

By Mr. Saggese of Winthrop, petition of Alfred E. Saggese, Jr., for legislation to establish the position of advisor in the small claims court. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING THE POSITION OF ADVISOR IN THE SMALL CLAIMS COURT.

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. This act may be cited as the "Small Claims Access
2 Act".

1 SECTION 2. Statement of intent. Many individuals do not
2 have meaningful access to small claims court because they lack
3 sufficient knowledge to participate effectively. This act promotes
4 convenient access to small claims court by providing for advisors
5 to serve the courts. Small claims advisors will furnish information
6 to litigants, thereby fostering individual participation in the small
7 claims process. The advisors will also facilitate efficient court
8 administration and publicize its availability to the community.
9 These advisors will thus further the goal of small claims court to
10 resolve minor disputes in an expeditious, economical, informal,
11 fair and effective manner.

1 SECTION 3. Section 22 of chapter 218 of the General Laws, as
2 most recently amended by section 343, is hereby further amended
3 by striking out, in line 2, the words, "three dollars", and inserting in
4 place thereof, the words "five dollars and fifty cents".

1 SECTION 4. Rule 1182 of the Rules of Civil Procedure for the
2 District court Departments is hereby amended by inserting, in line
3 9, after the word "law", the words, "a small claims advisor".

1 SECTION 5. Chapter 218 of the General Laws is hereby
2 amended by inserting after Section 25 the following section: —

3 *Section 25A. Small Claims Access Act*

4 (1) As used in this section: —

5 (a) “Act” means small claims access act.

6 (b) “Advisor” means a lay or attorney small claims advisor.

7 (c) “Advisor program” means the program of small claims advi-
8 sors.

9 (d) “Attorney advisor” means a non-lay advisor who belongs to
10 the Massachusetts bar and who has training in small claims litiga-
11 tion as defined by the chief justice.

12 (e) “Chief justice” means the chief justice of the district court
13 department of Massachusetts.

14 (f) “Entry fee” means the fee required to file an action in small
15 claims court.

16 (g) “Judicial council” means the fee required to file an action
17 in small claims court.

18 (h) “Lay advisor” means a non-attorney advisor who has train-
19 ing in small claims litigation as defined by the chief justice.

20 (i) “Mediation” means an attempt by a neutral third party to
21 bring about a peaceful settlement or compromise between disput-
22 ing parties:

23 (2) (a) Each small claims court shall have available an advisor
24 team, consisting of one attorney advisor and two lay advisors who
25 will work full-time as advisors. The chief justice shall hire advisors
26 and administer the advisor program. He or she may establish
27 guidelines under which the advisor program will operate, beyond
28 those included in this act, and may take any other measures neces-
29 sary to further the objectives of this act. The duties of the advisors
30 shall include, but not be limited to:

31 (i) assisting litigants in all phases of the small claims process,
32 including advising on the appropriateness of small claims court as
33 a forum to resolve particular disputes, aiding in preparation of
34 cases, mediating disputes, explaining the rationale behind judicial
35 determinations, helping collect judgments, and answering any
36 questions that litigants pose;

37 (ii) keeping the court informed about developments of law relat-
38 ing to small claims;

39 (iii) acting as friendly overseers for the court by observing court
40 operations and their impact on the community, and relaying find-
41 ings and recommended improvements to the chief justice and the
42 presiding judge; and

43 (iv) publicizing accessibility of the small claims court and the
44 availability of the advisors' services to the community.

45 (b) The chief justice may provide for law students to assist
46 advisors under the direct supervision of advisors.

47 (c) Court personnel shall orally inform a potential plaintiff
48 before he or she institutes a small claims action, of the availability
49 of the advisors' services free of charge to assist in pursuing small
50 claims. Each complaint delivered to defendants in small claims
51 actions shall state clearly the availability of the advisors' services
52 free of charge to assist in defending small claims.

53 (d) Chapter thirty-one of the General Laws does not apply to
54 the position of advisor.

55 (3) (a) A single advisor may not assist more than one party in a
56 dispute. An advisor shall refer a party seeking assistance to another
57 advisor if he or she has already provided assistance to the opposing
58 party in the same dispute.

59 (b) If an advisor assists a party in a dispute, that advisor may not
60 later mediate that same dispute.

61 (c) Lay advisors may not appear with litigants at trial unless the
62 attorney advisor finds a particular litigant incompetent to appear
63 without assistance at trial.

64 (d) Attorney advisors may not appear with litigants at trial
65 unless an attorney represents the opposing party, and the attorney
66 advisor finds a particular litigant to have a disadvantage without
67 an attorney's presence at trial.

68 (4) A party who has not filed more than five actions in small
69 claims court in the previous twelve months may receive assistance
70 from an advisor only upon a showing of genuine need, certified by
71 the presiding judge.

72 (5) (a) Each advisor team shall keep records which disclose use
73 of the advisor program.

74 (b) The advisors and the chief justice shall meet not less than
75 two times each year to review the operations of the small claims
76 courts and to develop improvements in the small claims system.

77 (c) The chief justice shall submit to the judicial council and the
78 general court not later than one year after the date of the enactment
79 of this act, and on or before February 1 of each year after the date
80 of the enactment of this act, and on or before February 1 of each
81 succeeding year, a report examining operations of the advisor
82 program during the preceding fiscal year.

83 (6) (a) Revenue raised from the increase in the entry fee shall
84 fund the advisor program. The general court shall make an appro-
85 priation from the general fund for additional financing not covered
86 by the entry fee increase.

87 (b) The chief justice may apply for and accept on behalf of the
88 commonwealth any federal, state, local or private grants, bequests,
89 gifts or contributions to aid in financing the operation of the
90 advisor program, subject to approval of the judicial council.