

By Mr. Demakis of Boston, petition of Paul C. Demakis relative to small claims collection procedures in the courts of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO SMALL CLAIMS COLLECTION PROCEDURES.

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 218 of the General Laws, as appearing in the 1994
2 Official Edition, is hereby amended by adding after section 22 the
3 following new section:—

4 Section 22A. (a) The court shall issue a notice of judgment to
5 all parties of small claims action. Such notice shall indicate a date
6 and time for a payment hearing to be held on or about thirty days
7 from the date of notice. If the court finds that the obligee is
8 entitled to judgment for a sum of money, the obligor may appeal
9 pursuant to section twenty-three, if applicable. If the obligor exer-
10 cises such rights, the court shall cancel the payment hearing and
11 notify the obligee. The obligor may also satisfy the judgment in
12 full on or before the hearing date, or arrange for an alternative
13 payment schedule or agreement at the discretion of the court.
14 Provided, however, that nothing in this paragraph is intended to
15 modify the power of the court pursuant to section twenty-one.
16 Notwithstanding any law to the contrary, the obligor shall have
17 the burden of proof that an alternative arrangement is in the best
18 interests of justice. A payment hearing may be heard by the judge,
19 clerk-magistrate, or assistant clerk-magistrate as determined by
20 standards and procedures promulgated by the chief justice for
21 administration and management.

22 (b) If the judgment remains unsatisfied at the time of the pay-
23 ment hearing, and the obligor fails to appear for the payment
24 hearing, or fails to make alternative payment arrangements to the

25 satisfaction of the court, a wage assignment shall be ordered pro-
26 vided the name and address of the small claims judgment oblig-
27 or's employer, if any, is known. At the time of trial, both parties
28 shall be required to provide the names and addresses of their
29 respective employers, if any. Such order shall include the name
30 and address of the small claims judgment obligee, and the name
31 and address of the small claims judgment obligor's employer.
32 Such order shall not exceed fifty dollars per week or the max-
33 imum amount permitted by 15 U.S.C.A. 1673(b). The court shall
34 send notice of the assignment order to the small claims judgment
35 obligor and his employer. The notice to specify the amount to be
36 withheld, the procedures and grounds under which such assign-
37 ment would be vacated. Such notice shall set forth that the assign-
38 ment applies to the obligor's subsequent employers and that the
39 obligor is required to notify the judgment obligee immediately
40 when his employment changes or be subject to possible punish-
41 ment for civil contempt of court.

42 The employer may deduct from the obligor's earnings a sum
43 not exceeding three dollars per pay period as reimbursement for
44 costs incurred. The employer may not discipline, suspend or dis-
45 charge an employee because of an assignment executed pursuant
46 to this section. Any employer who violates this section shall be
47 liable in a civil action, action for contempt or other appropriate
48 proceeding to such employee for all wages and employment bene-
49 fits lost by the employee from the time of the unlawful discipline,
50 suspension or discharge to the period of reinstatement.

51 The employer shall send the amount required by the assignment
52 to the obligee within three days of the date the employee is paid.
53 The assignment shall begin on the first payment of income that
54 occurs more than three days after the employer receives the notice
55 of the assignment and shall continue until the employee leaves
56 that employment, the employer is notified by the court or the
57 obligee that the assignment should be terminated, or the employ-
58 er's records show that an amount equal to that recited in the wage
59 assignment order has been sent to the obligee.

60 If the employee leaves his or her employment, the employer
61 shall be responsible to notify the obligee of the employee's depart-
62 ure and his subsequent employer, if known, prior to the time that
63 the next payment to the obligor is due. Any subsequent employer

64 of the obligor shall, upon notice of a wage assignment, comply
65 with the provisions of this section.

