

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Spilka

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 passage of the accompanying bill:

An Act to promote consumer rights and enhance exemptions in the small claims courts.

PETITION OF:

NAME:

Ms. Spilka

DISTRICT/ADDRESS:

Second Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01008 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROMOTE CONSUMER RIGHTS AND ENHANCE EXEMPTIONS IN THE SMALL
CLAIMS COURTS.

*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. The General Laws of Massachusetts are hereby amended by adding the following
- 2 Chapter:
- 3 Chapter 235A:
- 4 Section 1. Definitions.
- 5 The terms used in this Chapter shall have the following meanings:
- 6 (a) “Creditor” , the persons or entities making a claim against the Debtor.
- 7 (b) “Claim”,:

- 8 (1) The right to payment, whether or not such right is reduced to judgment, liquidated,
9 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,
10 equitable, secured, or unsecured; or
- 11 (2) The right to an equitable remedy for breach of performance if such breach gives rise
12 to a right to payment, whether or not such right to an equitable remedy is reduced to
13 judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or
14 unsecured.
- 15 (c) “Debt”, any liability on a Claim that gives rise to a legally enforceable monetary obligation
16 or liability, whether arising out of contract, tort or otherwise, but shall not include any
17 liability for which the Debtor is fully insured for all damages.
- 18 (d) “Debtor”, any individual or individuals that owe a Debt, whether owed individually, or
19 jointly and/or severally with any other party that may have liability on such Debt.
- 20 (e) “Debtor’s Principal Residence”:
- 21 (1) A single- or multiple-family structure, including incidental property, together with the
22 Debtor’s interest in the land on which the structure is situated and the lands in which
23 immediately adjacent, appurtenant or abutting such lands, that is occupied or which is
24 intended to be occupied within the sixty (60) days following the purchase or
25 acquisition of the property as a primary residence by the Debtor; and
- 26 (2) An individual condominium or cooperative unit, a mobile or manufactured home,
27 boat or trailer, including the Debtor’s interest in the land on which such individual
28 condominium or cooperative unit, a mobile or manufactured home, boat or trailer is

29 situated together with, to the extent applicable, the lands owned by the Debtor
30 immediately adjacent or abutting such lands, that is occupied or which is intended to
31 be occupied within the sixty (60) days following the purchase or acquisition of the
32 property as a primary residence by the Debtor in which a possessory interest to such
33 property is held, either in whole or in any part, by the Debtor, regardless of whether
34 such possessory interest is in the nature of a freehold estate, a leasehold estate, life
35 tenancy, right of survivorship, fixed or contingent remainder interest, a whole or
36 fractional beneficial interest in any trust expressly reflected in a Schedule of
37 Beneficiaries recorded with the applicable County Registry of Deeds, or a license to
38 occupy said premises coupled with an interest therein.

39 (g) “Domestic Support Obligation”, A Debt, including any legal fees and expenses awarded
40 incident thereto and any interest that accrues on that Debt,

41 (1) owed to or recoverable by—

42 (A) a spouse, former spouse, or child of the debtor or such child’s parent, legal
43 guardian, or responsible relative; or

44 (B) a governmental unit;

45 (2) that is actually in the nature of alimony, maintenance, or support (including assistance
46 provided by a governmental unit) of such spouse, former spouse, or child of the
47 debtor or such child’s parent, without regard to whether such debt is expressly so
48 designated;

49 (3) established or subject to establishment by reason of applicable provisions of—

50 (A) a separation agreement, divorce decree, or property settlement agreement or
51 similar agreement; or

52 (B) an order of a court of record; and

53 (4) has not been assigned to a non-governmental entity, unless that obligation is assigned
54 voluntarily and in writing by the spouse, former spouse, child of the Debtor, or such
55 child's parent, legal guardian, or responsible relative for the purpose of collecting the
56 Debt.

57 (h) "Exempt" or "Exemption", The Debtor's right to protect his or her Equity in property to the
58 extent provided under this Chapter from subjection to a judicial lien, legal process, or
59 proceeding to collect a debt and, to the extent made applicable by this Chapter, a non-
60 possessory non-purchase-money security interest.

61 (i) "Entity", A person, an estate, a trust, or governmental unit.

62 (j) "Equity", That sum in dollars that represents the fair market value of the Debtor's interest in
63 any property claimed as exempt in excess of the amounts due under the dollar sum of all
64 Security Interests and all Liens encumbering such property but only to the extent that such
65 Liens are not subject to avoidance under this Chapter or any other provision of applicable
66 state or federal law.

