

By Mrs. Pines of Newton, petition of Lois G. Pines 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	Number of Employees (con't)	Assessment Fee
61	(Size Categories)	per Concern
62	8-19	\$ 75
63	20-49	95
64	50-99	110
65	100-249	140
66	250-499	170
67	500-999	190
68	1000-1499	255
69	1500-2499	270
70	2500-4999	600
71	5000 or above	900

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

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

83 (5) The director shall establish consumer claims districts, not
84 exceeding forty, within the commonwealth which take into
85 account population, location of cities and towns and the
86 anticipated number of consumer claims to be filed in each
87 district, and may change such districts from time to time as
88 circumstances warrant. The director shall appoint one or more
89 consumer claims officers who shall not be subject to chapter
90 thirty-one and shall, with the approval of the secretary, fix their
91 salaries. Said officers shall be appointed to each one of the
92 districts and shall determine and hear consumer claims as
93 provided in this section. Such consumer claims officers need not
94 be attorneys, but must be familiar with consumer transactions
95 and possess an ability to resolve disputes between adverse parties.
96 The director shall establish criteria for meeting these
97 qualifications. Consumer claims officers may serve full or part

98 time, and may serve in more than one district, as the director
99 determines. They shall be provided with office space and clerical
100 help within the district they serve, and shall be reimbursed for
101 reasonable expenses incurred in the performance of their duties.

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

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

107 (b) times and places of operation convenient to the consumers
108 of each district;

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

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

113 (e) uniform fees for filing consumer claims, not exceeding
114 \$5.00.

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

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

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

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

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

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

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

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

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

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

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

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

168 (12) Any party to a consumer claim other than a claim
169 resolved under subsection (8) of this section may within thirty
170 days file a petition to review a final decision of the consumer
171 claims officers with the district court judge in the district in
172 which the claim was heard. The district court judge shall affirm,
173 reverse or otherwise modify such decision or remand the matter
174 for further hearing within thirty days after a petition for review

175 is filed. A consumer claim filed with a consumer claims officer is
176 not subject to removal to another court, but a claim filed
177 initially in another court may be removed by either party for
178 a hearing before a consumer claims officer. There shall be no
179 appeal from a decision of the district court judge, except on a
180 matter of law certified by the district court judge. A
181 determination by the consumer claims officer as to which no
182 review was taken, or which was affirmed on review, or on appeal
183 from such review, is enforceable through the proceedings of the
184 district court for enforcement of judgments.

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

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

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

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

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

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

209 (15) The fund from which claims are paid pursuant to
210 subsection (8) shall be derived exclusively from fees collected
211 pursuant to subsection (4), and from funds obtained through

212 reimbursement pursuant to subsection (13), and from any
213 increment in that fund by virtue of its investment by the
214 director. The director may apply portions of that fund to the
215 administrative costs of operating the system.

