

By Mr. Buxbaum of Sharon, petition of Laurence R. Buxbaum relative to establishing a division of consumer claims within the Executive Office of Consumer Affairs. Commerce and Labor.

The Commonwealth of Massachusetts

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

AN ACT TO SIMPLIFY THE RESOLUTION OF CONSUMER CLAIMS.

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

1 Chapter 6A of the General Laws is hereby amended by adding
2 after section 9B the following new section 9C, under the caption
3 CONSUMER CLAIMS SYSTEM:

4 *Section 9C.* (1) In this section, the following definitions
5 apply:

6 "Consumer claim" is a claim filed under this section arising
7 out of a consumer transaction.

8 "Consumer transaction" means a transaction between a
9 natural person and a merchant under which the natural person
10 acquires real or personal property, services, credit or money for
11 personal, family or household purposes.

12 "Director," the director of the division of consumer claims.

13 "Division," the division of consumer claims within the
14 executive office of consumer affairs.

15 "Merchant" means a person or organization regularly engaged
16 in the business of providing real or personal property, services,
17 credit or money to natural persons for their personal, family or
18 household purposes.

19 "Organization" means a corporation, trust, estate,
20 partnership, cooperative, or association.

21 "Secretary," the secretary of the executive office of consumer
22 affairs.

23 (2) There shall be within the executive office of consumer
24 affairs a division of consumer claims. The secretary, with the
25 advice and consent of the consumers' council, shall appoint a
26 director, not subject to chapter 31, who shall be the chief
27 administrative officer of the division. The salary of the director
28 shall be fixed by the secretary with the approval of the governor.
29 The director shall have the authority to receive, invest and
30 disburse moneys, submit any reports or plans required by state
31 or federal law, and to supervise, direct, coordinate and conduct
32 the activities of the division. The director may appoint such
33 other assistants, clerks and personnel as is deemed necessary to
34 carry out the responsibilities of the division.

35 (3) Every merchant doing business within the commonwealth
36 shall file notice of such fact with the division within thirty days
37 after the effective date of this act and thereafter whenever
38 information contained in the original notice becomes inaccurate
39 or incomplete. The notice shall contain:

- 40 (a) the name under which the merchant does business;
41 (b) the street address of each place of business;
42 (c) the names and addresses of the owners of such business or,
43 if a corporation, the names and addresses of the officers of such
44 corporation, including the name of the general manager;
45 (d) a brief description of the nature of the business.

46 (4) Every merchant required to file a notice under this section
47 shall pay to the division a fee in accordance with the following
48 schedules:

49 (a) every merchant doing business as a vendor and registered
50 as such for the collection of the sales tax pursuant to the
51 Appendix of chapter 58 of the General Laws, and having no
52 other payroll employees, shall pay a fee of \$10 at the time of
53 filing the first notice;

54 (b) all other merchants having employees shall pay the
55 following fee at the time of filing the first notice:

56	Number of Employees	Assessment Fee
57	(Size Categories)	per Concern
58	1-3	\$ 35
59	4-7	60
60	8-19	75
61	20-49	95
62	50-99	110
63	100-249	140
64	250-499	170
65	500-999	190
66	1000-1499	225
67	1500-2499	270
68	2500-4999	600
69	5000 or above	900

70 (c) for each subsequent notice, the director may collect a fee
71 of not more than \$25;

72 (d) prior to July 1 of each year, the director shall fix, assess
73 and collect an additional uniform fee for each claim adjudicated
74 against each merchant during the preceding twelve months in an
75 amount which will produce sufficient funds to cover any deficit
76 in current funds and to pay the claims the director anticipates
77 will be filed during the next twelve months under subsection (8).
78 Any merchant who fails to comply with this subsection, or
79 subsection (3) shall be guilty of a misdemeanor punishable by a
80 fine of \$100 or up to six months in prison or both.

81 (5) The director shall establish consumer claims districts, not
82 exceeding forty, within the commonwealth which take into
83 account population, location of cities and towns and the
84 anticipated number of consumer claims to be filed in each
85 district, and may change such districts from time to time as
86 circumstances warrant. The director shall appoint one or more
87 consumer claims officers who shall not be subject to chapter
88 thirty-one and shall, with the approval of the secretary, fix their

89 salaries. Said officers shall be appointed to each one of the
90 districts and shall determine and hear consumer claims as
91 provided in this section. Such consumer claims officers need not
92 be attorneys, but must be familiar with consumer transactions
93 and possess an ability to resolve disputes between adverse
94 parties. The director shall establish criteria for meeting these
95 qualifications. Consumer claims officers may serve full or part
96 time, and may serve in more than one district, as the director
97 determines. They shall be provided with office space and clerical
98 help within the district they serve, and shall be reimbursed for
99 reasonable expenses incurred in the performance of their duties.

100 (6) The director shall establish rules of procedure under which
101 consumer claims, as provided in this section, shall be initiated,
102 heard, decided and enforced including:

103 (a) simple forms in layman's language, such forms to be in
104 both English and Spanish;

105 (b) times and places of operation convenient to the consumers
106 of each district;

107 (c) provision for interpreters unless the consumer claims
108 officer speaks the language of a party not fluent in English;

109 (d) filing of consumer claims by or against consumers solely in
110 the district of the consumer's residence;

111 (e) uniform fees for filing consumer claims, not exceeding
112 \$5.00.