67 (k) "Judicial Lien", Any Lien obtained by judgment, levy, sequestration, or other legal or
68 equitable process or proceeding.

69 (l) “Lien”, Any charge against or interest in property taken in order to secure payment of a debt
70 or performance of any legally enforceable obligation.

71 (m) “Primary Proceeds”, The money, negotiable instruments, deposits or other property
72 immediately realized from the liquidation, sale, hypothecation, encumbering of property of
73 the Debtor.

74 (n) “Secondary Proceeds”, The money, negotiable instruments, deposits or other property
75 immediately realized from Primary Proceeds.

76 (o) “Security Agreement”, Any agreement that creates or provides for a Security Interest with
77 respect to a Claim of a Creditor.

78 (p) “Security Interest”, Any Lien that is or was created or provided for by an agreement.

79 (q) “Statutory Lien”, A Lien arising by force of statute under specified circumstances or
80 conditions, but does not include a Security Interest or Judicial Lien.

81 Section 2. Application of Chapter.

82 (a) The residents of the Commonwealth of Massachusetts are entitled to the exemptions
83 provided by this Chapter. Nonresidents are entitled to the exemptions provided by the law
84 of the jurisdiction of their resident state.

85 (b) For the purposes of this section, the term “resident” shall mean an individual who has
86 both manifested his intent to maintain his primary domicile in the Commonwealth of
87 Massachusetts and has been physically present in the Commonwealth of Massachusetts
88 for no less than the last sixty calendar (60) days.

89 Section 3. Homestead Exemption.

90 (a) Except as provided under subsection (c) below, a Debtor's Principal Residence and the
91 Equity therein (the "Homestead") shall be exempt from all laws of conveyance, descent,
92 devise, attachment, levy on execution and sale for payment of debts or legacies, whether or
93 not the Debtor has previously filed a Declaration of Homestead with any County Registry of
94 Deeds, to the extent that the aggregate sum of the Debtor's equity in the Homestead and any
95 and all equity in the Homestead held by co-owners of the Debtor that are family members of
96 the Debtor, does not exceed the sum of \$500,000.00.

97 (b) The homestead exemption set forth in subsection (a) and the Debtor's right to claim such
98 protections may be terminated with respect to any Claim only by the execution of an express
99 written waiver by the Debtor, that has been recorded with the Registry of Deeds, specifically
100 identifying the Claim and Creditor against whom the homestead exemption is no longer
101 applicable; however, the Debtor may not waive any protections held by any other person or
102 persons with any legally cognizable interest in such Homestead on record with the applicable
103 County Registry of Deeds.

104 (c) The Homestead exemption provided for under subsection (a) shall not apply with respect to:

105 (1) Any Security Interest created by a written Security Agreement executed by the
106 Debtor;

107 (2) Any Lien for state, federal or local taxes;

108 (3) Any Lien arising from the enforcement by any Domestic Support Obligation.

109 Section 4. No Incarceration or Threat of Incarceration in any Mesne or Supplementary Process

110 (a) Notwithstanding any other provision of the Law or any other Rule of Court providing
111 otherwise, absent direct contempt such as the failure to appear before or obey an
112 order of such court, no Debtor shall be subject to physical arrest or incarceration on
113 any Mesne or Supplementary Process issued under Chapter 224, nor shall any court
114 have the jurisdiction to incarcerate any Debtor on account of any judgment,
115 execution, or order issued as part of any Small Claims Proceeding under Chapter 218,
116 Section 21, et seq. A Debtor's failure to pay a Debt shall not constitute contempt of
117 court.

118 (i) No Lawyer, Sheriff, Officer of the Court, Clerk of Court, or Judge may
119 intimate to a Debtor, either directly or indirectly, that he may be arrested or
120 incarcerated as a result of any failure to pay any Debt arising from any
121 judgment, execution, or order issued as part of any Mesne or Supplementary
122 Process issued under Chapter 224 or any Small Claims Proceeding under
123 Chapter 218, Section 21, et seq. Additionally, the violation of the provisions
124 of this section shall constitute a violation of the Massachusetts Consumer
125 Protection Act, Mass. Gen. Laws Ch. 93A, Section 2 as to any party other
126 than a judge, magistrate or other officiating party.

