

# HOUSE . . . . . No. 1271

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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>1/14/2015</i>

# HOUSE . . . . . No. 1271

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By Ms. Ehrlich of Marblehead, a petition (accompanied by bill, House, No. 1271) 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. 1304 OF 2013-2014.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

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           MGL c. 203E

2           “Claimants’ Trust Act”

3           § 1 Citation And Purpose

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

§ 2 Definitions

For the purposes of this chapter the following words shall have the following meanings unless the context otherwise requires:

“Administrative Trustee”, a duly licensed trust institution identified in the Trust Instrument that has executed the Trust Instrument and is approved by the Court to act as the “Administrative Trustee” to manage, invest, and report on the Trust’s assets and income.

“Beneficiary”, a person identified as a “Beneficiary” in the Trust Instrument and who is a Claimant whose claims arise out of the transaction that is the subject of the Trust; and who is either a person who has: executed the Trust Instrument as a Beneficiary; or, is a named Plaintiff in or a member of a class that is or is sought to be approved in a filed state or federal action that is the subject of the Trust.

“Claim”, a claim or potential claim for damages for personal injury or property damage or the claim of an estate of a person or persons that has or may have a claim for wrongful death, arising out of the allegedly wrongful conduct of a potentially liable party.

“Claimant”, a person who has a claim arising out of a transaction involving the allegedly wrongful conduct of a potentially liable party.

“Claimants’ Trust”, a Trust for two or more Claimant Beneficiaries that is approved by the Court under this chapter as having met the statutory requirements for such a Trust.

“Organizer”, a person or persons who has or have executed the Trust Instrument as an “Organizer” and who is or are seeking Court approval of the “Claimants’ Trust”.

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

“Transferor”, a Potentially Liable Party who has transferred any money or interest in property to a Claimants’ Trust, the purpose of which is to extinguish liability to a Claimant.

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

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

“Trust Corpus”, the assets including any money or property belonging to the Trust; or transferred to the Trust by a Transferor; and the income arising therefrom.

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

### § 3 Probate Court Jurisdiction And Venue

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

#### 59           § 4 Petition For Approval

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

#### 65           § 5 Trust Instrument Requirements

66           The Trust Instrument shall be in writing and contain the following:

- 67           a.       The name of the Trust;
- 68           b.       The name, address, and signature of the Organizer;
- 69           c.       A description of the transaction giving rise to the Claim which is the subject  
70 matter of the Trust and the liability sought to be extinguished by the Trust;

d. Identification of the two or more Claimants who are the intended Beneficiaries on an attached “Beneficiary Schedule” either bearing the signature of the Beneficiaries or their legal representative or, if the intended Beneficiaries are Plaintiffs in, or members of a class approved or sought to be approved by, a state or federal action, then identification of the action and the Plaintiffs or class. In the event the Organizer intends to include as a Beneficiary an additional Claimant or Claimants not named on the Schedule whose claims arise out of the same transaction then the Instrument shall so indicate;

e. Identification of the Potentially Liable Party or Parties;

f. The name, address, and signature of the Trustee;

g. If sought, the name, address, and signature of the Administrative Trustee

#### § 6 Trustee’s Powers

Unless otherwise limited by the Trust as approved by the Court, the Trustee shall have all of the powers reasonable and necessary to carry out its fiduciary obligations to administer the Trust. In the event the appointment of an Administrative Trustee is not required by the terms of the Trust or the Court, than the Trustee’s powers and obligations shall also include those powers and obligations of an Administrative Trustee detailed in Section 8. The Trustee shall, in addition, have the powers described in Section 7 regarding the settlement of claims with Potentially Liable Parties and the issuance of appropriate release of claims to Transferors.

#### § 7 Approval Of Settlement And Release Of Claims

91           The Trustee, with the approval of the Court, shall have the power to enter into and  
92   execute, in the name of the Trust and on behalf of the Beneficiaries, a settlement agreement with  
93   any Potentially Liable Party and to execute and provide to any Transferor any appropriate release  
94   of Claims. The Court in approving any proposed settlement and issuance of release of Claims  
95   shall have the authority and shall exercise its power to:

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

100          b.       Determine the settlement and release was entered into by the parties in good faith  
101   as that term is used GL c. 231B §4 regarding a release or covenant not to sue one or more  
102   tortfeasors.

103  
104           § 8 Administrative Trustee's Powers

105           The Administrative Trustee unless otherwise limited by the terms of the Trust as  
106   approved by the Court shall have all of the powers reasonable and necessary to carry out its  
107   fiduciary obligations to manage, invest, and report on the Trust's assets and income. These  
108   obligations shall be consistent with the requirements of the Massachusetts Prudent Investor Act  
109   G.L. c. 203C. In addition, the Administrative Trustee shall be empowered to take all such  
110   actions as are reasonable and necessary to ensure that the Trust is treated as a Designated or  
111   Qualified Settlement Fund under the Internal Revenue Code 26 USC §468B and the regulations  
112   promulgated pursuant thereto and codified at 26 CFR Section 1.468B-1. The Court shall allow

the Trust Instrument to be amended from time to time as is necessary to take into account changes in Federal or State tax laws and regulations that bear on such designation or qualification.

#### § 9 Maintenance of Action In Name Of Trust

The Trustee may maintain an action in the name of the Trust on behalf of the Beneficiaries regarding the Claim in any of the Courts of the Commonwealth that the Beneficiaries could have maintained such an action in their name.

#### § 10 Distribution And Management Of Funds And Allocation Among Multiple

Beneficiaries

Any distribution of the Trust Corpus among multiple Beneficiaries shall be made in accordance with principles of fairness and equity. The Trust shall distribute the Trust Corpus to the Beneficiaries in accordance with the terms of the Trust as approved by the Court or a distribution plan subsequently approved by the Court.

#### § 11 Dispute Resolution/Use of Mediator or Court Appointed Master

In the event any dispute arises among or between any of the parties to the Trust Instrument, their counsel, or any person asserting an interest in the Trust Corpus or entitlement of a Beneficiary or Beneficiaries, the Trustee shall have the power to resolve the dispute by agreement of the parties or, if necessary, engage the services of a recognized mediator or mediation service to aid in the resolution of such dispute. In the event such mediation services are not successful in resolving the dispute, the Trustee may request the Court appoint a Special



134 Master to make findings and recommendation(s) to the Trustee regarding resolving the dispute  
135 which shall be submitted to the Court, with the Trustee's recommendation(s), for the Court's  
136 approval. In any event, the Court shall have ultimate authority to resolve any outstanding  
137 dispute regarding the administration of the Trust.