

# HOUSE . . . . . No. 5326

---

---

## The Commonwealth of Massachusetts

---

HOUSE OF REPRESENTATIVES, February 23, 1998.

The committee on the Judiciary, to whom was recommitted the petition (accompanied by bill, House, No. 1344) of Paul C. Demakis relative to small claims collection procedures in the courts of the Commonwealth, and on the petition (accompanied by bill, Senate, No. 767) of Cheryl A. Jacques for legislation to reform the small claims court system, reports recommending that the accompanying bill (House, No. 5326) ought to pass.

For the committee,

JOHN H. ROGERS.

## The Commonwealth of Massachusetts

---

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

---

### AN ACT RELATIVE TO SMALL CLAIMS PROTECTION 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 SECTION 1. Section 22 of Chapter 218 of the General Laws,  
2 as appearing in the 1996 Official Edition, is hereby amended by  
3 adding at the end of the first paragraph the following new  
4 sentence:— In any claim where a wage assignment order may be  
5 issued, the defendant shall be required to provide the court, at the  
6 time of trial, with the name and address of their present  
7 employer(s), if any.

1 SECTION 2. Section 22 of Chapter 218 of the General Laws,  
2 as appearing in the 1996 Official Edition, is hereby amended in  
3 line 9 by adding after the word “hearing” the following new  
4 sentence:— Said notice shall include clear and understandable  
5 provisions explaining the small claims judgment collection proce-  
6 dure including the potential use of wage assignment orders, civil  
7 contempt, non-renewal of a driver’s license and the availability of  
8 the obligor’s payment status to credit reporting agencies.

1 SECTION 3. Section 21 of Chapter 218 of the General Laws,  
2 as appearing in the 1996 Official Edition, is hereby amended by  
3 striking out, in line 6 and in line 36, the words “two thousand”  
4 and inserting in place thereof the following words:— two  
5 thousand five hundred.

1 SECTION 4. Chapter 218 of the General Laws, as appearing in  
2 the 1996 Official Edition, is hereby amended by adding after  
3 section 22 the following new section:—

4 Section 22A. (a) The court shall issue a notice of judgment to  
5 all parties of a small claims action. Such notice shall indicate a  
6 date and time for a payment hearing to be held on or before thirty  
7 days from the date of the notice. A payment hearing may be heard  
8 by a judge, clerk-magistrate, or assistant clerk-magistrate as deter-  
9 mined by the standards and procedures promulgated by the chief  
10 justice for administration and management. If the court finds that  
11 the obligee is entitled to judgment for a sum of money, the obligor  
12 may appeal pursuant to section twenty-three, if applicable. If the  
13 obligor exercises such appellate rights, the court shall cancel the  
14 payment hearing and notify all parties of the cancellation and of  
15 the obligor's intention to appeal. Cancellation of a payment  
16 hearing due to an obligor's exercise of appellate rights shall not  
17 affect the obligee's original claim under subsection (b). When an  
18 obligor's appeal becomes final, the court shall issue a notice of  
19 judgment to all parties indicating the date and time for a payment  
20 hearing to be held on or before thirty days from the date of the  
21 final appeal. The obligor may satisfy the judgment in full on or  
22 before the hearing date, or arrange for an alternative payment  
23 schedule or agreement at the discretion of the court. Provided,  
24 however, that nothing in this paragraph is intended to modify the  
25 power of the court pursuant to section twenty-one. There shall be  
26 a rebuttable presumption that payment in full by the obligor on or  
27 before the payment hearing date is in the best interests of justice.  
28 Said presumption may be rebutted by a preponderance of the  
29 evidence that an alternative payment arrangement is in the best  
30 interests of justice. If the obligor fails to satisfy the judgment in  
31 full on or before the date of the payment hearing, he shall file with  
32 the court at the payment hearing a financial disclosure form pro-  
33 vided by the court and signed under the pains and penalties of per-  
34 jury. The court shall make said form, once completed and filed,  
35 available to the obligee. If the obligor (1) fails to appear for the  
36 payment hearing or (2) fails to make alternative payment arrange-  
37 ments to the satisfaction of the court or (3) fails to file a financial  
38 disclosure form, the court shall make a finding of failure to pay a  
39 small claims court judgment and shall order a wage assignment  
40 pursuant to paragraph (b).

41 (b) If the judgment remains unsatisfied at the time of the pay-  
42 ment hearing, and the obligor (1) fails to appear for the payment

43 hearing or (2) fails to make alternative payment arrangements to  
44 the satisfaction of the court or (3) fails to file a financial disclo-  
45 sure form with the court, a wage assignment shall be ordered by  
46 the court provided that the name and address of the small claims  
47 judgment obligor's employer, if any, is known. Such order shall  
48 include the following: (1) the name and address of the small  
49 claims judgment obligor's employer; (2) the name and address of  
50 the small claims judgment obligee; (3) the amount to be withheld  
51 from the obligor's earnings which in no instance shall exceed the  
52 lesser of fifty dollars per week or the maximum amount permitted  
53 by 15 U.S.C.A. 1673(b); (4) the procedures and grounds under  
54 which such assignment would be terminated as provided herein;  
55 (5) that said assignment applies to the obligor's current and subse-  
56 quent employers until said judgment is fully satisfied according to  
57 the court; (6) that the obligor is required to notify the judgment  
58 obligee and the appropriate court having jurisdiction over the  
59 matter immediately when said obligor's employment status  
60 changes and that when possible, such notice shall be given at  
61 least three days in advance of the obligor's departure from his  
62 employer; such notice shall include the name and address of any  
63 and all subsequent employers; and (7) that failure to so notify the  
64 obligee and the court as required in subsection (b)(6) subjects the  
65 obligor, at the discretion of the court, to punishment for civil con-  
66 tempt. The court shall send a copy of the wage assignment order  
67 and a copy of the rights of the obligor's employer pertaining to  
68 wage assignment costs as provided herein to the small claims  
69 judgment obligor and to said obligor's employer.