127 Section 5. Avoidance of the Fixing of Judicial Liens and Certain Security Interests; Requirement
128 for Obtaining Pre- and Post-Judgment Security in Civil Actions

129 (a) Notwithstanding any waiver of exemptions, the Debtor may avoid the fixing of a lien
130 on an interest of the Debtor in property to the extent that such lien impairs an

131 exemption to which the Debtor would have been entitled under section 3 or 4 of this
132 Chapter, if such lien is:

133 (1) A judicial lien, other than a judicial lien that secures a debt for a Domestic
134 Support Obligation; or

135 (2) A non-possessory, non-purchase money security interest in household furnishings,
136 household goods, wearing apparel, and home or gardening appliances, books,
137 musical instruments or any pieces of art, any jewelry held primarily for the
138 personal use of the Debtor as an engagement or wedding ring that was acquired
139 prior to or at the time of the Debtor's marriage, any jewelry held primarily for the
140 personal use of the Debtor other than as an engagement or wedding ring, any
141 implements, professional books, or other personal property that is used as a tool
142 of the Debtor's trade or the trade of the spouse or any dependent of the Debtor
143 and any materials and stock necessary for carrying on such trade.

144 (b) For the purposes of this section, subject to subsection (c) below, a lien or liens shall
145 be deemed to impair an exemption to the extent that the sum of (1) the lien or liens
146 the fixing of which is sought to be avoided, (2) the aggregate of all other liens on the
147 property in question and (3) the amount of the exemption that the Debtor could claim
148 in the absence of any lien on the property exceeds the fair market value of the
149 property. In the case of a property subject to more than one lien that is subject to
150 avoidance, a lien that has already been avoided shall not be considered in making the
151 calculation under this subsection.

152 (c) With respect to any lien the fixing of which is sought to be avoided under subsection
153 (b), to the extent that there exists any remaining equity in the property subject to such
154 lien, after the application of the applicable exemption, the fixing of the lien in
155 question may only be avoided to the extent of such remaining non-exempt equity.

156 (d) The Debtor may initiate the avoidance of the fixing of a lien as an original action in
157 the Superior Court or the District Court in the judicial district which the Debtor
158 resides in the manner of an action for Declaratory Judgment, and such Superior Court
159 or the District Court shall have subject-matter jurisdiction to entertain such original
160 action. Alternatively, the Debtor may bring such avoidance proceeding by way of
161 motion, after notice and a hearing, in any action brought by such Creditor who has
162 obtained a lien subject to avoidance herein in which the Debtor has been named a
163 defendant, defendant-in-counterclaim, defendant-in-crossclaim, or third-party
164 defendant.

165 (e) In any civil action, a party that seeks to impose a judicial lien as security for the
166 payment of a judgment before such judgment is received, including any attachment,
167 attachment on trustee process, or any other legal or equitable remedy that may be
168 considered to create a lien at law or in equity, shall, in addition to all other
169 requirements provided for by other applicable law, provide proof demonstrating by a
170 preponderance of evidence that the imposition of such lien requested as security will
171 not be deemed to impair any claim of exemption to which the Debtor might be
172 entitled under section (4), above. To the extent that, after such lien is allowed by the
173 court, it is determined that the fixing of the lien did in fact impair a claim of
174 exemption under subsection (b), above, at the time that the request was made, not

175 only will the lien be avoided, but the underlying claim or claims sought to be secured
176 by such lien shall be dismissed by the court.

177 § 6 Continuation of Exempt Status in Proceeds of Property

178 (a) Any real or personal property protected by the Homestead Exemption under Section 3
179 of Chapter 235A may be converted into Primary Proceeds or Secondary Proceeds
180 without the loss of any protections provided under Section 3 of Chapter 235A to the
181 extent of that the amount realized as Primary Proceeds or Secondary Proceeds does
182 not, in aggregate, exceed the amount of the Homestead Exemption under Section 3 of
183 Chapter 235A, however, any interest or dividends arising from such Primary
184 Proceeds or Secondary Proceeds, shall only be exempt to the extent provided under
185 Section 34 of Chapter 235.

186 (b) Any property that is subject to a claim of exemption under Ch. 235 Section 34 may be
187 converted into Primary Proceeds without the loss of any protections provided under
188 this Chapter to the extent of that the amount realized as primary proceeds does not
189 exceed the amount of the exemption set forth under Ch. 235 Section 34.

