
By Mr. McKinnon, a petition (accompanied by bill, Senate, No. 90) of Allan R. McKinnon and Philip W. Johnston for legislation to further regulate business practices for consumer protection. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-seven.

AN ACT FURTHER REGULATING BUSINESS PRACTICES FOR CONSUMER PROTECTION.

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. Section 1 of chapter 93A of the General Laws is
2 hereby amended by adding after paragraph (d), added by sec-
3 tion 1 of chapter 814 of the acts of 1969, the following para-
4 graph: —

5 (e) "Notice" with reference to informing members of a
6 class of any matter in connection with a class action shall
7 mean taking such steps may be reasonably required to in-
8 form members in ordinary course whether or not all members
9 actually come to know of it. Reasonable steps may, as the cir-
10 cumstances of a particular case warrant, include one or more
11 of the following: —

12 (1) publication, when individual notice is not possible
13 because individual class members cannot be identified through
14 reasonable effort;

15 (2) mailing to individual members of a class;

16 (3) service under the Massachusetts Rules of Civil Pro-
17 cedure for commencing civil actions upon identifiable members
18 of a class numbering no more than twenty.

1 SECTION 2. Section 2 of said chapter 93A, added by section
2 1 of chapter 813 of the acts of 1967, is hereby amended by
3 adding after paragraph (c) the following paragraph: —

4 (d) Successful completion by the Federal Trade Commission
5 of any action, the basis of which arose in the Commonwealth,
6 brought by it pursuant to the Federal Trade Commission Act

7 (15 U.S.C. 45(a) (1)), as from time to time amended, shall
8 constitute prima facie evidence of a violation of subsection 2
9 (a) of this chapter. For the purposes of this paragraph “suc-
10 cessful completion” shall be a finding of a violation of the
11 Federal Trade Commission Act (15 U.S.C. 45(a) (1)), or any
12 regulation issued pursuant thereto, after all available appeals
13 have been waived or exhausted.

1 SECTION 3. Paragraph 1 (c) of section 3 of said chapter
2 93A, as most recently amended by section 2 of chapter 814 of
3 the acts of 1969, is hereby amended by striking out said
4 paragraph and inserting in place thereof the following para-
5 graph: —

6 (c) transactions or actions of any person who shows that
7 he has had served upon him by the Federal Trade Commission
8 a complaint pursuant to 15 U.S.C. 45(b) relating to said
9 transactions or actions until the Federal Trade Commission
10 has either,

11 (1) dismissed said complaint,

12 (2) secured an assurance of voluntary compliance,

13 (3) issued a cease and desist order relating to said com-
14 plaint pursuant to 15 U.S.C. 45(b),

15 (4) failed to assert in writing to the Attorney General,
16 within fourteen days of notice to it and to said person by the
17 Attorney General, its objection to action proposed by him and
18 set forth in said notice or,

19 (5) asserted in writing to the Attorney General its objection
20 to the proposed action, and nineteen days have elapsed since
21 the date of said written objection.

1 SECTION 4. The first paragraph of section 4 of said chapter
2 93A, as most recently amended by chapter 544 of the Acts of
3 1972, is hereby further amended by adding the following
4 sentence: In any action or proceeding brought under the
5 provisions of this act in which an act or practice in violation of
6 this act has been found, the Attorney General shall be entitled
7 to recover costs on behalf of the Commonwealth, and reason-
8 able attorney's fees, but such fees shall be recoverable only if
9 the use or employment of the act or practice was a willful or

10 knowing violation of section 2 or that the refusal to grant
11 relief upon demand sent pursuant to this section was made
12 with knowledge or reason to know that the act or practice
13 complained of violated said section 2.

