

#62(L)

8/5/65

Memorandum 65-54

Subject: Study No. 62(L) - Vehicle Code Section 17150 and Related Statutes

Accompanying this memorandum (on yellow paper) are two copies of a tentative recommendation designed to carry out the Commission's decisions on the above topic. The extra copy is provided so that you may mark your suggested revisions upon it and return it to the staff at the next meeting.

The tentative recommendation is substantially the same as the one submitted to you for the July meeting. There have been some revisions, however, to harmonize the contribution provisions with the changes made in the contribution provisions of the statute on personal injury damages.

There is no provision in Section 17801 equivalent to that in Section 184(b) (dealing with Code of Civil Procedure Section 417). Such a provision appears unnecessary here, since personal jurisdiction can be secured over both residents and non-residents on causes of action arising out of vehicular accidents under Vehicle Code Sections 17450-17463.

Section 15 has been added to avoid any constitutional problems that might be involved in retroactive application of the statute.

Respectfully submitted,

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Assistant Executive Secretary

7/7/65

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

IMPUTED NEGLIGENCE UNDER VEHICLE CODE SECTION 17150 AND RELATED SECTIONS

Vehicle Code Section 17150 provides that the owner of a vehicle who permits it to be operated by another is liable for any injury caused by the negligence of the operator. Moreover, the negligence of the operator is imputed to the owner for all purposes of civil damages, thus barring the owner from recovering damages from a negligent third party if the driver was also negligent.

The provision of Vehicle Code Section 17150 that imputes the contributory negligence of a driver to the owner of the vehicle did not operate as a complete bar to an owner's recovery of damages when injured by the concurring negligence of his operator and a third party prior to the amendment of Vehicle Code Section 17158¹ (the guest statute) in 1961. Prior to that time this provision merely prohibited the owner from recovering from the negligent third party. It did not affect his remedy against the driver. Thus, in effect, it forced an owner who was injured by the concurring negligence of his

¹Section 17158 provides:

17158. No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of the vehicle or against any other person legally liable for the conduct of the driver on account of personal injury to or the death of the guest during the ride, unless the plaintiff in any such action establishes that the injury or death proximately resulted from the intoxication or wilful misconduct of the driver.

driver and a third party to obtain his relief in damages from his driver alone. At a time when contribution between tortfeasors was unknown to the law, the choice thus forced upon an owner of a vehicle was not an unreasonable one. After all, he selected the driver, therefore he should bear the risk of that driver's negligence and ability to respond in damages rather than imposing the risk of the driver's negligence upon some third party. The amendment of the guest statute in 1961 deprived the owner of his option to recover from his driver damages for personal injuries caused while the owner was riding as a guest in his own car. The policy underlying the guest statute--to prevent collusive suits--is undoubtedly as applicable to owners riding as guests as it is to others riding as guests; but the amendment deprived the innocent owner of his only remedy for personal injuries caused by the concurring negligence of his driver and a third party.

Within recent years California has abandoned the traditional common law view that there is no contribution between tortfeasors. The contribution principle seems to be a fairer one than to require one tortfeasor to bear the entire loss that his actions but partially caused. The principle of contribution provides a means for providing the owner with relief, preventing collusive suits between owners and operators, and relieving both the negligent third party and the driver from the entire burden of liability.

Accordingly, the Commission recommends the repeal of the provisions of the Vehicle Code that permit a third party tortfeasor to escape liability to an innocent owner because of the contributory negligence of the owner's driver. Instead, the third party tortfeasor should have the right to join the operator as a party to the litigation, and if both are found guilty of misconduct contributing to the injury, the third party should have a right to contribution from the operator in accordance with the existing statute providing for contribution between tortfeasors. See CODE CIV. PROC. §§ 875-880.

Because an operator should be required to contribute not only when he is negligent but also when he is guilty of more serious misconduct, the recommended statute does not limit his duty to make contribution to those situations where he is found guilty of negligence. He is required to make such contribution when guilty of any negligent or wrongful act or omission in the operation of the vehicle. The third party tortfeasor, however, as under the existing contribution statute, is prohibited from obtaining contribution if he intentionally caused the injury or damage.