66 If any employer fails to comply with an order of wage assign-
67 ment executed pursuant to this section, the court may, on its own
68 motion, or upon report of the obligee, summon the employer to
69 appear in court and show cause why he or she should not be held
70 in civil contempt for failure to obey said order. Said employer
71 shall also be liable to the obligee in a civil action for contempt, or
72 other appropriate proceeding for the full amount of the wage
73 assigned and a civil penalty of five hundred dollars. A finding by
74 the court that the employer has failed or neglected to comply with
75 an order of wage assignment executed pursuant to this section
76 shall be prima facie evidence of the liability of such employer in
77 such proceeding.

78 (c) On the date following the payment hearing, the obligor of a
79 judgment of less than one thousand dollars which is not satisfied,
80 subject to a payment schedule or agreement, or a wage assign-
81 ment, shall be subject to a non-payment fine in the amount of
82 twenty-five dollars to be paid to the court. On the same day of the
83 next month and of every month thereafter the court shall levy an
84 additional nonpayment fine in the amount of twenty-five dollars.
85 The obligor of a judgment of one thousand dollars or more that is
86 not satisfied, subject to a payment schedule or agreement, or a
87 wage assignment, shall be subject to a non-payment fine in the
88 amount of fifty dollars to be paid to the court. On the same day of
89 the next month and of every month thereafter the court shall levy
90 an additional non-payment fine in the amount of fifty dollars. An
91 affidavit filed by the obligee that the obligor is in default of any
92 payment order or wage assignment shall subject the obligor to a
93 non-payment fine increase pursuant to this paragraph. The notice
94 of judgment shall indicate by what amount and on what date the
95 judgment shall become subject to a non-payment fine, and shall
96 contain a schedule of monthly increases.

97 (d) If the judgment is not satisfied in full, and is not subject to a
98 payment schedule, or wage assignment as determined by the court
99 or if the obligor fails to appear for the payment hearing or defaults
100 on a payment schedule, or fails to arrange an alternative payment
101 schedule, the court shall make a finding of failure to pay a small
102 claims court judgment sufficient to non-renew a license or right to

103 operate a motor vehicle. Upon a finding of failure to pay a small
104 claims court judgment sufficient to non-renew a license or right to
105 operate a motor vehicle, the court shall notify the registrar of
106 motor vehicles of such finding. If the registrar receives notice
107 from a clerk magistrate or assistant clerk of the district court,
108 housing court or municipal court of the city of Boston that, after a
109 hearing, or an opportunity therefor, a finding of failure to pay a
110 small claims court judgment sufficient to non-renew a license or
111 right to operate a motor vehicle has been made against a resident
112 of the commonwealth or any person licensed to operate a motor
113 vehicle under the provisions of this chapter, said registrar shall not
114 issue, renew, or reinstate license to operate by such person.

115 Said registrar may issue, renew, or reinstate such license or
116 right to operate a motor vehicle if the said clerk magistrate or
117 assistant clerk of the district court, housing court, or municipal
118 court of the city of Boston, provides to the registrar a written
119 notice that the resident or other person is in compliance with any
120 payment agreement, schedule or wage assignment. Such notice
121 may also be provided by the obligor if it is signed by said clerk.
122 Notices between a clerk and a registrar under this subsection may
123 be made in any form, including electronic transmission. Any indi-
124 vidual aggrieved by a decision of the registrar may seek judicial
125 review in the court where the small claims judgment issued. Said
126 hearing may be heard by a judge, clerk-magistrate, or assistant
127 clerk-magistrate as determined by standards and procedures pro-
128 mulgated by the chief justice for administration and management.
129 If the aggrieved person prevails, the court shall order the clerk to
130 provide written notice to the registrar to issue, renew or reinstate
131 the license or right to operate of the obligor.

132 (e) The court shall provide both parties with a written notice
133 that states in clear and accessible language the collection proce-
134 dure and penalties for nonpayment of small claims judgment,
135 including wage assignment, liens, court fines, non-renewable of
136 driver's licenses, and the availability of obligor's payment status
137 to credit reporting agencies. This notice shall be provided with the
138 statement of claim and notice, at the judgment hearing, with the
139 notice of judgment, and at the payment hearings.