

HOUSE BILL No. 5567

March 6, 1990, Introduced by Reps. Niederstadt and Hart and referred to the Committee on Judiciary.

A bill to amend section 2925a of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," being section 600.2925a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2925a of Act No. 236 of the Public Acts
2 of 1961, being section 600.2925a of the Michigan Compiled Laws,
3 is amended to read as follows:

4 Sec. 2925a. (1) Except as otherwise provided in this act,
5 when 2 or more persons become jointly or severally liable in tort
6 for the same injury to a person or property or for the same
7 wrongful death, there is a right of contribution among them even
8 though judgment has not been recovered against all or any of
9 them.

1 (2) The right of contribution exists only in favor of a
2 tort-feasor who has paid more than his OR HER pro rata share of
3 the common liability and his OR HER total recovery is limited to
4 the amount paid by him OR HER in excess of his OR HER pro rata
5 share. A tort-feasor against whom contribution is sought shall
6 not be compelled to make contribution beyond his OR HER own pro
7 rata share of the entire liability.

8 (3) A tort-feasor who enters into a settlement with a claim-
9 ant is ~~not~~ entitled to recover contribution from another
10 tort-feasor ONLY if ~~any~~ ALL of the following circumstances
11 exist:

12 (a) The liability of the ~~contributor~~ NONSETTLING
13 TORT-FEASOR for the injury or wrongful death is ~~not~~ extin-
14 guished by the settlement.

15 (b) A reasonable effort was ~~not~~ made to notify the
16 ~~contributor~~ NONSETTLING TORT-FEASOR of the pendency of the set-
17 tlement negotiations.

18 (c) The ~~contributor~~ NONSETTLING TORT-FEASOR was ~~not~~
19 given a reasonable opportunity to participate in the settlement
20 negotiations.

21 (d) The settlement was ~~not~~ made in good faith.

22 (4) In an action to recover contribution commenced by a
23 tort-feasor who has entered into a settlement, the defendant may
24 assert the ~~defenses~~ ABSENCE OF ANY OF THE CIRCUMSTANCES set
25 forth in subsection (3) and any other defense he OR SHE may have
26 to his OR HER alleged liability for such injury or wrongful
27 death.

1 (5) A tort-feasor who satisfies all° or part of a judgment
2 entered in an action for injury or wrongful death is not entitled
3 to contribution if the ~~alleged contributee~~ PERSON FROM WHOM
4 CONTRIBUTION IS SOUGHT was not made a party to the action and if
5 a reasonable effort was not made to notify him OR HER of the com-
6 mencement of the action. Upon timely motion, a person receiving
7 such notice may intervene in the action and defend as if joined
8 as a third party.

9 (6) A liability insurer, who by payment has discharged in
10 full or in part the liability of a tort-feasor and has thereby
11 discharged in full its obligation as insurer, is subrogated to
12 the tort-feasor's right of contribution to the extent of the
13 amount it has paid in excess of the tort-feasor's pro rata share
14 of the common liability. It may assert this right either in its
15 own name or in the name of its insured. This provision does not
16 limit or impair any right of subrogation arising from any other
17 relationship.

18 (7) This section does not impair any right of indemnity
19 under existing law. Where 1 tort-feasor is entitled to indemnity
20 from another, the right of the indemnity obligee is for indemnity
21 and not contribution, and the indemnity obligor is not entitled
22 to contribution from the obligee for any portion of his OR HER
23 indemnity obligation.

24 (8) This section does not apply to breaches of trust or of
25 other fiduciary obligations.

26 (9) This section shall not operate to increase the liability
27 of the secretary of state under THE MOTOR VEHICLE ACCIDENT CLAIMS

1 ACT, Act No. 198 of the Public Acts of 1965, as amended, being
2 sections 257.1101 to ~~257.1132~~ 257.1133 of the Michigan Compiled
3 Laws.