The question of the extent to which an owner should be barred from the recovery of damages by reason of the conduct of another who operates his vehicle with his permission also raises the question of the extent to which the owner should be liable for the acts or omissions of his operator. Vehicle Code Section 17150 now provides that the owner is liable for the "negligence" of the operator. In Section 17158, the term "wilful misconduct" is used to describe the kind of conduct for which an operator is liable to his guest. The term does not appear in Section 17150. Nonetheless, the courts have held that there is no liability on the part of an owner for "wilful misconduct" of his operator under Section 17150. Weber v. Pinyan, 9 Cal.2d 226 (1937). They have apparently treated the terms "negligence" and "wilful misconduct" as mutually exclusive terms. Yet, recent cases decided under the guest statute reveal that these terms are not mutually exclusive. In fact, recent interpretations of the term "wilful misconduct" in the guest statute reveal that almost any negligence involves wilful misconduct. For example, in Reuther v. Viall, 62 A.C. 486 (1965), the following conduct was held to be "wilful misconduct": The Reuthers and the Vialls were neighbors and friends. The Viall automobile was being used after a joint outing to return the Reuther's

by sitter to her home. Two small children of the Reuthers were in the car as well as the defendant's small daughter. The heat element of the cigarette lighter fell to the floor of the automobile, and Mrs. Viall, the driver, took her eyes off the road for a brief time and bent down to pick up the lighter. The car crossed the center line and collided with another automobile.

Of course, Mrs. Viall's action was misconduct--she should not have taken her eyes off the road. And, of course, her misconduct was wilful. But it seems difficult, if not impossible, to believe that she contemplated that any injury would ever occur to anyone as a result of her action. After all, both she and her small daughter were in the car and she was a close friend of all of the other occupants of the car. But if this is wilful misconduct, almost all negligence is wilful misconduct. Negligence almost invariably involves the wilful doing of some act when a reasonable person should be able to foresee that some harm will result therefrom. A person may wilfully drive too fast, roll through a stop sign, look away from the road, etc. Such misconduct is usually wilful and, under the Reuther case, may subject a driver to liability to a guest. Such an interpretation of the guest statute may be proper and consistent with its purpose--to avoid collusive suits. But to apply this rationale to Section 17150 (as the courts have done in the past) and deny an owner's vicarious liability in such circumstances would virtually nullify the section. Accordingly, the Commission recommends the revision of the vicarious liability provisions of Vehicle Code Section 17150 to impose liability upon an owner for the negligent or wrongful act or omission of the operator of the vehicle.

Other statutes in this area of the Vehicle Code reflect the same policy found in Vehicle Code Section 17150. The Commission recommends the revision of these sections, too, so that a consistent policy might be followed in all such situations.

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 17150, 17151, 17152, 17153, 17154, 17155, 17156, 17159, 17707, 17708, 17709, 17710, and 17714 of, and to add Chapter 3 (commencing with Section 17800) to Division 9 of, the Vehicle Code, relating to liability arising out of the operation of vehicles.

SECTION 1. Section 17150 of the Vehicle Code is amended to read:

17150. Every owner of a motor vehicle is liable and responsible for the death of or injury to person or property resulting from negligence a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner, ~~and the negligence of such person shall be imputed to the owner for all purposes of civil damages.~~

Comment. The substitution of "a negligent or wrongful act or omission" for "negligence" broadens the vicarious liability of owners of motor vehicles. The word "negligence" has been construed narrowly to exclude the "willful misconduct" for which a driver is liable to a guest under Vehicle Code Section 17158. Weber v. Pinyan, 9 Cal.2d 226, 70 P.2d 183 (1937). Yet cases involving Section 17158 have construed "willful misconduct" broadly to include conduct virtually indistinguishable from negligence. See, e.g., Reuther v. Viall, 62 Cal.2d ___, 42 Cal. Rptr. 456, 398 P.2d 792 (1965). To treat the terms in Sections 17150 and 17158 as mutually exclusive disregards the diverse purposes underlying the two sections. Section 17158 is designed to prevent collusive suits. Section 17150 is designed to protect innocent third persons against the improper use of automobiles by financially irresponsible persons. To shield himself from the consequences of the liability

imposed the owner must either make sure that his driver is financially responsible or obtain insurance against his own potential liability. The exclusion of "willful misconduct" from Section 17150 tends to defeat the purpose for which the section was enacted. Therefore, the more comprehensive term, now found in Vehicle Code Section 17001, has been substituted for the narrowly construed term previously used in the section.

