

SENATE No. 862

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. 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 adoption of the accompanying bill:

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

PETITION OF:

NAME:

Karen E. Spilka

DISTRICT/ADDRESS:

SENATE No. 862

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 862) of Karen E. Spilka for legislation to promote consumer rights and enhance exemptions in the small claims courts. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1802 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 are hereby amended by adding the following
2 new 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,
9 liquidated, 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
12 breach gives rise to a right to payment, whether or not such right to an equitable remedy is
13 reduced to 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
16 monetary obligation or liability, whether arising out of contract, tort or otherwise, but shall not
17 include any liability for which the Debtor is fully insured for all damages.

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

21 (e) “Debtor’s Principal Residence”:

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

27 (2) An individual condominium or cooperative unit, a mobile or manufactured home,
28 boat or trailer, including the debtor’s

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

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

41 (1) owed to or recoverable by—

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

44 (ii) a governmental unit;

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

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

49 (i) a separation agreement, divorce decree, or property settlement agreement
50 or similar agreement; or

51 (ii) an order of a court of record; and

52 (4) has not been assigned to a non-governmental entity, unless that obligation is
53 assigned voluntarily and in writing by the

54 spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or
55 responsible relative for the purpose of collecting the debt.

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

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

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

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

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

70 (m) "Primary Proceeds", The money, negotiable instruments, deposits or other
71 property immediately realized from the liquidation, sale, hypothecation, encumbering of property
72 of the debtor.

73 (n) "Secondary Proceeds", The money, negotiable instruments, deposits or other
74 property immediately realized from primary proceeds.

75 (o) "Security Agreement", Any agreement that creates or provides for a
76 security interest with respect to a claim of a creditor.

77 (p) "Security Interest", Any lien that is or was created or provided for by an
78 agreement.

79 (q) "Statutory Lien", A lien arising by force of statute under specified
80 circumstances or 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
83 exemptions provided by this Chapter. Nonresidents are entitled to the exemptions provided by
84 the law of the jurisdiction of their resident state.

85 (b) For the purposes of this section, the term "resident" shall mean an individual
86 who has 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 for no
88 less than the last 60 calendar days.

89 Section 3. Homestead Exemption.

90 (a) Except as provided under subsection (c) below, a debtor's principal
91 residence and the equity therein (the "homestead") shall be exempt from all laws of conveyance,
92 descent, devise, attachment, levy on execution and sale for payment of debts or legacies, whether
93 or 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 and
95 all equity in the homestead held by co-owners of the debtor that are family members of the
96 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
98 claim such protections may be terminated with respect to any claim only by the execution of an
99 express written waiver by the debtor, that has been recorded with the Registry of Deeds,
100 specifically identifying the claim and creditor against whom the homestead exemption is no
101 longer applicable; however, the debtor may not waive any protections held by any other person
102 or 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
105 with respect to:

106 (1) Any security interest created by a written security agreement
107 executed by the debtor;

108 (2) Any lien for state, federal or local taxes;

109 (3) Any lien arising from the enforcement by any domestic support
110 obligation.

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

113 (a) Notwithstanding any general or special law to the contrary, absent direct contempt
114 such as the failure to appear before or obey an order of such court, no debtor shall be subject to
115 physical arrest or incarceration on any mesne or supplementary process issued under chapter
116 224, nor shall any court have the jurisdiction to incarcerate any debtor on account of any
117 judgment, execution, or order issued as part of any small claims proceeding under section 21 of
118 chapter 218. A debtor's failure to pay a debt shall not constitute contempt of court.

119 (1) No lawyer, sheriff, officer of the court, clerk of court, or judge may intimate to a
120 debtor, either directly or indirectly, that he may be arrested or incarcerated as a result of any
121 failure to pay any debt arising from any judgment, execution, or order issued as part of
122 any mesne or supplementary process issued under chapter 224 or any small claims proceeding
123 under section 21 of chapter 218. The violation of the provisions of this section shall constitute a
124 violation of the section 2 of chapter 93A, otherwise known as the Massachusetts Consumer
125 Protection Act, as to any party other than a judge, magistrate or other officiating party.

