

**SENATE . . . . . No. 1802**

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
**In the Year Two Thousand 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  
2 following Chapter:

3 Chapter 235A:

4 Section 1. Definitions.

5 The terms used in this Chapter shall have the following meanings:

6 “Creditor” , the persons or entities making a claim against the Debtor.

7 “Claim”,:

8 The right to payment, whether or not such right is reduced to judgment, liquidated,  
9 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,  
10 secured, or unsecured; or

11           The right to an equitable remedy for breach of performance if such breach gives rise to a  
12 right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed,  
13 contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

14           “Debt”, any liability on a Claim that gives rise to a legally enforceable monetary  
15 obligation or liability, whether arising out of contract, tort or otherwise, but shall not include any  
16 liability for which the Debtor is fully insured for all damages.

17           “Debtor”, any individual or individuals that owe a Debt, whether owed individually, or  
18 jointly and/or severally with any other party that may have liability on such Debt.

19           “Debtor’s Principal Residence”:

20           A single- or multiple-family structure, including incidental property, together with the  
21 Debtor’s interest in the land on which the structure is situated and the lands in which  
22 immediately adjacent, appurtenant or abutting such lands, that is occupied or which is intended  
23 to be occupied within the sixty (60) days following the purchase or acquisition of the property as  
24 a primary residence by the Debtor; and

25           An individual condominium or cooperative unit, a mobile or manufactured home, boat or  
26 trailer, including the Debtor’s interest in the land on which such individual condominium or  
27 cooperative unit, a mobile or manufactured home, boat or trailer is situated together with, to the  
28 extent applicable, the lands owned by the Debtor immediately adjacent or abutting such lands,  
29 that is occupied or which is intended to be occupied within the sixty (60) days following the  
30 purchase or acquisition of the property as a primary residence by the Debtor in which a  
31 possessory interest to such property is held, either in whole or in any part, by the Debtor,  
32 regardless of whether such possessory interest is in the nature of a freehold estate, a leasehold

33 estate, life tenancy, right of survivorship, fixed or contingent remainder interest, a whole or  
34 fractional beneficial interest in any trust expressly reflected in a Schedule of Beneficiaries  
35 recorded with the applicable County Registry of Deeds, or a license to occupy said premises  
36 coupled with an interest therein.

37 “Domestic Support Obligation”, A Debt, including any legal fees and expenses awarded  
38 incident thereto and any interest that accrues on that Debt,

39 owed to or recoverable by—

40 a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or  
41 responsible relative; or

42 a governmental unit;

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

46 established or subject to establishment by reason of applicable provisions of—

47 a separation agreement, divorce decree, or property settlement agreement or similar  
48 agreement; or

49 an order of a court of record; and

50 has not been assigned to a non-governmental entity, unless that obligation is assigned  
51 voluntarily and in writing by the spouse, former spouse, child of the Debtor, or such child’s  
52 parent, legal guardian, or responsible relative for the purpose of collecting the Debt.

53           “Exempt” or “Exemption”, The Debtor’s right to protect his or her Equity in property to  
54 the extent provided under this Chapter from subjection to a judicial lien, legal process, or  
55 proceeding to collect a debt and, to the extent made applicable by this Chapter, a non-possessory  
56 non-purchase-money security interest.

57           “Entity”, A person, an estate, a trust, or governmental unit.

58           “Equity”, That sum in dollars that represents the fair market value of the Debtor’s interest  
59 in any property claimed as exempt in excess of the amounts due under the dollar sum of all  
60 Security Interests and all Liens encumbering such property but only to the extent that such Liens  
61 are not subject to avoidance under this Chapter or any other provision of applicable state or  
62 federal law.

63           “Judicial Lien”, Any Lien obtained by judgment, levy, sequestration, or other legal or  
64 equitable process or proceeding.

65           “Lien”, Any charge against or interest in property taken in order to secure payment of a  
66 debt or performance of any legally enforceable obligation.

67           “Primary Proceeds”, The money, negotiable instruments, deposits or other property  
68 immediately realized from the liquidation, sale, hypothecation, encumbering of property of the  
69 Debtor.