The last clause of Section 17150 has been deleted because it, together with Section 17158, prevents an innocent vehicle owner from recovering any damages when he is injured by the concurring negligence of his driver and a third party. The policy underlying the clause and the policy underlying Section 17158 can both be served without denying recovery to the owner if the principle of contribution is utilized to allocate the liability between the third party and the driver. Accordingly, the last clause has been repealed, and Sections 17800-17803 have been added to permit the use of the contribution principle in cases where the owner is injured by the concurring negligence of a third party and his driver.

SEC. 2. Section 17151 of the Vehicle Code is amended to read:

17151. The liability of an owner, bailee of an owner, or personal representative of a decedent ~~for-imputed-negligence~~ imposed by this chapter and not arising through the relationship of principal and agent or master and servant is limited to the amount of ten thousand dollars (\$10,000) for the death of or injury to one person in any one accident and, subject to the limit as to one person, is limited to the amount of twenty thousand dollars (\$20,000) for the death of or injury to more than one person in any one accident and is limited to the amount of five thousand dollars (\$5,000) for damage to property of others in any one accident.

Comment. This ~~amendment~~ merely conforms the section to Section 17150 as amended.

SEC 3. Section 17152 of the Vehicle Code is amended to read:

17152. In any action against an owner, bailee of any owner, or personal representative of a decedent on account of ~~imputed-negligence-as~~ liability imposed by Sections 17150, 17154, or 17159 the operator of the vehicle whose ~~negligence~~ negligent or wrongful act or omission is imputed to the owner, bailee of an owner, or personal representative of a decedent shall be made a party defendant if personal service of process can be had upon the operator within this State. Upon recovery of judgment, recourse shall first be had against the property of the operator so served.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 4. Section 17153 of the Vehicle Code is amended to read:

17153. If there is recovery under this chapter against an owner, bailee of an owner, or personal representative of a decedent ~~based-on-imputed~~ negligence, the owner, bailee of an owner, or personal representative of a decedent is subrogated to all the rights of the person injured or whose property has been injured and may recover from the operator the total amount of any judgment and costs recovered against the owner, bailee of an owner or personal representative of a decedent.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 5. Section 17154 of the Vehicle Code is amended to read:

17154. If the bailee of an owner with the permission, express or implied, of the owner permits another to operate the motor vehicle of the owner, then the bailee and the driver shall both be deemed operators of the vehicle of the owner within the meaning of Sections 17152 and 17153.

Every bailee of a motor vehicle is liable and responsible for the death of or injury to person or property resulting from negligence a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the bailee or otherwise, by any person using or operating the same with the permission, express or implied of the bailee, ~~and the negligence of such person shall be imputed to the bailee for all purposes of civil damages~~.

Comment. This amendment to Section 17154 is in substance the same as the amendment to Section 17150. See the Comment to Section 17150.

SEC. 6. Section 17155 of the Vehicle Code is amended to read:

17155. Where two or more persons are injured or killed in one accident, the owner, bailee of an owner, or personal representative of a decedent may settle and pay any bona fide claims for damages arising out of personal injuries or death, whether reduced to judgment or not, and the payments shall diminish to the extent thereof such person's total liability on account of the accident. Payments aggregating the full sum of twenty thousand dollars (\$20,000) shall extinguish all liability of the owner, bailee of an owner, or personal representative of a decedent for death or personal injury arising out of the accident which exists ~~by-reason-of imputed-negligence,~~ pursuant to this chapter, and did not arise through the ~~negligence~~ negligent or wrongful act or omission of the owner, bailee of an owner, or personal representative of a decedent nor through the relationship of principal and agent or master and servant.

Comment. This amendment merely conforms the ~~section~~ to Section 17150 as amended.