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

128 (a) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien
129 on an interest of the debtor in property to the extent that such lien impairs an exemption to which
130 the debtor would have been entitled under section 3 or 4 of this chapter, if such lien is:

131 (1) A judicial lien, other than a judicial lien that secures a debt for a domestic
132 support obligation; or

133 (2) A non-possessory, non-purchase money security interest in household
134 furnishings, household goods, wearing apparel, and home or gardening appliances, books,
135 musical instruments or any pieces of art, any jewelry held primarily for the personal
136 use of the debtor as an engagement or wedding ring that was acquired prior to or at the
137 time of the debtor's marriage, any

138 jewelry held primarily for the personal use of the debtor other than as an engagement or
139 wedding ring, any implements, professional books, or other personal property that is used as a
140 tool of the debtor's trade or the trade of the spouse or any dependent of the debtor and any
141 materials and stock necessary for carrying on such trade.

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

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

153 (d) The debtor may initiate the avoidance of the fixing of a lien as an original action in
154 the Superior Court or the District Court in the judicial district which the debtor resides in the

155 manner of an action for declaratory judgment, and such Superior Court or the District Court shall
156 have subject-matter jurisdiction to entertain such original action. Alternatively, the debtor may
157 bring such avoidance proceeding by way of motion, after notice and a hearing, in any action
158 brought by such creditor who has obtained a lien subject to avoidance herein in which the debtor
159 has been named a defendant, defendant-in-counterclaim, defendant-in-crossclaim, or third-party
160 defendant.

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

172 Section 6. Continuation of Exempt Status in Proceeds of Property

173 (a) Any real or personal property protected by the homestead exemption under section 3
174 of chapter 235A may be converted into primary proceeds or secondary proceeds without the loss
175 of any protections provided under section 3 of chapter 235A to the extent of that the amount
176 realized as primary proceeds or secondary proceeds does not, in aggregate, exceed the amount of

177 the homestead exemption under section 3 of chapter 235A, however, any interest or dividends
178 arising from such primary proceeds or secondary proceeds, shall only be exempt to the extent
179 provided under section 34 of chapter 235.

180 (b) Any property that is subject to a claim of exemption under section 34 of chapter 235
181 may be converted into primary proceeds without the loss of any protections provided under this
182 chapter to the extent of that the amount realized as primary proceeds does not exceed the amount
183 of the exemption set forth under section 34 of chapter 235.

184 (c) Any primary proceeds arising from exempt property that is subject to a claim of
185 exemption under section 34 of chapter 235 may be converted into secondary proceeds without
186 the loss of any protections provided under this chapter to the extent of that the amount realized as
187 primary proceeds does not exceed the amount of the exemption set forth under section 34 of
188 chapter 235, above.

189 (d) To the extent that secondary proceeds are used to purchase or are converted into any
190 other real or personal property, such property purchased with or converted from such secondary
191 proceeds, shall only be exempt to the extent that such property is or could be exempt under
192 section 34 of chapter 235, above.

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

195 (a) In addition to any pleading, paper, summons or writ utilized by the trial courts of the
196 Commonwealth of Massachusetts in order to initiate any action involving civil process against
197 one or more individual debtors on any debt, at the time of the service of any such civil process,
198 the court or the plaintiff as the case may be shall serve upon such individual defendant a notice

199 explaining the defendant's exemption rights as provided in sections 2 through 6, inclusive, as
200 well as the defendant's rights under section 34 of chapter 235.

201 (b) The administrative office of each department of the Trial Court shall promulgate the
202 form of notice required by subsection (a) by certified mail.

203 (c) The notification requirements of subsection (a) shall apply to all original actions,
204 counterclaims, third-party actions, cross-claims, including all matters involving any mesne or
205 supplementary process issued under chapter 224 in which one or more individuals is or may be a
206 debtor.

207 Section 8. Conflict with Prior Inconsistent Law

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

210 SECTION 2. Chapter 235 of the General Laws, as appearing in 2008 Official
211 Edition, is hereby amended by striking out Section 34 and inserting in place thereof the
212 following section:-

213 Section 34. Each debtor's equity in the following items of personal property
214 shall be exempt from all laws of conveyance, descent, devise, attachment, levy on execution and
215 sale for payment of debts or legacies:

216 (a) The debtor's equity held in one motor vehicle, not to exceed \$6,000 in value;

217 (b) The debtor's equity and interests in all household furnishings, household goods,
218 wearing apparel, and home or gardening appliances, without regard to such property's value,

