

# HOUSE . . . . . No. 1304

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Lori A. Ehrlich***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to establish a Claimants' Trust Act.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/14/2013</i>

# HOUSE . . . . . No. 1304

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By Ms. Ehrlich of Marblehead, a petition (accompanied by bill, House, No. 1304) of Lori A. Ehrlich relative to claims for damages and establishing a claimants trust law. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2162 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act to establish a Claimants' Trust Act.

*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. Chapter 203, as appearing in the official edition, is hereby amended by  
2 inserting after chapter 203D the following chapter:-

3           Chapter 203E

4           SECTION 1 . This section shall be known as and may be cited as the Massachusetts  
5 Claimant's Trust Act. It is the express purpose of this chapter to allow for the use of the  
6 "Claimant's Trust" to encourage the early aggregation of Claims arising out of the same  
7 transaction, resolution of Claims on a pre-suit basis or through alternative dispute resolution, the  
8 efficient litigation and administration of such aggregated Claims, and the sound financial and tax  
9 planning and fiscal management of settlement funds for the Beneficiary's benefit.

10          SECTION 2. For the purposes of this chapter the following words shall have the  
11 following meanings unless the context otherwise requires:

12          "Administrative Trustee", an institution identified in the Trust Instrument who has  
13 executed the Trust Instrument and is approved by the Court to act as the "Administrative  
14 Trustee" to manage, invest, and report on the Trust's assets and income.

15          "Benefits Plan", a plan for the long term management, investment, and distribution of the  
16 Trust Corpus approved by the Court.

17 “Beneficiary”, a person identified as a “Beneficiary” in the Trust Instrument and who is a  
18 Claimant, or in the case of multiple “Beneficiaries” are Claimants whose claims arise out of the  
19 same transaction; and who has or have executed the Trust Instrument, complied with its terms,  
20 and assigned to the Trust any claims they may have arising out of the allegedly wrongful  
21 conduct. The Beneficiary is entitled to and has an interest in the Trust Corpus.

22 “Claim”, a claim or potential claim for damages for personal injury or property damage  
23 or the claim of an estate of a person or persons that has or may have a claim for wrongful death,  
24 arising out of the allegedly wrongful conduct of another or others.

25 “Claimant”, a person who has a claim or in the case of multiple Claimants, persons  
26 whose claims arise out of the same transaction.

27 “Claimant’s Trust”, a Trust approved by the Court under this chapter as having met the  
28 statutory requirements for such a Trust.

29 “Organizer”, a person or persons who is or are independent from any Transferor or  
30 Potentially Liable Party and who has or have executed the Trust Instrument as an “Organizer”  
31 and who is or are seeking Court approval of the “Claimant’s Trust”.

32 “Potentially Liable Party”, a person or persons who is or are liable or potentially liable to  
33 the Beneficiary for damages for personal injury or property damage resulting from the party’s  
34 allegedly wrongful conduct and who is or are identified in the Trust Instrument as a “Potentially  
35 Liable Party”.

36 “Transferor”, a Potentially Liable Party who has made a payment to the Trust in exchange  
37 for a release of liability.

38 “Trust”, the use of the word Trust in this Act refers to a “Claimant’s Trust” unless the context  
39 plainly means otherwise.

40 “Trustee”, a person or persons who is or are independent from any Transferor or  
41 Potentially Liable Party, any Organizer, or Beneficiary and who has or have executed the Trust  
42 Instrument as a “Trustee” and who is or are approved by the Court to act as the “Trustee” to  
43 perform the duties and undertake the responsibilities of a Trustee under the Trust Instrument and  
44 the requirements of this chapter.

45 “Trust Corpus”, the assets including any real or personal property; account; money; claim  
46 or interest assigned, granted, or belonging to the Trust; and any payments or thing of value made  
47 to the Trust by the Transferor in settlement of any claims; and the income arising therefrom, to  
48 which the Beneficiary is entitled and has an interest.

49 “Trust Instrument”, the written document containing the terms of the Trust submitted by  
50 the Organizer to be approved by the Court.

51           SECTION 3. The Probate Court in the County in which any Beneficiary resides or in the  
52 event that no Beneficiary is a Massachusetts resident then in the County in which a Potentially  
53 Liable Party resides or has a place of business and if not applicable then any County in which the  
54 intended Trustee or Administrative Trustee resides, shall have exclusive jurisdiction to receive  
55 an application for approval, approve, supervise, and hear and determine any issue under this  
56 chapter relating to the Claimant's Trust. In the event that more than one petition for approval of  
57 a Trust Instrument is filed by an Organizer on behalf of a Claimant or Claimants whose claims  
58 arise out of the same transaction, the Chief Judge of the Probate Court shall determine the  
59 County which shall have exclusive jurisdiction in the matter.

60           SECTION 4. The Organizer may petition the Probate Court for approval of a Trust  
61 Instrument by the filing of a Complaint and motion. The Complaint shall be accompanied by the  
62 Trust Instrument executed by the Organizer, intended Trustee, at least one intended Beneficiary,  
63 and, if sought, the intended Administrative Trustee. The application shall be heard and ruled on  
64 and the Trust approved and supervised on an expedited basis and in a manner intended to carry  
65 out the purposes of this chapter.

