

# HOUSE . . . . No. 1256

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By Mr. Wall of Lawrence (by request), petition of Francis Harrigan and another for increasing the safety of workmen in industry by providing a supplementary remedy for injuries resulting from negligence of employers or their agents. The Judiciary.

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## The Commonwealth of Massachusetts

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

AN ACT TO INCREASE THE SAFETY OF WORKMEN IN INDUSTRY BY PROVIDING A SUPPLEMENTARY REMEDY FOR INJURIES RESULTING FROM THE NEGLIGENCE OF THE EMPLOYER OR HIS AGENTS.

*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 152 of the General Laws is hereby amended
- 2 by inserting after section 67 thereof the following new
- 3 section:—
- 4 *Section 67A.* (1) In addition to all other rights
- 5 created by this chapter, and without any election,
- 6 and notwithstanding any of the provisions of sec-
- 7 tions twenty-three, twenty-four, twenty-five, sixty-
- 8 six, sixty-seven or any other provisions of this chap-
- 9 ter, every insured person, including a self-insurer
- 10 shall be liable in damages to any person suffering in-
- 11 jury while he is employed by such insured person, or,
- 12 in case of the death of such employee, to his or her

13 personal representative, for the benefit of the surviv-  
14 ing widow or husband and children of such employee;  
15 and, if none, then of such employee's parents; and,  
16 if none, then of the next of kin of such employee, for  
17 such injury or death resulting in whole or in part from  
18 the negligence of any of the officers, agents or employ-  
19 ees of such employer, or by reason of any defect or  
20 insufficiency, due to its negligence, in its buildings,  
21 machinery, vehicles, ways or other appliances and  
22 equipment.

23 (2) In all actions under this section, the fact that  
24 the employee may have been guilty of contributory  
25 negligence shall not bar a recovery, but the damages  
26 shall be diminished in proportion to the amount of  
27 negligence attributable to such employee; provided,  
28 that no such employee who may be injured or killed  
29 shall be held to have been guilty of contributory neg-  
30 ligence in any case where the violation by such insured  
31 person of any statute or regulation providing for the  
32 safety of employees contributed to the injury or death  
33 of such employee.

34 (3) In all actions under this section, the employee  
35 shall not in any case be held to have assumed the risk  
36 of the injury, either voluntarily or contractually.

37 (4) Any right of action given by this chapter to a  
38 person suffering injury shall survive to his or her per-  
39 sonal representative, for the benefit of the surviving  
40 widow or husband and children of such employee,  
41 and, if none, then of such employee's parents; and, if  
42 none, then of the next of kin dependent upon such  
43 employee, but in such cases there shall be only one  
44 recovery, for the same injury.

45 (5) Benefits paid under workmen's compensation  
46 may be deducted from the tort recovery, and vice

47 versa, it being the intention of this act that the em-  
48 ployee or beneficiaries have the greater of the two  
49 recoveries, but not both. The attorney obtaining the  
50 tort recovery may charge the person entitled to reim-  
51 bursement for workmen's compensation a reasonable  
52 fee plus expenses out of said reimbursement.

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