

HOUSE No. 1255

By Mr. Shea of Worcester, petition of Eugene H. Giroux and John M. Shea relative to the settlement by agreement of actions against third parties under the workmen's compensation law. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE SETTLEMENT BY AGREEMENT
BY THE PARTIES TO AND DURING A TRIAL OF AN ACTION
AT LAW AGAINST A THIRD PARTY UNDER THE WORK-
MEN'S COMPENSATION LAW.

*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 15 of chapter 152 of the General Laws, as
2 most recently amended by chapter 432 of the acts of
3 1943, is hereby further amended by striking out said
4 section and inserting the following section:—

5 *Section 15.* Where the injury for which com-
6 pensation is payable was caused under circumstances
7 creating a legal liability in some person other than
8 the insured to pay damages in respect thereof, the
9 employee may at his option proceed either at law
10 against that person to recover damages or against
11 the insurer for compensation under this chapter, but,
12 except as hereinafter provided, not against both. If
13 compensation be paid under this chapter, the insurer

14 may enforce, in the name of the employee or in its
15 own name and for its own benefit, the liability of
16 such other person, and if, in any case where the
17 employee has claimed or received compensation
18 within six months of the injury, the insurer does not
19 proceed to enforce such liability within a period of
20 nine months after said injury, the employee may so
21 proceed. In either event the sum recovered shall be
22 for the benefit of the insurer unless such sum is
23 greater than that paid by it to the employee. If the
24 insurer brings the action four fifths of the excess shall
25 be paid to the employee, and if the employee brings
26 the action he shall retain the entire excess. The
27 party bringing the action shall be entitled to retain
28 any costs recovered by him and any interest received
29 in such action shall be apportioned between the
30 insurer and the employee in proportion to the amounts
31 received by them, respectively, under this section,
32 exclusive of interest and costs. For the purposes of
33 this section, "excess" shall mean the amount by
34 which the total sum received in payment for the
35 injury, exclusive of interest and costs, exceeds the
36 compensation paid under this chapter. The insurer
37 and the employee may share the expense of any
38 attorney's fee in accordance with such agreement as
39 they may make; provided, that when the insurer
40 brings the action no such agreement shall be valid if
41 the employee would be required thereunder to bear
42 a greater proportion of such expenses than the pro-
43 portion that the part of the excess received hereunder
44 by him bears to the total sum received hereunder by
45 him and the insurer, exclusive of interest and costs.
46 Except in the case of a settlement by agreement by
47 the parties to, and during a trial of, such an action at

48 law, no settlement by agreement shall be made with
49 such other person without the approval of the in-
50 dustrial accident board after an opportunity has been
51 afforded both the insurer and the employee to be
52 heard on the merits of the settlement and on the
53 amount, if any, to which the insurer is entitled out of
54 such settlement by way of reimbursement, which
55 amount shall be determined by said board at the
56 time of such approval. In the case of a settlement
57 by agreement by the parties to, and during a trial of,
58 such an action at law the justice presiding at the trial
59 shall have and exercise power of approval of said
60 settlement, but only as to the adequacy thereof as in
61 his judgment the merits of such action before him
62 warrant such approval; by the reimbursement to
63 which the compensation insurer may be entitled and
64 the distribution of the excess, if any, in such settle-
65 ment shall be left to the jurisdiction of the depart-
66 ment of industrial accidents to approve. An employee
67 shall not be held to have exercised his option under
68 this section to proceed at law if, at any time prior to
69 trial of an action at law brought by him against such
70 other person, he shall after notice to the insurer
71 discontinue such action, provided that upon payment
72 of compensation following such discontinuance the
73 insurer shall not have lost its right to enforce the
74 liability of such other person as hereinbefore pro-
75 vided.

in law, no settlement by agreement shall be made which
 to any other person without the approval of the court
 to protect creditors' interests and to prevent any person
 to alienate from the debtor and the creditors the
 to fund on the assets of the debtor and on the
 to amount, if any, to which the debtor is entitled out of
 to such settlement by way of compromise, which
 to amount shall be determined by and paid to the
 to trustee of such settlement, whether trustee or otherwise,
 to by agreement for the benefit of creditors, and of
 to any other person or persons, whether or not the
 to shall have any claim, debt or demand against or
 to settlement, but only in so far as the same may be
 to a settlement, the trustee or other person to whom the
 to amount shall be paid, or by his assignee, or
 to which the amount or interest may be entitled and
 to the distribution of the amount thereof to such parties
 to court shall be left to the discretion of the court
 to court of probate and wills, or other court, in any case
 to which it is by law or otherwise provided that the
 to shall continue in force until the death of the last
 to survive or until the expiration of the term therein
 to which it is by law or otherwise provided that the
 to of compromise shall be binding upon the debtor, the
 to court shall have full power to enforce the
 to validity of such settlement or compromise, and
 to order.