SEC. 7. Section 17156 of the Vehicle Code is amended to read:

17156. If a motor vehicle is sold under a contract of conditional sale whereby the title to such motor vehicle remains in the vendor, such vendor or his assignee shall not be deemed an owner within the provisions of this chapter ~~relating to imputed negligence~~, but the vendee or his assignee shall be deemed the owner notwithstanding the terms of such contract, until the vendor or his assignee retake possession of the motor vehicle. A chattel mortgagee of a motor vehicle out of possession is not an owner within the provisions of this chapter ~~relating to imputed negligence~~.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 8. Section 17159 of the Vehicle Code is amended to read:

17159. Every person who is a personal representative of a decedent who has control or possession of a motor vehicle subject to administration for the purpose of administration of an estate is, during the period of such administration, or until the vehicle has been distributed under order of the court or he has complied with the requirements of subdivision (a) or (b) of Section 5602, liable and responsible for the death of or injury to person or property resulting from ~~negligence~~ a negligent or wrongful act or omission in the operation of the motor vehicle by any person using or operating the same with the permission, express or implied, of the personal representative, ~~and the negligence of such person shall be imputed to the personal representative for all purposes of civil damages~~.

Comment. This amendment to Section 17159 is in substance the same as the amendment to Section 17150. See the Comment to Section 17150.

SEC. 9. Section 17707 of the Vehicle Code is amended to read:

17707. Any civil liability of a minor arising out of his driving a motor vehicle upon a highway during his minority is hereby imposed upon the person who signed and verified the application of the minor for a license and the person shall be jointly and severally liable with the minor for any damages proximately resulting from the ~~negligence-or-wilful-misconduct~~ negligent or wrongful act or omission of the minor in driving a motor vehicle, except that an employer signing the application shall be subject to the provisions of this section only if an unrestricted driver's license has been issued to the minor pursuant to the employer's written authorization.

Comment. This amendment to Section 17707 merely substitutes the term that has been used in Vehicle Code Section 17001 and in Sections 17150-17159 for that which now appears in Section 17707. The substitution has been made in order to make clear that the same meaning is intended. No substantive change is made by the revision.

SEC. 10. Section 17708 of the Vehicle Code is amended to read:

17708. Any civil liability ~~negligence-or-wilful-misconduct~~ of a minor, whether licensed or not under this code, arising out of his ~~in~~ driving a motor vehicle upon a highway with the express or implied permission of the parents or the person or guardian having custody of the minor ~~shall be imputed to~~ is hereby imposed upon the parents, person, or guardian, ~~for all purposes-of-civil-damages~~ and the parents, person, or guardian shall be jointly and severally liable with the minor for any damages proximately resulting from the ~~negligence-or-wilful-misconduct~~ negligent or wrongful act or omission of the minor in driving a motor vehicle .

Comment. The same reasons which justify the deletion of the provisions for imputed contributory negligence from Section 17150 justify the removal of the similar provisions from Section 17708. The language of the section has been revised to conform to that used in Section 17707.

SEC. 11. Section 17709 of the Vehicle Code is amended to read:

17709. No person, or group of persons collectively to whom negligence ~~or willful misconduct~~ a minor's negligent or wrongful act or omission is imputed shall incur liability under Sections 17707 and 17708 in any amount exceeding ten thousand dollars (\$10,000) for injury to or death of one person as a result of any one accident or, subject to the limit as to one person, exceeding twenty thousand dollars (\$20,000) for injury to or death of all persons as a result of any one accident or exceeding five thousand dollars (\$5,000) for damage to property of others as a result of any one accident.

Comment. This amendment merely conforms the section to Sections 17707 and 17708 as amended.

SEC. 12. Section 17710 of the Vehicle Code is amended to read:

17710. ~~Negligence-or-wilful-misconduct~~ The negligent or wrongful act or omission of a minor shall not be imputed to the person signing a the minor's application for a license when the minor is acting as the agent or servant of any person.

Comment. This amendment merely conforms the section to Section 17707 as amended.

SEC. 13. Section 17714 of the Vehicle Code is amended to read:

17714. In the event, in one or more actions, judgment is rendered against a defendant under this chapter based upon the negligent or wrongful act or omission of a minor in the negligent operation of a vehicle by-a ~~minor~~, and also by reason of such act or omission negligence rendered against such defendant under Article 2 (commencing with Section 17150) of Chapter 1 of Division 9, then such judgment or judgments shall be cumulative but recovery shall be limited to the amount specified in Section 17709.

Comment. This amendment merely conforms the section to Sections 17707 and 17708 as amended.