1 SECTION 5. The fourth paragraph of section 4 of said chap-
2 ter 93A, as most recently amended by section 3 of chapter
3 814 of the acts of 1969, is hereby further amended by striking
4 out said paragraph and inserting in place thereof the following
5 paragraph: —

6 Any person who violates the terms of an injunction or other
7 order issued under this section shall, in a subsequent proceed-
8 ing for contempt, forfeit and pay to the Commonwealth a civil
9 penalty of not more than ten thousand dollars for each viola-
10 tion in addition to, and without thereby limiting, any other
11 remedy available in such proceeding. For the purpose of this
12 section, the court issuing such an injunction or order shall
13 retain jurisdiction, and the cause shall be continued, and in
14 such case the Attorney General, acting in the name of the
15 Commonwealth, or any other person entitled to relief under
16 the decree, may petition said court for recovery of such civil
17 penalty.

1 SECTION 6. Section 8 of said chapter 93A, as most recently
2 amended by section 4 of chapter 814 of the acts of 1969, is
3 hereby further amended by striking out said section and insert-
4 ing in place thereof the following: —

5 *Section 8.* Upon petition by the Attorney General, the court
6 may for willful and continuous violations of any injunction,
7 order or judgment issued pursuant to section four, order the
8 dissolution, or suspension or forfeiture of franchise of any
9 corporation or the right of any foreign corporation to do busi-
10 ness in the Commonwealth.

1 SECTION 7. Paragraphs (1) through (4) of section 9 of said
2 chapter 93A, as most recently amended by chapter 241 of the
3 acts of 1971, are hereby further amended by striking out said
4 paragraphs and inserting in place thereof the following para-
5 graphs: —

6 (1) Any person, other than a person entitled to bring an

7 action under section eleven of this chapter, who has been
8 injured by another person's use or employment of any method,
9 act or practice declared to be unlawful by section two or any
10 rule or regulation issued thereunder may bring a civil action
11 or counterclaim, where appropriate, in the Superior Court for
12 his damages and for equitable relief, including an injunction,
13 as the court deems to be necessary and appropriate.

14 (2) (a) Any person entitled to bring an action under para-
15 graph (1) of this section may bring an action as a class action
16 on behalf of himself and all persons injured in the Common-
17 wealth for damages and such other relief as he and such other
18 persons are entitled to under this section.

19 (b) The court at any stage of an action brought under this
20 paragraph may hold a hearing to determine whether the
21 action may be maintained as a class action. The court shall
22 consider only the following factors in determining whether an
23 action may be maintained as a class action:

24 (i) the class is so numerous that joinder of all members is
25 impracticable.

26 (ii) there are questions of law or fact common to the class,

27 (iii) the claims or counterclaims of the representative
28 parties are typical of the claims or counterclaims of the class,
29 and

30 (iv) the representative parties will fairly and adequately
31 protect the interests of the class.

32 (c) The court shall make written findings with respect to
33 its determination. An order based upon such findings may be
34 condition and may be altered or amended following appropri-
35 ate notice and opportunity to be heard prior to any decision on
36 the merits.

37 (d) A class action shall not be dismissed, settled or com-
38 promised without the approval of the court. The court may
39 require notice of such proposed dismissal, settlement or com-
40 promise to be given in such manner as the court directs.

41 (e) If the action is permitted to be maintained as a class
42 action under this paragraph, the court shall require that
43 reasonable notice of the action be given to all ascertainable
44 members of the class which notice shall, in terms understand-
45 able by an ordinary person:

46 (i) briefly state the nature, alleged grounds, and status of
47 the action, and

48 (ii) inform the recipient that:

49 (a) the court will exclude him from the class if he so re-
50 quests by a specified date;

51 (b) the judgment, whether favorable or not, will include all
52 members who do not request exclusion, and

53 (c) any member who requests inclusion may, if he desires,
54 enter an appearance through counsel.

55 No member of the class to whom notice is not given shall be
56 bound by the judgment or any other action of the court unless
57 such person later affirmatively elects to be so bound, but, as to
58 all parties to whom notice is given and who do not request
59 exclusion, the judgment or other action of the court shall be
60 binding on them.

