

By Ms. Jacques, a petition (accompanied by bill, Senate, No. 862) of Cheryl A. Jacques for legislation relative to the reform of the small claims court system. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO REFORM OF 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. Section 22 of chapter 90 of the General Laws is
2 hereby amended by adding at the end thereof the following new
3 paragraph:—

4 (h) If the registrar receives notice from a clerk-magistrate or
5 assistant clerk of the district court, housing court, or municipal
6 court of the city of Boston that, after a hearing or an opportunity
7 therefor, a finding of failure to pay a small claims court judgment
8 of more than two hundred and fifty dollars sufficient to non-renew
9 a license or right to operate a motor vehicle has been made pur-
10 suant to paragraph (a) of section twenty two A of chapter two
11 hundred and eighteen, against a resident of the commonwealth or
12 any person licensed to operate a motor vehicle under the provi-
13 sions of this chapter, said registrar shall not renew such license or
14 right to operate by such person and forward any notice required
15 by paragraph (d) of intention to revoke or suspend license or right
16 to operate. Said registrar shall reinstate such license or right to
17 operate a motor vehicle if said clerk-magistrate or assistant clerk
18 of the district court, housing court, or municipal court of the city
19 of Boston, provides to the registrar a written notice stating that the
20 resident or other person is in compliance with said small claims
21 court judgment or is currently making payment in accordance with
22 any payment agreement, schedule or wage assignment. Such
23 notice may also be provided by the obligor if it is signed by said
24 clerk. Notices between a clerk and the registrar under this subsec-

25 tion may be made in any form, including electronic transmission.
26 Any individual aggrieved by a decision of the registrar may seek
27 judicial review in the court where the small claims judgment
28 issued. If the aggrieved person prevails, the court shall order the
29 clerk to provide written notice to the registrar to issue or reinstate
30 the license or right to operate of the obligor.

1 SECTION 2. Section 22A of chapter 218 of the General laws is
2 hereby amended by adding the following new paragraph:—

3 (b) If the judgment remains unsatisfied at the time of the pay-
4 ment hearing, and the unsuccessful party fails to appear for the
5 payment hearing, or fails to make alternative payment arrange-
6 ments to the satisfaction of the court, a wage assignment shall be
7 ordered provided the name and address of the small claims judg-
8 ment obligor's employer, if any, is known. At the time of trial,
9 both parties shall be required to provide the name and address of
10 his employer, if any. Such order shall include the name and
11 address of the small claims judgment obligee, and the name and
12 address of the small claims judgment obligor's employer. Such
13 order shall not exceed fifty dollars per week or the maximum
14 amount permitted by 15 U.S.C.A. 1673(b). The court shall send
15 notice of the assignment order to the small claims judgment
16 obligor and his employer. The notice shall specify the amount to
17 be withheld, and the procedures and grounds for dismissal of such
18 assignment. Such notice shall set forth that the assignment applies
19 to the obligor's subsequent employers and that the obligor is
20 bound to notify the judgment obligee immediately when his
21 employment changes or be subject to possible punishment for
22 civil contempt of court.

23 The obligor may, within fifteen days from the date the notice is
24 sent, submit a request in writing for a hearing as to whether the
25 assignment should be dismissed. If the obligor requests a hearing,
26 it shall be held within fifteen days from the receipt of his request.
27 If at the hearing the obligor establishes that the judgment has been
28 satisfied, that the assignment violates the Consumer Protection
29 Credit Act, or that such assignment creates an undue hardship
30 upon the obligor, the wage assignment shall be vacated.

31 The employer may deduct from the obligor's earnings a sum
32 not exceeding three dollars per pay period as reimbursement for

33 costs incurred. The employer may not discipline, suspend or dis-
34 charge an employee because of an assignment executed pursuant
35 to this section. Any employer who violates this section shall be
36 liable in a civil action, action for contempt or other appropriate
37 proceeding to such employee for all wages and employment bene-
38 fits lost by the employee from the time of the unlawful discipline,
39 suspension or discharge to the period of reinstatement.

40 The employer shall send the amount required by the assignment
41 to the obligee within three days of the date the employee is paid.
42 The assignment shall begin on the first payment of income that
43 occurs more than three days after the employer receives notice of
44 the assignment and shall continue until the employee leaves that
45 employment, the employer is notified by the court or the obligee
46 that the assignment should be terminated, or the employer's
47 records show that an amount equal to that recited in the wage
48 assignment order has been sent to the obligee.

49 If the employee leaves his employment, the employer shall be
50 responsible to notify the obligee of the employee's departure and
51 his subsequent employer, if known, prior to the time that the next
52 payment to the obligor is due. Any subsequent employer of the
53 obligor shall, upon notice of an income assignment, comply with
54 the provisions of this section.