SEC. 14. Chapter 3 (commencing with Section 17800) is added to Division 9 of the Vehicle Code, to read:

CHAPTER 3. OPERATOR'S LIABILITY FOR CONTRIBUTION TO JOINT TORTFEASOR

17800. If a money judgment is rendered against one or more defendants in a tort action for death or injury to person or property arising out of the operation of a motor vehicle, the operator, whether or not liable to the plaintiff, shall be deemed to be a joint tortfeasor judgment debtor and liable to make contribution in accordance with Title 11 (commencing with Section 875) of Part 2 of the Code of Civil Procedure where:

(a) The plaintiff is a person liable for the negligent or wrongful act or omission of the operator under Section 17150, 17154, 17159, 17707, or 17708; and

(b) The negligent or wrongful act or omission of the operator in the operation of the motor vehicle is adjudged to have been a proximate cause of the death or injury.

Comment. Sections 17800-17803 permit a defendant who is held liable to an owner of a vehicle, or to some other person who is made statutorily liable for the conduct of the vehicle's operator, to obtain contribution from the operator if he can establish that the injury was caused by the operator's concurring negligence or wrongdoing.

Until 1961, Section 17150 forced the injured vehicle owner to seek relief solely from the operator. In 1961, Section 17158 deprived him of that remedy and left him with no remedy for his tortiously inflicted injuries.

A fairer way to protect against fraudulent claims while still providing the innocent owner with a remedy for his injuries is to require contribution between the joint tortfeasors. These sections provide a means for doing so.

Section 17800 establishes the right of the third party tortfeasor to obtain contribution. Section 17800 applies only if the defendant is held to be liable in the plaintiff's action. Thus, no issue of contribution can arise if the defendant is not liable. In those instances where the contributory negligence or contributory wrongdoing of the operator is still imputed to the plaintiff--as in master-servant situations--the defendant is not liable to the plaintiff and, hence, no question of contribution can arise. Thus, Section 17800 can apply only where the relationship of master-servant did not exist between the plaintiff and the operator insofar as the operator's acts were concerned.

Under Section 17800, if the defendant is held liable, he is entitled to contribution from the operator in the event that the operator's negligence or misconduct is adjudged to have been a proximate cause of the injury involved in the case. To obtain an adjudication that is personally binding on the operator, the defendant must proceed against the operator by cross-complaint and see that he is properly served. See Section 17801 and the Comment thereto. Usually the fault of the defendant and the fault of the operator will be determined at the same time and by the same judgment. But if the defendant's cross-action against the operator is severed from the plaintiff's action and tried separately, the showing required by Section 17800 for an adjudication that the operator is a joint tortfeasor consists merely of the judgment against the defendant and the fault of the operator. Section 17800 does not permit a contest of the merits of the judgment against the defendant in the trial of the cross-action.

After the defendant has obtained a judgment establishing that the operator is a joint tortfeasor, his right to contribution is governed by Sections 875-880 of the Code of Civil Procedure, relating to contribution among joint tortfeasors. Thus, for example, the right of contribution may be enforced only after the tortfeasor has discharged the judgment or has paid more

than his pro rata share. The pro rata share is determined by dividing the amount of the judgment among the total number of tortfeasors; but where more than one person is liable solely for the tort of one of them--as in master-servant situations--they contribute one pro rata share. Consideration received for a release given to one joint tortfeasor reduces the amount the remaining tortfeasors have to contribute. And the enforcement procedure specified in Code of Civil Procedure Section 878 is applicable.

Under Section 17800 the defendant is entitled to contribution from the operator even though the operator might not be independently liable to the plaintiff. For example, if the operator has a good defense based on Vehicle Code Section 17158 as against the owner, he may still be held liable for contribution under Section 17800. The policy underlying Vehicle Code Section 17158 is to prevent collusive suits between the owner and the operator by which an insurance company can be defrauded. The reasons justifying Section 17158 are inapplicable when the operator's negligence is sought to be established by a third party who would be liable for all of the damage if the operator's concurring negligence or misconduct were not established. The third party and the operator are true adversaries and there is little possibility of collusion between them.

17801. (a) A defendant's right to contribution from the operator of a motor vehicle under Section 17800 must be claimed, if at all, by cross-complaint in the action brought by the plaintiff. If trial of the cross-action together with the plaintiff's action would unduly delay the trial of the plaintiff's action, the court shall order the cross-action severed from the plaintiff's action.

