

By Mr. DeFilippi of West Springfield, petition of Walter A. DeFilippi relative to comparative fault in certain tort actions. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT RELATIVE TO COMPARATIVE FAULT IN CERTAIN TORT ACTIONS.

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

1 The General Laws are hereby amended by inserting after
2 chapter 261 the following chapter: —

3 **CHAPTER 261A**
4 **COMPARATIVE FAULT ACT.**

5 Section 1. This Chapter may be cited as The Comparative
6 Fault Act.

7 Section 2. The following words, as used in this Chapter, shall
8 have the meaning set forth below, unless the context clearly
9 requires otherwise:

10 "Fault", an act or omission of a person which is a proximate
11 cause of injury or death to another person or persons, damage
12 to property, tangible or intangible, or economic injury, including
13 but not limited to, negligence, malpractice, strict liability, absolute
14 liability, or failure to warn. Fault shall not include any tort which
15 results from an act or omission committed with a specific wrongful
16 intent.

17 "Comparative fault", the degree to which the fault of each
18 person was the proximate cause of the alleged injury or death or
19 damage to property, tangible or intangible.

20 "Person", any individual, corporation, company, association,
21 firm, partnership, society, joint stock company, or any other

22 entity, including any governmental entity or unincorporated
23 association of persons.

24 Section 3. In any action for personal injury, property damage,
25 or wrongful death, recovery shall be predicated upon principles
26 of comparative fault and the liability of each person who caused
27 the injury shall be allocated to each person in direct proportion
28 to that person's percentage of fault. Where the percentage of fault
29 chargeable to the plaintiff is equal to or less than the aggregate
30 fault of all defendants and nonparties, the plaintiff may recover
31 damages, but the plaintiff's recovery of damages will be
32 diminished in proportion to the percentage of fault chargeable to
33 the plaintiff.

34 Where the plaintiff's percentage of fault exceeds the aggregate
35 fault of all defendants and nonparties, the plaintiff shall be barred
36 from any recovery.

37 Section 4. (A) In assessing percentages of fault the trier of fact
38 shall consider the fault of all persons who contributed to the
39 alleged injury, death, or damage to property, tangible or
40 intangible, regardless of whether said person was, or could have
41 been, named as a party to the suit. Negligence or fault of a
42 nonparty may be considered if the plaintiff entered into a
43 settlement agreement with the nonparty or if the defending party
44 gives notice within one hundred twenty days of the date of trial
45 that a nonparty was wholly or partially at fault. The notice shall
46 be given by filing a pleading in the action designating such
47 nonparty and setting forth such nonparty's name and last-known
48 address, or the best identification of such nonparty which is
49 possible under the circumstances, together with a brief statement
50 of the basis for believing such nonparty to be at fault.

51 (B) Nothing in this Chapter is meant to eliminate or diminish
52 any defenses or immunities which currently exist, except as
53 expressly noted herein. Assessments of percentages of fault for
54 nonparties are used only as a vehicle for accurately determining
55 the fault of named parties. Where fault is assessed against
56 nonparties, findings of such fault shall not subject any nonparty
57 to liability in this or any other action, or be introduced as evidence
58 of liability in any action.

59 Section 5. (A) Assumption of the risk shall operate as a
60 complete bar to an action when the injured person,

61 (1) expressly, in writing or orally, assumed the risk of injury,
62 or

63 (2) had knowledge of the risk, as proven by actions, statements,
64 or direct testimony, yet undertook or continued the activity that
65 constituted exposure to the risk.

66 (B) In situations not covered by section (A) but where
67 reasonably prudent persons would have realized the risk before
68 exposing themselves to it, assumption of the risk shall be
69 considered as a factor in apportioning fault.

70 (C) In all cases involving products, structures, or services where
71 a warning has been provided concerning the product, structure,
72 or service, including any warning required or approved by a
73 federal or state government body or regulatory agency, proof of
74 the existence of the warning will create an irrebuttable
75 presumption that the plaintiff knew of the warning's content.

76 Section 6. Nothing in this act is intended to, in any way, disturb
77 the doctrine of imputed negligence, or fault, currently followed
78 in this jurisdiction.

79 Section 7. Contributory fault shall not bar recovery in any
80 action for personal injury, property damage, or wrongful death,
81 except as otherwise provided in section six above.

82 Section 8. The burden of alleging and proving fault shall be
83 upon the person who seeks to establish such fault.

84 Section 9. Nothing in this Chapter shall be construed to create
85 a cause of action. Nothing in this Chapter shall be construed in
86 any way to alter the immunity of any person.