113 (7) The director shall establish a central system in which
114 consumer claims shall be recorded in a manner which classifies
115 the nature of the claim, identifies the consumer, identifies the
116 merchant, and provides such other information as the director
117 deems appropriate, all of which shall be readily retrievable by
118 consumer claims officers and other interested persons or
119 agencies.

120 (8) Consumers who have money claims against merchants
121 required to file notice under this section may file such claims
122 with the consumer claims officer on forms and in such manner
123 as the director prescribes. The consumer claims officer shall
124 request each merchant against whom a claim is filed to respond
125 to such claim. The consumer claims officer shall:

126 (a) when the merchant concedes or does not dispute the
127 validity of amount of the claim,

128 (i) pay any claim not exceeding one hundred dollars from the
129 fund maintained under this section, or

130 (ii) order the merchant to pay any claim exceeding one
131 hundred dollars but not exceeding one thousand dollars, or

132 (iii) make such other order as will satisfy a consumer's claim
133 other than for money.

134 (b) when the merchant disputes or otherwise contests a claim
135 which does not exceed one hundred dollars

136 (i) within forty-five days after the claim is filed, determine the
137 validity of the claim, and, if valid, the amount to be awarded to
138 the claimant, and pay such amount from the fund maintained
139 under this section, or

140 (ii) within forty-five days after the claim is filed, determine the
141 claim to be invalid and deny such claim.

142 (9) In all other cases of consumer claims not exceeding one
143 thousand dollars or for other claims to relief filed by or against
144 consumers, the consumer claims officer shall set a time and
145 place for hearing, conduct such hearing and render a decision in
146 accordance with this section and rules promulgated under this
147 section. All decisions rendered by the consumer claims officer
148 under this and the preceding subsection shall be made in
149 accordance with the General Laws of the commonwealth,
150 including the Consumer Protection Act, chapter 93A of the
151 General Laws, and all the rules and regulations promulgated
152 under those laws.

153 (10) In his or her discretion, the consumer claims officer may,
154 in a hearing conducted pursuant to subsection (9), assess
155 administrative, clerical and hearing costs against either one or
156 both of the parties. In no case, however, shall a consumer be
157 assessed more than the filing fee for bringing a reasonable and
158 legitimate claim. If the consumer claims officer determines that a
159 merchant has committed a willful or knowing violation of
160 section 2 of chapter 93A, all costs shall be assessed against the
161 merchant.

162 (11) A consumer claims officer may deny a consumer claim
163 which he finds was not made in good faith and for this purpose
164 may inquire into other claims filed by the same person. Such a
165 finding shall be recorded in the disposition of the claim.

166 (12) Any party to a consumer claim other than a claim
167 resolved under subsection (8) of this section may within thirty
168 days file a petition to review a final decision of the consumer
169 claims officer with the district court judge in the district in which
170 the claim was heard. The district court judge shall affirm,
171 reverse or otherwise modify such decision or remand the matter
172 for further hearing within thirty days after a petition for review
173 is filed. A consumer claim filed with a consumer claims officer is
174 not subject to removal to another court, but a claim filed
175 initially in another court may be removed by either party for a
176 hearing before a consumer claims officer. There shall be no
177 appeal from a decision of the district court judge, except on a
178 matter of law certified by the district court judge. A
179 determination by the consumer claims officer as to which no
180 review was taken, or which was affirmed on review, or on appeal
181 from such review, is enforceable through the proceedings of the
182 district court for enforcement of judgments.

183 (13) The director shall seek reimbursement from merchants as
184 to whom consumer claims have been satisfied from the fund
185 created pursuant to subsection (4) of the amount so paid from
186 the fund. The director may require the payment of other fees
187 stated as a percentage of the amount to be reimbursed and
188 calculated to provide funds necessary to meet administrative
189 costs which are not met by complaint filing fees, appropriations
190 by the General Court, and investment income. For this purpose
191 the director subrogates to the rights of the consumers filing the
192 claims. The director may bring an action against such merchants
193 in district or superior court to obtain such reimbursement.

194 (14) The director, in addition to the penalties provided by
195 subsection (4), may seek an order in district or superior court to
196 terminate a merchant's right to do business in the com-
197 monwealth when the merchant:

198 (a) fails to file the notice or to pay the fees required by
199 subsections (3) and (4);

200 (b) fails to reimburse the director as required by subsection
201 (13) without the director's resort to litigation;

202 (c) fails to satisfy consumer claims exceeding \$100 which are
203 finally adjudicated against the merchant;

204 (d) is the subject of numerous claims by consumers which
205 indicate a pattern of violation of or disregard for the laws of the
206 commonwealth.

207 (15) The fund from which claims are paid pursuant to
208 subsection (8) shall be derived exclusively from fees collected
209 pursuant to subsection (4), and from funds obtained through
210 reimbursement pursuant to subsection (13), and from any
211 increment in that fund by virtue of its investment by the
212 director. The director may apply portions of that fund to the
213 administrative costs of operating the system.