(b) Each party to the cross-action has a right to a jury trial on the question whether the negligent or wrongful act or omission of the operator was a proximate cause of the plaintiff's injury.

(c) Failure of the defendant to claim contribution under this chapter does not impair any right to contribution that may otherwise exist.

Comment. Section 17801 prescribes the procedure through which the right to contribution created by Section 17800 may be asserted.

Subdivision (a) requires that the right to contribution under Section 17800 be claimed by cross-complaint. In the usual case, this will require the issues presented by the principal action and the cross-action to be tried together. The California courts previously have permitted the cross-complaint to be used to join a stranger to pending litigation for the purpose of securing contribution from the stranger. City of Sacramento v. Superior Court, 205 Cal. App.2d 398, 23 Cal. Rptr. 43 (1962). Subdivision (a) requires the use of the cross-complaint so that all of the issues may be settled at the same time if it is possible to do so. If for some reason a joint trial would unduly delay the plaintiff's action--as, for example, if service could not be made on the operator in time to permit a joint trial the court is required by subdivision (a) to sever the actions so that the

plaintiff's action may proceed to trial in the normal course of events. In addition, the court has the discretion to order a severance if it determines to do so in the interest of justice. CODE CIV. PROC. § 1048; Roylance v. Doelger, 57 Cal.2d 255, 261-262, 19 Cal. Rptr. 7, 368 P.2d 535 (1962).

If the operator were a codefendant in the principal action, he would be entitled to a jury trial on the issue of his fault. Subdivision (b) preserves his right to a jury trial on the issue of his fault where he is brought into the action by cross-complaint for contribution. After an adjudication that the operator is a joint tortfeasor with the defendant, neither joint tortfeasor is entitled to a jury trial on the issue of contribution. Judgment for contribution is made upon motion after entry of the judgment determining that the parties are joint tortfeasors and after payment by one tortfeasor or more than his pro rata share of that judgment. CODE CIV. PROC. §§ 875(c), 878. The court is required to administer the right to contribution "in accordance with the principles of equity." CODE CIV. PROC. § 875(b). As the issues presented by a motion for a contribution judgment are equitable issues, there is no right to a jury trial on those issues.

Subdivision (c) is included to make it clear that a person named as a defendant does not forfeit his right to contribution under Code of Civil Procedure Sections 875-880 by failing to cross-complain under this chapter if he and the operator are named as codefendants and held jointly liable in the principal action.

17802. There is no right to contribution under Section 17800 in favor of any person who intentionally injured the person killed or injured or intentionally damaged the property that was damaged.

Comment. Section 17802 may not be necessary. Code of Civil Procedure Section 875(d) provides: "There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person." Section 17802, however, is included to make clear that this substantive provision in the joint tortfeasor's law applies to the right of contribution under this chapter. Moreover, Section 17802 applies to intentionally caused property damage, whereas Code of Civil Procedure Section 875(d) appears to apply only to intentionally caused personal injuries.

17803. Subdivision (b) of Section 877 of the Code of Civil Procedure is inapplicable to the right of contribution provided by this chapter.

Comment. Section 877(b) of the Code of Civil Procedure provides that a release, dismissal or covenant not to sue or not to enforce a judgment discharges the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors. The policy underlying this provision of the Code of Civil Procedure is to permit a defendant to finally settle with a plaintiff with the assurance that another defendant may not still hold him liable. Without such a provision in the joint tortfeasor's law, settlements could be made with a plaintiff only if all potential defendants agreed. Here, however, the close relationship of the parties involved would encourage plaintiffs to release operators from liability merely for the purpose of exacting full compensation from the third party tortfeasor. Frequently, the operator will be represented by the plaintiff's insurance company as an additional insured. To permit such releases to discharge an operator's duty to contribute under this chapter would frustrate the purpose underlying this law. Hence, the provisions of Code of Civil Procedure Section 877(b) are made inapplicable to contribution sought under this chapter.

SEC. 15. This act does not confer or impair any right or defense arising out of any death or injury to person or property occurring prior to the effective date of this act.

Comment. This act creates new liabilities and abolishes old defenses. In order to avoid making any change in rights that may have become vested under the prior law, the act is made inapplicable to the rights and defenses arising out of events occurring prior to the effective date of the act.