70           “Secondary Proceeds”, The money, negotiable instruments, deposits or other property  
71 immediately realized from Primary Proceeds.

72           “Security Agreement”, Any agreement that creates or provides for a Security Interest  
73 with respect to a Claim of a Creditor.

74 “Security Interest”, Any Lien that is or was created or provided for by an agreement.

75 “Statutory Lien”, A Lien arising by force of statute under specified circumstances or  
76 conditions, but does not include a Security Interest or Judicial Lien.

77 Section 2. Application of Chapter.

78 The residents of the Commonwealth of Massachusetts are entitled to the exemptions  
79 provided by this Chapter. Nonresidents are entitled to the exemptions provided by the law of the  
80 jurisdiction of their resident state.

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

85 Section 3. Homestead Exemption.

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

93 The homestead exemption set forth in subsection (a) and the Debtor’s right to claim such  
94 protections may be terminated with respect to any Claim only by the execution of an express

95 written waiver by the Debtor, that has been recorded with the Registry of Deeds, specifically  
96 identifying the Claim and Creditor against whom the homestead exemption is no longer  
97 applicable; however, the Debtor may not waive any protections held by any other person or  
98 persons with any legally cognizable interest in such Homestead on record with the applicable  
99 County Registry of Deeds.

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

102 Any Security Interest created by a written Security Agreement executed by the Debtor;

103 Any Lien for state, federal or local taxes;

104 Any Lien arising from the enforcement by any Domestic Support Obligation.

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

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

114 No Lawyer, Sheriff, Officer of the Court, Clerk of Court, or Judge may intimate to a  
115 Debtor, either directly or indirectly, that he may be arrested or incarcerated as a result of any

116 failure to pay any Debt arising from any judgment, execution, or order issued as part of any  
117 Mesne or Supplementary Process issued under Chapter 224 or any Small Claims Proceeding  
118 under Chapter 218, Section 21, et seq. Additionally, the violation of the provisions of this section  
119 shall constitute a violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch.  
120 93A, Section 2 as to any party other than a judge, magistrate or other officiating party.

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

123 Notwithstanding any waiver of exemptions, the Debtor may avoid the fixing of a lien on  
124 an interest of the Debtor in property to the extent that such lien impairs an exemption to which  
125 the Debtor would have been entitled under section 3 or 4 of this Chapter, if such lien is:

126 A judicial lien, other than a judicial lien that secures a debt for a Domestic Support  
127 Obligation; or

128 A non-possessory, non-purchase money security interest in household furnishings,  
129 household goods, wearing apparel, and home or gardening appliances, books, musical  
130 instruments or any pieces of art, any jewelry held primarily for the personal use of the Debtor as  
131 an engagement or wedding ring that was acquired prior to or at the time of the Debtor's  
132 marriage, any jewelry held primarily for the personal use of the Debtor other than as an  
133 engagement or wedding ring, any implements, professional books, or other personal property  
134 that is used as a tool of the Debtor's trade or the trade of the spouse or any dependent of the  
135 Debtor and any materials and stock necessary for carrying on such trade.

136 For the purposes of this section, subject to subsection (c) below, a lien or liens shall be  
137 deemed to impair an exemption to the extent that the sum of (1) the lien or liens the fixing of

138 which is sought to be avoided, (2) the aggregate of all other liens on the property in question and  
139 (3) the amount of the exemption that the Debtor could claim in the absence of any lien on the  
140 property exceeds the fair market value of the property. In the case of a property subject to more  
141 than one lien that is subject to avoidance, a lien that has already been avoided shall not be  
142 considered in making the calculation under this subsection.

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

147 The Debtor may initiate the avoidance of the fixing of a lien as an original action in the  
148 Superior Court or the District Court in the judicial district which the Debtor resides in the  
149 manner of an action for Declaratory Judgment, and such Superior Court or the District Court  
150 shall have subject-matter jurisdiction to entertain such original action. Alternatively, the Debtor  
151 may bring such avoidance proceeding by way of motion, after notice and a hearing, in any action  
152 brought by such Creditor who has obtained a lien subject to avoidance herein in which the  
153 Debtor has been named a defendant, defendant-in-counterclaim, defendant-in-crossclaim, or  
154 third-party defendant.