70 In addition to the amount specified in the order, the employer  
71 may deduct from the obligor's earnings a sum not exceeding one  
72 dollar per pay period as reimbursement for costs incurred as a  
73 result of the wage assignment order. The employer may not disci-  
74 pline, suspend, discharge or otherwise discriminate against an  
75 employee because of an assignment executed pursuant to this sec-  
76 tion. Any employer who violates this section shall be liable to  
77 such employee in a civil action, action for contempt or any other  
78 appropriate proceeding for damages including, but not limited to,  
79 all wages and employment benefits lost by the employee from the  
80 time of the unlawful action to the period of reinstatement.

81 The employer shall forward the amount specified by the wage  
82 assignment order to the obligee within five business days of each  
83 date said obligor is paid. The assignment shall begin on the first  
84 payment of income that occurs more than three days after the  
85 employer receives notice of the assignment and shall continue  
86 until the last paycheck is issued to the obligor, the employer is  
87 notified by the court that the assignment has been satisfied, or the  
88 employer's records show that an amount equal to that recited in  
89 the wage assignment order has been forwarded to the obligee.  
90 Provided, however, that in the last instance, the employer shall  
91 provide proof satisfactory to the court that said wage assignment  
92 order has been satisfied pursuant to the terms of the assignment  
93 order.

94 If the obligor leaves his employment, the employer shall notify  
95 the court and the obligee of the obligor's departure and of the sub-  
96 sequent employer's identity and address, if known. When pos-  
97 sible, notice of an obligor's pending departure shall be given to  
98 the court and obligee at least three days in advance of the oblig-  
99 or's departure. Any subsequent employer of the obligor shall,  
100 upon notice of a wage assignment, comply with the provisions of  
101 this section.

102 Upon the notification and verification of the obligor's subse-  
103 quent employment, the court shall modify the original wage  
104 assignment order to reflect the name and address of the obligor's  
105 new employer(s) and the remaining amount of money to be  
106 assigned by the new employer(s). The court shall send a copy of  
107 the modified wage assignment order to the obligor, the obligee  
108 and the new employer.

109 If an employer fails to comply with a wage assignment order  
110 executed pursuant to this section, the court may enforce such  
111 order by contempt proceedings, substantially in the manner pro-  
112 vided in chapter two hundred and twenty four. Said employer shall  
113 also be liable to the obligee in a civil action for contempt, or other  
114 appropriate proceeding for the full amount of wages that were to  
115 be assigned pursuant to the wage assignment order and a civil  
116 penalty of not more than five hundred dollars. A finding by the  
117 court that the employer has failed or neglected to comply with a  
118 wage assignment order executed pursuant to this section shall be

119 prima facie evidence of a liability of the wage assignment order in  
120 said action or proceeding.

121 (c) If a judgment is not satisfied in full, and is not subject to a  
122 payment schedule or wage assignment order as provided for in  
123 subsection (b) and determined by the court, or if the obligor fails  
124 to appear for the payment hearing or defaults on or fails to arrange  
125 an alternative payment schedule, the court shall make a finding of  
126 failure to pay a small claims court judgment sufficient to non-  
127 renew a license or right to operate a motor vehicle. Upon a finding  
128 of failure to pay a small claims court judgment sufficient to non-  
129 renew a license or right to operate a motor vehicle, the court shall  
130 notify the registrar of motor vehicles of such finding. If the regis-  
131 trar receives notice from a clerk magistrate or assistant clerk of  
132 the district court, housing court or municipal court of the City of  
133 Boston that, after a hearing, or an opportunity therefor, a finding  
134 of failure to pay a small claims court judgment sufficient to non-  
135 renew a license or right to operate a motor vehicle has been made  
136 against a resident of the commonwealth or any person licensed to  
137 operate a motor vehicle under the provisions of this chapter, said  
138 registrar shall not issue, renew, or reinstate a license to operate for  
139 such person.

140 Said registrar may issue, renew, or reinstate a license to operate  
141 a motor vehicle if the clerk magistrate or assistant clerk of the dis-  
142 trict court, housing court, or municipal court of the city of Boston,  
143 provided to the registrar a written notice that the resident or other  
144 person is in compliance with any payment agreement, schedule or  
145 wage assignment order. Such notice may also be provided by the  
146 obligor if it is signed by said clerk. Notices between a clerk and a  
147 registrar under this subsection may be made in any form,  
148 including electronic transmission. Any obligor aggrieved by a  
149 decision of the registrar may seek judicial review in the court  
150 where the small claims judgment issued. Said hearing may be  
151 heard by a judge, clerk-magistrate, or assistant clerk-magistrate as  
152 determined by standards and procedures promulgated by the chief  
153 justice for administration and management. If the aggrieved  
154 obligor prevails, the court shall order the clerk to provide written  
155 notice to the registrar to issue, renew, or reinstate said obligor's  
156 license or right to operate a motor vehicle.