190 (c) Any Primary Proceeds arising from exempt property that is subject to a claim of
191 exemption under Ch. 235 Section 34 may be converted into Secondary Proceeds
192 without the loss of any protections provided under this Chapter to the extent of that
193 the amount realized as primary proceeds does not exceed the amount of the
194 exemption set forth under Ch. 235 Section 34, above.

195 (d) To the extent that Secondary Proceeds are used to purchase or are converted into any
196 other real or personal property, such property purchased with or converted from such
197 Secondary Proceeds, shall only be exempt to the extent that such property is or could
198 be exempt under Ch. 235 Section 34, above.

199 Section 7. Notification of Exemption Rights in Any Action Involving Civil Process

200 (a) In addition to any pleading, paper, summons or writ utilized by the trial courts of the
201 Commonwealth of Massachusetts in order to initiate any action involving civil
202 process against one or more individual Debtors on any Debt, at the time of the service
203 of any such civil process, the court or the plaintiff as the case may be shall serve upon
204 such individual defendant a notice explaining the defendant's exemption rights as
205 provided in sections 2 through 6, inclusive, as well as the defendant's rights under
206 Ch. 235 Section 34.

207 (b) The Administrative Office of each Department of the Trial Court shall promulgate the
208 form of notice required by subsection (a) by certified mail.

209 (c) The notification requirements of subsection (a) shall apply to all original actions,
210 counterclaims, third-party actions, cross-claims, including all matters involving any
211 Mesne or Supplementary Process issued under Gen. Laws Ch. 224 in which one or
212 more individuals is or may be a Debtor.

213 Section 8. Conflict with Prior Inconsistent Law

214 To the extent that any other provisions of prior statutory or common law directly conflict
215 with the provisions of this Act, the provisions of this act shall control.

216 SECTION 2: Chapter 235 Section 34 of the General Laws, as appearing in 2006 official edition,
217 is hereby amended as follows:

218 Paragraph 1 beginning with “The following property of the debtor shall be...” through paragraph
219 17 ending with “...not exceeding seven hundred dollars in value” are hereby deleted. In their
220 place shall read:

221 Each Debtor’s equity in the following items of personal property shall be exempt from all
222 laws of conveyance, descent, devise, attachment, levy on execution and sale for payment of
223 debts or legacies:

224 (a) The Debtor’s equity held in one motor vehicle, not to exceed \$6,000 in value;

225 (b) The Debtor’s equity and interests in all household furnishings, household goods,
226 wearing apparel, and home or gardening appliances, without regard to such property’s
227 value, other than the specific categories of such types of personal property otherwise
228 provided for under this section;

229 (c) The Debtor’s combined equity in any books, musical instruments, jewelry or pieces
230 of art not to exceed \$6,000 in total value;

231 (d) The Debtor’s equity and interests in all crops grown by the Debtor as part of any
232 commercial farming operations or enterprise regularly conducted by the Debtor,
233 whether or not such crops have been harvested, in an amount not to exceed \$30,000
234 in value;

235 (e) The Debtor's equity in any vessel, whether registered with the Commonwealth of
236 Massachusetts or documented with the United States Coast Guard, used as part of any
237 commercial fishing operation or enterprise regularly conducted by the Debtor, in an
238 amount not to exceed \$30,000

239 (f) The Debtor's equity and interest in cattle, sheep, swine, or other animals kept or
240 housed by the Debtor as part of any commercial farming operations or enterprise
241 regularly conducted by the Debtor, in any amount not to exceed \$30,000 in value and
242 any feed for such animals kept by the Debtor in an amount not to exceed \$10,000 in
243 value;

244 (g) The Debtor's equity in or right to receive payment or property for maintenance or
245 child support;

246 (h) The Debtor's equity in any jewelry held primarily for the personal use of the Debtor
247 as an engagement or wedding ring that was acquired prior to or at the time of the
248 Debtor's marriage;

249 (i) The Debtor's equity in any implements, professional books, or other personal
250 property that is used as a tool of the Debtor's trade or the trade of the spouse or any
251 dependent of the Debtor and any materials and stock necessary for carrying on such
252 trade, in an amount not to exceed \$15,000;

253 (j) The Debtor's equity in one or more deposit, brokerage or mutual fund accounts in any
254 insured depository institution, stock brokerage or mutual fund, notwithstanding any
255 claim of set-off or recoupment made by any Creditor on any Claim arising by any