55 If an employer fails to comply with an order of income assign-
56 ment executed pursuant to this section the court may, on its own
57 motion or upon report of the obligee, summon the employer to
58 appear in court and show cause why he should not be held in civil
59 contempt for failure to obey said order. Said employer shall also
60 be liable to the obligee in a civil action for contempt, or other
61 appropriate proceeding for the full amount of the income assigned
62 and a civil penalty of five hundred dollars. A finding by the court
63 that the employer has failed or neglected to comply with an order
64 of income assignment executed pursuant to this section shall be
65 prima facie evidence of the liability of such employer in such pro-
66 ceeding.

1 SECTION 3. Chapter 218 of the General laws is hereby
2 amended by adding after section 22 the following new section:—

3 Section 22A. (a) The court shall issue a notice of judgment to
4 all parties of a small claims action.

5 Such notice shall indicate a date and time for a payment
6 hearing to be held on or about thirty days from the date of notice.
7 If the court finds that the obligee is entitled to judgment for a sum
8 of money, the obligor may appeal pursuant to section twenty-
9 three, if applicable. If the defendant exercises such rights, the
10 court shall cancel the payment hearing and notify the plaintiff.
11 The obligor may also satisfy the judgment in full on or before the
12 hearing date, or arrange for an alternative payment schedule or
13 agreement at the discretion of the court. Provided, however, that
14 nothing in this paragraph is intended to modify the power of the
15 court pursuant to section twenty-one. Notwithstanding any law to
16 the contrary, the obligor shall have the burden of proof that an
17 alternative arrangement is in the best interests of justice. If the
18 obligor fails to satisfy the judgment in full on or before the pay-
19 ment hearing he shall file a financial disclosure form provided by
20 the court and to be made available to the prevailing party. If the
21 obligor fails to appear for the payment hearing, or fails to arrange
22 for an alternative payment schedule, or file a financial disclosure
23 form, the court shall make a finding of failure to pay a small
24 claims court judgment sufficient to non-renew a license or right to
25 operate a motor vehicle, and shall order a wage assignment pur-
26 suant to paragraph (b). Provided, however, that no such finding or
27 order may enter unless the judgment exceeds two-hundred and
28 fifty dollars, and the judgment creditor has made personal service
29 on the obligor of the payment hearing pursuant to the rules of civil
30 procedure. A payment hearing may be heard by a judge, clerk-
31 magistrate, or assistant clerk magistrate as determined by stan-
32 dards and procedures promulgated by the chief justice of
33 administration and management.

34 This section shall not apply to any action in which the plaintiff
35 has filed more than ten small claims actions within the twelve
36 months prior to the action on which payment is sought.

1 SECTION 4. Section 22A of chapter 218 of the General laws is
2 hereby amended by adding the following new paragraph:—

3 (c) A small claims judgment governed by this section shall not
4 be subject to interest. b lieu thereof, on the date following a pay-
5 ment hearing, a judgment of less than one thousand dollars which
6 is not satisfied, subject to a payment schedule or agreement, or a

7 wage assignment, shall increase by the amount of twenty-five dol-
8 lars. On the same day of the next month and of every month there-
9 after, the judgment shall increase in the amount of twenty-five
10 dollars. A judgment in the amount of one-thousand dollars or
11 more which is not satisfied, subject to a payment schedule or
12 agreement, or a wage assignment, shall increase by the amount of
13 fifty dollars. On the same day of the next month and of every
14 month thereafter, such judgment shall increase in the amount of
15 fifty dollars. A judgment shall be subject to increase where an
16 obligor is in default of such payment schedule or wage assign-
17 ment. An affidavit filed by the obligee that the obligor is in
18 default of any payment order or wage assignment shall subject the
19 judgment to increase pursuant to this paragraph. The notice of
20 judgment shall indicate by what amount and on what date the
21 judgment shall become subject to increases in lieu of interest, and
22 shall contain a schedule of monthly increases.

1 SECTION 5. The chief justice for administration and manage-
2 ment shall prepare a plan to make mediation available at the
3 request of all small claims litigants on the same day of trial, and
4 by a mediator other than the judicial officer scheduled to hear the
5 case. Said chief justice shall seek the input of the chief justice of
6 the district court, the chief justice of the housing court, and the
7 chief justice of the municipal court for the city of Boston. Such
8 report shall be filed with the joint committee on the judiciary and
9 the house and senate ways and means committees on or before
10 May first, nineteen hundred and ninety-five.

1 SECTION 6. Section 21 of chapter 218 of the General Laws is
2 hereby amended by striking out in line 55 and in line 87 the words
3 "two thousand" and inserting in place thereof the words —"three
4 thousand dollars."

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