61 (f) The court may make such orders as are necessary to
62 the efficient and expeditious disposition of any class action
63 maintained under this paragraph including orders:

64 (i) limiting the action to particular classes, persons on issues
65 except that the class shall not, except as required in unusual
66 circumstances, be limited to persons appearing as parties
67 therein;

68 (ii) dividing the proposed class into subclasses and treating
69 each subclass as a separate class to the extent that such
70 separate treatment is necessary or appropriate with respect to
71 the trial of questions of law or fact;

72 (iii) determining the course and conduct of the proceedings
73 including orders to prevent undue repetition or complication
74 in the presentation of evidence or argument; and

75 (iv) establishing procedures for the submission and determi-
76 nation of any issues relevant to only individual members of a
77 class or subclass.

78 (g) The judgment in any class action, whether or not
79 favorable to the class, shall describe those persons found by
80 the court to be members of the class and who have not been
81 excluded from the class. Notice of the judgment, its effect and
82 any action that must be taken to benefit from a judgment
83 favorable to the class shall be given in such manner as the
84 court directs.

85 (h) The responsibility for giving notice and the costs of any
86 notice required to be given to the class shall be assessed to the
87 plaintiff by the court in such manner as it deems fair and just;
88 however, all costs of notice of a compromise, settlement or
89 judgment favorable to the class shall be assessed to the
90 defendant as a cost recoverable under paragraph (4) of this
91 section.

92 (3) At least thirty days prior to the filing of any such
93 action, a written demand for relief, identifying the claimant
94 and class, if any, on whose behalf the action will be brought,
95 and reasonably describing the unfair or deceptive method, act
96 or practice relief upon and the injury suffered, shall be mailed
97 or delivered to any prospective defendant. Any person re-
98 ceiving such a demand for relief who, within thirty days of
99 the mailing or delivery of the demand for relief, makes a
100 written tender of settlement which is rejected by the claimant
101 may in any subsequent action, file the written tender and an
102 affidavit concerning its rejection and thereby limit any re-
103 covery to the relief tendered, if the court finds that the relief
104 tendered was reasonable in relation to the injury complained
105 of by the plaintiff. In all other cases, if the court finds for the
106 plaintiff, recovery shall be in the amount of actual damages
107 or twenty-five dollars, whichever is greater, or up to three
108 but not less than two times such amount if the court finds
109 that the use or employment of the method, act or practice was
110 a willful or knowing violation of said section two or any rule
111 or regulation issued thereunder or that the refusal to grant
112 relief upon demand was made in bad faith with knowledge or
113 reason to know that the method, act or practice complained
114 of violated said section two or any rule or regulation issued
115 thereunder. In addition, the court shall award such other
116 equitable relief, including an injunction, as it deems to be
117 necessary and proper. The demand requirements of this para-
118 graph shall not apply if the prospective defendant does not
119 maintain a place of business or does not keep assets within
120 the Commonwealth, or when the person filing such an action
121 seeks preliminary or temporary injunctive relief or if the
122 person filing such a claim does so as a counter-claim in a civil
123 action in the Superior Court, but such defendant or a de-

124 fendant in a counterclaim may otherwise employ the pro-
125 visions of this paragraph by making a written offer of relief
126 and paying the rejected tender into court as soon as prac-
127 ticable after receiving notice of an action or counter-claim
128 commenced under this section.

129 (4) The court shall, in addition to other relief provided for
130 by this section, award to plaintiff or plaintiff in counterclaim
131 in an action in which it is found that there has been a viola-
132 tion of section two or a rule or regulation issued thereunder,
133 reimbursement for costs, litigation expenses and a reasonable
134 attorney's fee for services furnished in connection with the
135 action; provided that in an action brought under this section,
136 the court may refuse to award reimbursement for costs, litiga-
137 tion expenses or attorney's fees incurred subsequent to the
138 rejection by plaintiff of a written offer of settlement found by
139 the court under paragraph (3) of this section to have been
140 reasonable in relation to the injury or damage sustained or
141 sought to be remedied.

1 SECTION 8. Said chapter 93A is hereby amended by adding
2 the following new section: —

3 *Section 12.* Any remedy available under this chapter shall
4 be in addition to any other remedy provided by law.