155 In any civil action, a party that seeks to impose a judicial lien as security for the payment  
156 of a judgment before such judgment is received, including any attachment, attachment on trustee  
157 process, or any other legal or equitable remedy that may be considered to create a lien at law or  
158 in equity, shall, in addition to all other requirements provided for by other applicable law,  
159 provide proof demonstrating by a preponderance of evidence that the imposition of such lien



160 requested as security will not be deemed to impair any claim of exemption to which the Debtor  
161 might be entitled under section (4), above. To the extent that, after such lien is allowed by the  
162 court, it is determined that the fixing of the lien did in fact impair a claim of exemption under  
163 subsection (b), above, at the time that the request was made, not only will the lien be avoided,  
164 but the underlying claim or claims sought to be secured by such lien shall be dismissed by the  
165 court.

166 § 6 Continuation of Exempt Status in Proceeds of Property

167 Any real or personal property protected by the Homestead Exemption under Section 3 of  
168 Chapter 235A may be converted into Primary Proceeds or Secondary Proceeds without the loss  
169 of any protections provided under Section 3 of Chapter 235A to the extent of that the amount  
170 realized as Primary Proceeds or Secondary Proceeds does not, in aggregate, exceed the amount  
171 of the Homestead Exemption under Section 3 of Chapter 235A, however, any interest or  
172 dividends arising from such Primary Proceeds or Secondary Proceeds, shall only be exempt to  
173 the extent provided under Section 34 of Chapter 235.

174 Any property that is subject to a claim of exemption under Ch. 235 Section 34 may be  
175 converted into Primary Proceeds without the loss of any protections provided under this Chapter  
176 to the extent of that the amount realized as primary proceeds does not exceed the amount of the  
177 exemption set forth under Ch. 235 Section 34.

178 Any Primary Proceeds arising from exempt property that is subject to a claim of  
179 exemption under Ch. 235 Section 34 may be converted into Secondary Proceeds without the loss  
180 of any protections provided under this Chapter to the extent of that the amount realized as

181 primary proceeds does not exceed the amount of the exemption set forth under Ch. 235 Section  
182 34, above.

183 To the extent that Secondary Proceeds are used to purchase or are converted into any  
184 other real or personal property, such property purchased with or converted from such Secondary  
185 Proceeds, shall only be exempt to the extent that such property is or could be exempt under Ch.  
186 235 Section 34, above.

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

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

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

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

#### 200 Section 8. Conflict with Prior Inconsistent Law

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

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

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

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

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

212 The Debtor’s equity and interests in all household furnishings, household goods, wearing  
213 apparel, and home or gardening appliances, without regard to such property’s value, other than  
214 the specific categories of such types of personal property otherwise provided for under this  
215 section;

216 The Debtor’s combined equity in any books, musical instruments, jewelry or pieces of art  
217 not to exceed \$6,000 in total value;

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

221           The Debtor's equity in any vessel, whether registered with the Commonwealth of  
222 Massachusetts or documented with the United States Coast Guard, used as part of any  
223 commercial fishing operation or enterprise regularly conducted by the Debtor, in an amount not  
224 to exceed \$30,000

225           The Debtor's equity and interest in cattle, sheep, swine, or other animals kept or housed  
226 by the Debtor as part of any commercial farming operations or enterprise regularly conducted by  
227 the Debtor, in any amount not to exceed \$30,000 in value and any feed for such animals kept by  
228 the Debtor in an amount not to exceed \$10,000 in value;

229           The Debtor's equity in or right to receive payment or property for maintenance or child  
230 support;

231           The Debtor's equity in any jewelry held primarily for the personal use of the Debtor as an  
232 engagement or wedding ring that was acquired prior to or at the time of the Debtor's marriage;

