

SENATE No. 55

By Mr. Lees (by request), a petition (accompanied by bill, Senate, No. 55) of JoAnne O'Neil for legislation relative to unfair competition against small businesses in the Commonwealth. Commerce and Labor.

The Commonwealth of Massachusetts

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

**AN ACT RELATIVE TO UNFAIR COMPETITION AGAINST SMALL BUSINESSES
IN THE COMMONWEALTH.**

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 8A of chapter 12 of the General Laws, as
2 appearing in the 1996 Official Edition, is hereby amended by
3 inserting at the end thereof the following definitions:—

4 “Public charity,” an entity which has legal obligation to apply
5 some or all of its funds for purposes that are charitable, and may
6 arise either by being organized with intent to use funds for chari-
7 table purposes or by engaging in conduct which results in the
8 entity holding funds for charitable purposes. For purposes of this
9 definition, the words charity and public charity are synonymous.

10 “Small business,” any self-employed individual, sole propri-
11 etorship, firm, corporation, partnership, association or other entity
12 that has fewer than 101 full-time employees and is subject to
13 income taxation.

1 SECTION 2. Said chapter 12 is hereby further amended by
2 inserting after section 8M the following sections:—

3 Section 8N. A public charity may not fund, capitalize, guar-
4 antee the indebtedness of, lease obligations or subsidize a
5 commercial business that is unrelated to the institution’s chari-
6 table purpose as stated in the public charity’s charter or governing
7 legal documents. Nothing in this section shall be construed as
8 prohibiting or limiting the ability of a public charity to fund,

9 capitalize, guarantee the indebtedness of or otherwise subsidize
10 other institutions which are purely public charities.

11 Section 8O. A public charity is not in violation of section 8N if
12 any of the following apply:

13 (1) The commercial business is intended only for use by its
14 employees, staff, faculty, students, clients, volunteers, patients or
15 residents. For purposes of this paragraph, a person shall not be
16 considered an employee, staff member, faculty, student, client,
17 volunteer, patient or resident, if the person's only relationship
18 with the institution is to receive products or services resulting
19 from the commercial business.

20 (2) The commercial business results in sales to the general
21 public that are incidental or periodic rather than permanent and
22 ongoing.

23 (3) The public charity invests in publicly traded stock and
24 bonds, real estate, whether directly or indirectly, or other invest-
25 ments; or

26 (4) The public charity uses its facilities to host groups for
27 educational purposes.

28 Section 8P. A public charity may engage in a new commercial
29 business which may otherwise be in violation of section 8N if the
30 institution is formally requested to do so by the Commonwealth or
31 a political subdivision thereof.

32 Section 8Q. The public charities division shall establish a
33 system of mandatory arbitration for the purpose of receiving all
34 complaints from aggrieved small businesses relating to a public
35 charity's alleged violation of section 8N. Upon receipt of such
36 complaint, the public charities division shall direct that the com-
37 plaint be resolved as provided in this section.

38 (1) All complaints shall be in the form of a sworn statement set-
39 ting forth all allegations and requests for relief, and shall be filed
40 with the public charities division, together with a fee as prescribed
41 by the department.

42 (2) Within ten days of receipt of the complaint, the public char-
43 ities division shall serve a copy of the complaint to the public
44 charity against which the complaint was filed. The public charity
45 must respond to the complaint within 30 days of receipt.

46 (3) Within 30 days following the period of time allotted to the
47 public charity to respond to the complaint, the public charities

48 division shall select an unbiased and qualified arbitrator who pos-
49 sesses sufficient knowledge regarding the regulations governing
50 public charities as set forth in this chapter to adjudicate the matter.
51 If the public charity does not participate in the arbitration, the
52 arbitrator may issue an order to compel such participation. Such
53 an order shall be enforceable by the superior court of the county
54 where the arbitration takes place.

55 (4) The arbitration process shall take place in the county in
56 which the aggrieved small business is located. The public charities
57 division shall ensure that the arbitration process is completed
58 within 180 days of the date on which the arbitrator was assigned
59 the complaint.

60 (5) Within 30 days of the arbitrator's assignment, the arbitrator
61 shall determine if the complaint sets forth prima facie evidence
62 that a violation of section 8N has occurred. If the arbitrator deter-
63 mines that the complaint does not contain prima facie evidence,
64 the arbitrator shall issue a written report detailing the findings and
65 shall terminate arbitration. A small business may appeal such a
66 determination as provided in paragraph (9).

67 (6) The arbitrator shall determine if the activity of the public
68 charity is in violation of section 8N. In making this determination,
69 the arbitrator shall review all relevant law, including previous
70 arbitrator's decisions, regulations, and the charter or governing
71 legal documents of the public charity.

72 (7) The decision of the arbitrator, including any issuance of an
73 order or injunction, shall be set forth in a written decision issued
74 to each party, specifying findings of fact and conclusions of law.
75 If the arbitrator finds a violation of section 8N, the arbitrator may
76 include an order or injunction as part of the decision, provided
77 that no damages may be assessed against a public charity.

78 (8) Upon agreement of the parties, the decision of the arbitrator
79 shall be final and binding as to all matters of fact and law and
80 shall be entered by the arbitrator as a final judgment in the supe-
81 rior court of the county in which the arbitration took place. A
82 copy of the arbitrator's final decision shall also be filed with the
83 public charities division.

84 (9) Either party may initiate a de novo appeal from the arbitra-
85 tor's decision in the superior court of the county in which the
86 arbitration took place within 30 days of the arbitrator's decision.

87 (10) The public charities division may provide for the system of
88 arbitration by maintaining a list of qualified arbitrators or by
89 contracting for qualified arbitration services.

90 (11) The public charities division may adopt regulations
91 necessary to implement this section.

92 (12) The cost of the arbitration proceeding, including the
93 arbitrator's fee, shall be borne by the complainant, unless the
94 arbitrator directs otherwise. Each party shall be responsible for its
95 attorneys fees and other costs incurred.

96 (13) The remedies set forth in this section shall be exclusive
97 remedies available to an aggrieved small business.