256 agreement created or established at the time or as part of the creation of such account
257 with such insured depository institution or brokerage, not to exceed \$5,000;

258 (k) The Debtor's equity in any annuity or pension in a Credit Union Retirement
259 Association under Chapter 171;

260 (l) The Debtor's equity in any Group Annuity Contract under Chapter 175;

261 (m) The Debtor's equity in any interest in annuity, pension or retirement benefit
262 provided for under Chapter 32;

263 (n) The Debtor's equity in any form of retirement funds to the extent that those funds or
264 account is exempt from taxation under sections 401, 403, 408, 408A, 414, 457, or
265 501(a) of the Internal Revenue Code of 1986;

266 (o) The Debtor's equity in any annuity, pension, Keough, profit sharing plan or other
267 retirement plan established and subject to Title I of the Employee Retirement
268 Income Security Act of 1974, including but not limited to any retirement or savings
269 plans described in Sections 401(a), 403, and 457 of the Internal Revenue Code, and
270 any annuity or similar contract purchased with the proceeds of such annuity,
271 pension, profit sharing plan or other retirement plan;

272 (p) The Debtor's equity in any lump-sum payment or stream of payments made as an
273 award or benefit for Workmens' Compensation under Chapter 152;

- 274 (q) The Debtor's equity in and right to receive payments as public assistance, a social
275 security benefit, an unemployment compensation benefit, a veteran's benefit, a
276 disability, illness or unemployment benefit;
- 277 (r) The Debtor's equity in, right to receive or other property that is traceable as primary
278 or secondary proceeds to:
- 279 i. An award under a crime victim's reparation law;
 - 280 ii. An award from the Massachusetts Client Security Board;
 - 281 iii. A payment or series of payments on account of the wrongful death of an
282 individual of whom the Debtor was a dependent;
 - 283 iv. A payment or series of payments under a life insurance contract that
284 insured the life of an individual of whom the Debtor was a dependent;
 - 285 v. A payment or series of payments on account of personal injuries, either
286 physical, mental or both, suffered by the Debtor, a family member of the
287 Debtor, or a dependent of the Debtor in compensation for loss of future
288 earnings, the cost of future medical treatment or therapy, or for actual
289 pecuniary loss other than a claim for loss or consortium, society, pain and
290 suffering or other element of damages in sounding in tort;
 - 291 vi. A payment or series of payments on account of personal injuries, either
292 physical, mental or both, suffered by the Debtor, a family member of the
293 Debtor, or a dependent of the Debtor in compensation for a claim for loss or

294 consortium, society, pain and suffering or other element of damages in
295 sounding in tort, not to exceed \$100,000;

296 (s) The Debtor's equity in any accrued dividend or interest under, or any loan value of
297 any unmatured life insurance contract owned by the Debtor under which the insured
298 is the Debtor, a family member of the Debtor or a dependent of the Debtor, not to
299 exceed \$15,000;

300 (t) The Debtor's equity in and right to receive payments under a policy of insurance on
301 account of the Debtor's mental or physical disability;

302 (u) The Debtor's equity in and right to receive payments as a benefit under a policy of
303 insurance on the life of the Debtor, a family member of the Debtor, or a dependent
304 of the Debtor; and

305 (v) To the extent that a Debtor files a bankruptcy case under Title 11 of the United
306 States Code, the Debtor may exempt any additional personal property interest to an
307 aggregate maximum of \$20,000 per each individual Debtor

308 SECTION 3: Section 22 of Chapter 218 of the General Laws, as appearing in 2006 official
309 edition, is hereby amended as follows:

310 In Paragraph 1, sentence 2 beginning "The procedure shall include notice ..." the words
311 "first class" are amended to read "certified."

312 Between Paragraph 1 ending with "...writs of attachment of property" and Paragraph 2
313 beginning with "At the commencement. . ." the following paragraph shall be inserted:

314 Notwithstanding any other provision of the Law or any other Rule of Court providing otherwise,
315 the interests of any Debtor in any tangible or intangible form of property shall not be subject to

316 any seizure, attachment, levy on execution and sale for payment of debts or legacies, or any other
317 type of judicial lien, with respect to any judgment, execution, or order issued as part of any Small
318 Claims Proceeding under Chapter 218, Section 21, et seq., for any combined debt of less than
319 \$1,300 owed to a single creditor.