

SENATE No. 137

To accompany the petition of Edward F. Dickinson that provision be made for friendly court proceedings in certain cases. Joint Judiciary.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Sixteen.

AN ACT

To provide for Friendly Court Proceedings in Certain Cases.

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

1 SECTION 1. The governor, with the advice and
2 consent of the council, shall within thirty days
3 after the first of July next designate one or more
4 district or police courts in which a system of
5 friendly civil proceedings shall be established in
6 accordance with the provisions of this act, to the
7 end that issues may be determined speedily, equit-
8 ably, amicably, and economically and with an
9 equality of expense for legal services by both
10 parties to a suit.

1 SECTION 2. The governor, with the advice and
2 consent of the council, shall appoint for each of
3 the courts designated by him as hereinbefore pro-
4 vided not less than two and not more than six
5 members of the bar of experience and standing,
6 to be state counsellors for said courts. Each of
7 said counsellors must be recommended for ap-
8 pointment by the judge of the court for which he
9 is appointed, and by the attorney-general. Said
10 state counsellors shall serve for terms of three
11 years and shall receive from the commonwealth
12 salaries to be fixed by the governor with the
13 advice and consent of the council, and the salaries
14 of all the state counsellors of courts of any one
15 class as defined by chapter four hundred and
16 fifty-three of the acts of the year nineteen hun-
17 dred and four shall be equal. No other counsel
18 than the state counsellors shall be employed in any
19 proceedings under this act, except that when the
20 judge of the court in which such a proceeding is
21 pending is satisfied that either counsel requires
22 assistance, or where none of the regular state
23 counsellors is available for service, the judge may
24 appoint an assistant or a temporary state coun-
25 sellor, who shall receive from the commonwealth
26 such reasonable compensation as the judge may
27 determine. No state counsellor or assistant shall
28 receive from any other source than the common-
29 wealth any compensation, fee, gift or gratuity in
30 connection with any case in which he acts in his
31 official capacity. The giving or receiving of any
32 such compensation, fee, gift or gratuity shall be

33 punishable by a fine not exceeding five hundred
34 dollars, or by imprisonment not exceeding one
35 year, or both.

1 SECTION 3. Either party to controversy of
2 which either of which said courts would have
3 jurisdiction may, either before or after the be-
4 ginning of a suit, file a petition to such court ask-
5 ing for its determination by friendly proceedings
6 under this act. A copy of said petition shall be
7 served on the adverse party (hereinafter called
8 the respondent) within one week after the filing
9 thereof. If within three days thereafter the re-
10 spondent files a bond furnished by a surety com-
11 pany doing business in the commonwealth in
12 such sum as the court may require, not exceeding
13 two hundred dollars, to secure the payment to
14 the petitioner of his legal costs, attorney's fees and
15 other necessary expenses in the trial of any action
16 growing out of such controversy, said petition
17 shall be dismissed and the parties shall be left to
18 their remedy by proceedings at law. If the re-
19 spondent does not file such bond within three days
20 he shall be deemed to assent to friendly proceed-
21 ings, and both parties shall be deemed to have
22 waived trial by jury and the right of appeal, save
23 on questions of law, and the proceedings upon
24 said petition shall be otherwise final and binding
25 on both parties.

1 SECTION 4. Each party to a proceeding under
2 this act shall, if he wishes to be represented by

3 counsel, employ one of the state counsellors of the
4 court in which the proceeding is pending to repre-
5 sent him, and if he has not means to pay such
6 counsellor the judge shall upon request assign
7 one of said counsellors as his counsel. Said
8 counsellors shall thereupon proceed to investi-
9 gate the facts with a view to the full discovery of
10 the truth and an adjustment of the controversy
11 on its merits. If they are unable to agree the
12 court shall upon request appoint a time for hear-
13 ing, and both parties shall make a full disclosure
14 to the court of all the facts within their knowl-
15 edge bearing upon the case, and the court shall
16 thereupon try any disputed question of fact and
17 enter judgment upon its findings.

1 SECTION 5. Reasonable fees for services of
2 said counsellors, which shall be equal to both
3 parties for similar services, shall be assessed by
4 the court, and collected from the parties by the
5 clerk and paid over to the treasurer of the com-
6 monwealth, except where the court is satisfied
7 that either party is unable to pay the same.

1 SECTION 6. Encouragement and facilities for
2 settlement of controversies by conference of the
3 parties with the judges without suit or formal
4 petition, shall be afforded by said courts to the
5 fullest extent possible.

1 SECTION 7. The judges of the several courts
2 designated under this act, together with the

3 senior retired justice of the supreme judicial
4 court, if there be one, otherwise the senior justice
5 of said court for the time being; the senior retired
6 justice of the superior court, if there be one, other-
7 wise the senior justice of said court for the time
8 being, and the attorney-general, shall constitute
9 a commission to be known as the Commission on
10 Friendly Court Proceedings, and shall have power
11 to make rules not inconsistent with law for the
12 conduct of proceedings under this act, the fixing
13 of fees and other details in connection therewith.
14 They shall make an annual report of the workings
15 of the system to the general court, with recom-
16 mendations as to changes which may be needed
17 in the system from time to time.

1 SECTION 8. This act shall take effect for the
2 purpose of the designation of courts under section
3 one and of appointments under section two on the
4 first day of July next, and for all purposes on the
5 thirty-first day of July next.

