limiting the time for the
53 commencement of action against such other tort-
54 feasor; provided, (a) such proceedings are commenced
55 within one year of the date of the judgment in the
56 action or the settlement, as the case may be; and
57 (b) there has been compliance with any statute re-
58 quiring notice of claim against such tort-feasor.