219 other than the specific categories of such types of personal property otherwise provided for under
220 this section;

221 (c) The debtor's combined equity in any books, musical instruments, jewelry or pieces of
222 art not to exceed \$6,000 in total value;

223 (d) The debtor's equity and interests in all crops grown by the debtor as part of any
224 commercial farming operations or enterprise regularly conducted by the debtor, whether or not
225 such crops have been harvested, in an amount not to exceed \$30,000 in value;

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

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

234 (g) The debtor's equity in or right to receive payment or property for maintenance or
235 child support;

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

238 (i) The debtor's equity in any implements, professional books, or other personal property
239 that is used as a tool of the debtor's trade or the trade of the spouse or any dependent of the

240 debtor and any materials and stock necessary for carrying on such trade, in an amount not to
241 exceed \$15,000;

242 (j) The debtor's equity in one or more deposit, brokerage or mutual fund accounts in any
243 insured depository institution, stock brokerage or mutual fund, notwithstanding any claim of set-
244 off or recoupment made by any creditor on any claim arising by any agreement created or
245 established at the time or as part of the creation of such account with such insured depository
246 institution or brokerage, not to exceed \$5,000;

247 (k) The debtor's equity in any annuity or pension in a Credit Union Retirement
248 Association under Chapter 171;

249 (l) The debtor's equity in any group annuity contract under chapter 175;

250 (m) The debtor's equity in any interest in annuity, pension or retirement benefit provided
251 for under chapter 32;

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

255 (o) The debtor's equity in any annuity, pension, Keough, profit sharing plan or other
256 retirement plan established and subject to Title I of the Employee Retirement Income Security
257 Act of 1974, including but not limited to any retirement or savings plans described in Sections
258 401(a), 403, and 457 of the Internal Revenue Code, and any annuity or similar contract
259 purchased with the proceeds of such annuity, pension, profit sharing plan or other retirement
260 plan;

261 (p) The debtor's equity in any lump-sum payment or stream of payments made as an
262 award or benefit for workmens' compensation under Chapter 152;

263 (q) The debtor's equity in and right to receive payments as public assistance, a social
264 security benefit, an unemployment compensation benefit, a veteran's benefit, a disability, illness
265 or unemployment benefit;

266 (r) The debtor's equity in, right to receive or other property that is traceable as primary or
267 secondary proceeds to:

268 (1) An award under a crime victim's reparation law;

269 (2) An award from the Massachusetts Client Security Board;

270 (3) A payment or series of payments on account of the wrongful death of an
271 individual of whom the debtor was a dependent;

272 (4) A payment or series of payments under a life insurance contract that insured the
273 life of an individual of whom the debtor

274 was a dependent;

275 (5) A payment or series of payments on account of personal injuries, either
276 physical, mental or both, suffered by the debtor, a

277 family member of the debtor, or a dependent of the debtor in compensation for
278 loss of future earnings, the cost of future

279 medical treatment or therapy, or for actual pecuniary loss other than a claim for
280 loss or consortium, society, pain and

281 suffering or other element of damages in sounding in tort;

282 (6) A payment or series of payments on account of personal injuries, either
283 physical, mental or both, suffered by the debtor, a family member of the debtor, or a dependent
284 of the debtor in compensation for a claim for loss or consortium, society, pain and suffering or
285 other element of damages in sounding in tort, not to exceed \$100,000;

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

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

291 (u) The debtor's equity in and right to receive payments as a benefit under a policy of
292 insurance on the life of the debtor, a family member of the debtor, or a dependent of the debtor;
293 and

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

297 SECTION 3: Section 22 of chapter 218 of the General Laws, as appearing in
298 2008 Official Edition, is hereby amended by striking out, in line 7, the words, "first class" and
299 inserting in place thereof the following word:- "certified"

300 SECTION 4: Said section 22 of chapter 218, as so appearing, is hereby
301 amended by inserting after the first paragraph the following new paragraph:-

302 Notwithstanding any other general or special law to the contrary, the interests
303 of any debtor in any tangible or intangible form of property shall not be subject to any seizure,
304 attachment, levy on execution and sale for payment of debts or legacies, or any other type of
305 judicial lien, with respect to any judgment, execution, or order issued as part of any small claims
306 proceeding under section 21 of chapter 218, for any combined debt of less than \$1,300 owed to a
307 single creditor.