66  
67           SECTION 5. The Trust Instrument shall be in writing and contain the following:

- 68
- 69           (a)     The name of the Trust;
  - 70           (b)     The name, address, and signature of the Organizer;
  - 71           (c)     A description of the transaction giving rise to the Claim which is the subject  
72 matter of the Trust;
  - 73           (d)     The name, address, and signature of the Beneficiary or Beneficiaries identified on  
74 an attached "Beneficiary Schedule". In the event the Organizer intends to include as a  
75 Beneficiary an additional Claimant or Claimants not named on the Schedule whose claims arise  
76 out of the same transaction then the Instrument shall so indicate;

- 77           (e)     The Assignment of the Beneficiary's Claim(s) to the Trust;
- 78           (f)     The name, address, and signature of the Trustee;
- 79           (g)     If sought, the name, address, and signature of the Administrative Trustee

80           SECTION 6. The Trust Instrument may provide the following:

- 81           (a)     The Trust may be administered and the funds managed, invested, and distributed  
82 in accordance with a Benefits Plan approved by the Court for the benefit of the Beneficiary

83 during their lifetime or any part thereof and, if provided in the Instrument, the lifetime or any  
84 part thereof of their offspring;

85 (b) The Trust Instrument may allow, with the Court's approval, for a formal method  
86 whereby the Beneficiary may indicate, on an advisory basis, their views to the Trustee regarding  
87 certain specified major decisions affecting the Trust prior to the decision taking place while at  
88 the same time reserving for the Trustee ultimate decision making authority under the supervision  
89 of the Court.

90 SECTION 7. Unless the Trust Instrument, with the approval of the Court, provides for  
91 more limited powers, the Trustee shall have all of the powers normally attendant to such a  
92 position except the powers to manage, invest, and report on the Trust's assets and income that  
93 are the responsibility of the Administrative Trustee, if an Administrative Trustee is sought to be  
94 appointed or the Court determines is required. The Trustee shall, in addition, have the powers  
95 described in Section 8 regarding the settlement of claims with Potentially Liable Parties and the  
96 issuance of appropriate release of claims to Transferors.

97 SECTION 8. The Trustee, with the approval of the Court, shall have the power to enter  
98 into and execute, in the name of the Trust and on behalf of the Beneficiary or Beneficiaries, a  
99 settlement agreement with any Potentially Liable Party and to execute and provide to any  
100 Transferor any appropriate release of Claims. The Court in approving any proposed settlement  
101 and issuance of release of Claims shall have the authority and shall exercise its power to:

102 (a) Determine the settlement and release is in the best interests of the Beneficiary or  
103 Beneficiaries including any minor Beneficiary. In the case of a Beneficiary who is a minor, such  
104 finding shall be accorded the same respect as a finding made by a court approving a settlement  
105 respecting a minor under GL c. 231 §140C 1/2;

106 (b) Determine the settlement and release was entered into by the parties in good faith  
107 as that terms used GL c. 231B §4 regarding a release or covenant not to sue one or more tort  
108 feorsors.

109 SECTION 9. The Administrative Trustee in accordance with the terms of the Trust  
110 Instrument as approved by the Court shall have all of the powers and duties necessary to manage,  
111 invest, and report on the Trust's assets and income that are attendant to such responsibility as set  
112 forth in the Massachusetts Prudent Investor Act G.L. c. 203C including making use, where  
113 appropriate, of insurance products and investment vehicles such as are referred to in GL c. 231C  
114 regarding Structured Settlement Contracts. In addition, the Administrative Trustee shall be  
115 empowered to take all such actions as are necessary to ensure that the Trust is treated as a  
116 Designated or Qualified Settlement Fund under the Internal Revenue Code 26 USC §468B and  
117 the regulations promulgated pursuant thereto and codified at 26 CFR Section 1.468B-1. It is  
118 intended that the Administrative Trustee manage and invest the Trust Corpus to minimize tax  
119 consequences to the Trust and Beneficiary. In this regard, the Court shall allow the Trust

120 Instrument to be amended from time to time as is necessary to take into account changes in  
121 Federal or State tax laws and regulations that bear on such tax consequences.

122 SECTION 10. The Trustee may maintain an action in the name of the Trust on behalf of  
123 the Beneficiary or Beneficiaries regarding the Claim in any of the Courts of the Commonwealth  
124 that the Beneficiary could have maintained such an action.

125 SECTION 11. Any distribution of the Trust Corpus among multiple Beneficiaries  
126 whether in accordance with the terms of the Trust, a Benefits Plan, or otherwise shall be made in  
127 accordance with principles of fairness and equity. Unless the Trust Instrument, with the approval  
128 of the Court, otherwise provides pursuant to a Court approved Benefits Plan, the Trust shall, in  
129 accordance with a distribution plan approved by the Court, distribute the Trust Corpus upon the  
130 payment into the Trust by a Transferor.

131 SECTION 12. In the event any dispute arises among or between any of the parties to the  
132 Trust Instrument, the Trustee shall have the discretion to engage the services of a recognized  
133 mediator or mediation service to aid in the resolution of such dispute. In the event such  
134 mediation services are not successful in resolving the dispute, the Trustee may request the Court  
135 appoint a Special Master to make findings and propose resolutions to the Trustee for submission  
136 to the Court. In any event, the Court shall have ultimate authority to resolve any outstanding  
137 dispute regarding the administration of the Trust.