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

237           The Debtor's equity in one or more deposit, brokerage or mutual fund accounts in any  
238 insured depository institution, stock brokerage or mutual fund, notwithstanding any claim of set-  
239 off or recoupment made by any Creditor on any Claim arising by any agreement created or  
240 established at the time or as part of the creation of such account with such insured depository  
241 institution or brokerage, not to exceed \$5,000;

242           The Debtor's equity in any annuity or pension in a Credit Union Retirement Association  
243 under Chapter 171;

244           The Debtor's equity in any Group Annuity Contract under Chapter 175;

245           The Debtor's equity in any interest in annuity, pension or retirement benefit provided for  
246 under Chapter 32;

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

250           The Debtor's equity in any annuity, pension, Keough, profit sharing plan or other  
251 retirement plan established and subject to Title I of the Employee Retirement Income Security  
252 Act of 1974, including but not limited to any retirement or savings plans described in Sections  
253 401(a), 403, and 457 of the Internal Revenue Code, and any annuity or similar contract  
254 purchased with the proceeds of such annuity, pension, profit sharing plan or other retirement  
255 plan;

256           The Debtor's equity in any lump-sum payment or stream of payments made as an award  
257 or benefit for Workmens' Compensation under Chapter 152;

258           The Debtor's equity in and right to receive payments as public assistance, a social  
259 security benefit, an unemployment compensation benefit, a veteran's benefit, a disability, illness  
260 or unemployment benefit;

261           The Debtor's equity in, right to receive or other property that is traceable as primary or  
262 secondary proceeds to:

- 263 i. An award under a crime victim’s reparation law;
- 264 ii. An award from the Massachusetts Client Security Board;
- 265 iii. A payment or series of payments on account of the wrongful death of an individual of  
266 whom the Debtor was a dependent;
- 267 iv. A payment or series of payments under a life insurance contract that insured the life of  
268 an individual of whom the Debtor was a dependent;
- 269 v. A payment or series of payments on account of personal injuries, either physical,  
270 mental or both, suffered by the Debtor, a family member of the Debtor, or a dependent of the  
271 Debtor in compensation for loss of future earnings, the cost of future medical treatment or  
272 therapy, or for actual pecuniary loss other than a claim for loss or consortium, society, pain and  
273 suffering or other element of damages in sounding in tort;
- 274 vi. A payment or series of payments on account of personal injuries, either physical,  
275 mental or both, suffered by the Debtor, a family member of the Debtor, or a dependent of the  
276 Debtor in compensation for a claim for loss or consortium, society, pain and suffering or other  
277 element of damages in sounding in tort, not to exceed \$100,000;
- 278 The Debtor’s equity in any accrued dividend or interest under, or any loan value of any  
279 unmatured life insurance contract owned by the Debtor under which the insured is the Debtor, a  
280 family member of the Debtor or a dependent of the Debtor, not to exceed \$15,000;
- 281 The Debtor’s equity in and right to receive payments under a policy of insurance on  
282 account of the Debtor’s mental or physical disability;

283           The Debtor’s equity in and right to receive payments as a benefit under a policy of  
284 insurance on the life of the Debtor, a family member of the Debtor, or a dependent of the Debtor;  
285 and

286           To the extent that a Debtor files a bankruptcy case under Title 11 of the United States  
287 Code, the Debtor may exempt any additional personal property interest to an aggregate  
288 maximum of \$20,000 per each individual Debtor

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

291           In Paragraph 1, sentence 2 beginning “The procedure shall include notice ...” the words  
292 “first class” are amended to read “certified.”

293           Between Paragraph 1 ending with “. . .writs of attachment of property” and Paragraph 2  
294 beginning with “At the commencement. . .” the following paragraph shall be inserted:

295           Notwithstanding any other provision of the Law or any other Rule of Court providing  
296 otherwise, the interests of any Debtor in any tangible or intangible form of property shall not be  
297 subject to any seizure, attachment, levy on execution and sale for payment of debts or legacies,  
298 or any other type of judicial lien, with respect to any judgment, execution, or order issued as part  
299 of any Small Claims Proceeding under Chapter 218, Section 21, et seq., for any combined debt  
300 of less than \$1,300 owed to a single creditor.