

HOUSE No. 576

By Mr. Buczko of Salem, petition of Thaddeus Buczko relative to providing for payment of workmen's compensation and for suit against a negligent third party without necessity of election. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty.

AN ACT PROVIDING FOR PAYMENT OF WORKMEN'S COMPENSATION AND FOR SUIT AGAINST A NEGLIGENT THIRD PARTY WITHOUT NECESSITY OF ELECTION.

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 by
2 striking out section 15 thereof and inserting in its place the
3 following:—

4 *Section 15.* Where the injury for which compensation is pay-
5 able was caused under circumstances creating a legal liability
6 in some person other than the insured to pay damages in re-
7 spect thereof, the employee shall be entitled to the compensa-
8 tion and other benefits provided under this chapter, and at the
9 same time the employee may pursue his remedy against such
10 third party. If, in any case where the employee may or has
11 claimed or received compensation, the employee does not pro-
12 ceed to enforce such liability within a period of six months after
13 said injury, the insurer also may proceed to enforce, in the name
14 of the employee or in its own name and for its own benefit, the
15 liability of such other person.

16 In either event, the sum recovered shall be for the benefit of
17 the insurer, unless such sum is greater than that paid by it to
18 the employee. If the insurer brings the action four fifths of the
19 excess shall be paid to the employee, and if the employee brings

20 the action he shall retain the entire excess. The party bringing
21 the action shall be entitled to retain any costs recovered by him,
22 and any interest received in such action shall be apportioned be-
23 tween the insurer and the employee in proportion to the amounts
24 received by them, respectively, under this section, exclusive of
25 interest and costs. For the purposes of this section, "excess"
26 shall mean the amount by which the total sum received in pay-
27 ment for the injury, exclusive of interest and costs, exceeds the
28 compensation paid under this chapter. The insurer and the em-
29 ployee may share the expense of any attorney's fee in accord-
30 ance with such agreement as they may make; provided, that
31 when the insurer brings the action no such agreement shall be
32 valid if the employee would be required thereunder to bear a
33 greater proportion of such expenses than the proportion that
34 the part of the excess received hereunder by him bears to the
35 total sum received hereunder by him and the insurer, exclusive
36 of interest and costs. Except in the case of a settlement by
37 agreement by the parties to, and during a trial of, such an ac-
38 tion at law, no settlement by agreement shall be made with
39 such other person without the approval of the industrial ac-
40 cident board after an opportunity has been afforded both the
41 insurer and the employee to be heard on the merits of the set-
42 tlement and on the amount, if any, to which the insurer is en-
43 titled out of such settlement by way of reimbursement, which
44 amount shall be determined by said board at the time of such
45 approval. In the case of a settlement by agreement by the
46 parties to, and during a trial of, such an action at law the justice
47 presiding at the trial shall have and exercise, relative to the
48 approval of such settlement by agreement and to the protec-
49 tion of the rights and interests of the employee, all the powers
50 hereinbefore granted to the industrial accident board. An em-
51 ployee shall not be held to have exercised his option under this
52 section to proceed at law if, at any time prior to trial of an ac-
53 tion at law brought by him against such other person, he shall
54 after notice to the insurer discontinue such action; provided,
55 that upon payment of compensation following such discontin-
56 uance the insurer shall not have lost its right to enforce the
57 liability of such other person as hereinbefore provided.