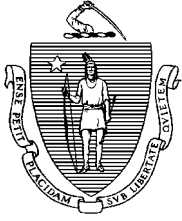


SENATE, NO. 1008

[SIMILAR MATTER FILED DURING PAST SESSION
SEE NO. OF]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

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 § 1 Definitions.

5 The terms used in this Chapter shall have the meaning ascribed to them as follows:

6 (a) The term "Creditor" shall mean the persons or entities making a claim against the Debtor.

7 (b) The term "Claim" shall mean:

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) The term “Debt” shall mean 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
17 not include any liability for which the Debtor is fully insured for all damages.

18 (d) The term “Debtor” shall mean 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) The term “Debtor’s Principal Residence” shall mean:

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

29 condominium or cooperative unit, a mobile or manufactured home, boat or trailer is
30 situated together with, to the extent applicable, the lands owned by the Debtor
31 immediately adjacent or abutting such lands, that is occupied or which is intended to
32 be occupied within the sixty (60) days following the purchase or acquisition of the
33 property as a primary residence by the Debtor

34 in which a possessory interest to such property is held, either in whole or in any part, by the
35 Debtor, regardless of whether such possessory interest is in the nature of a freehold estate, a
36 leasehold estate, life tenancy, right of survivorship, fixed or contingent remainder interest, a
37 whole or fractional beneficial interest in any trust expressly reflected in a Schedule of
38 Beneficiaries recorded with the applicable County Registry of Deeds, or a license to occupy said
39 premises coupled with an interest therein.

40 (g) The term “Domestic Support Obligation” shall mean a Debt, including any legal fees and
41 expenses awarded incident thereto and any interest that accrues on that Debt,

42 (1) owed to or recoverable by—

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

45 (B) a governmental unit;

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

- 50 (3) established or subject to establishment by reason of applicable provisions of—
- 51 (A) a separation agreement, divorce decree, or property settlement agreement or
- 52 similar agreement; or
- 53 (B) an order of a court of record; and
- 54 (4) has not been assigned to a non-governmental entity, unless that obligation is
- 55 assigned voluntarily and in writing by the spouse, former spouse, child of the
- 56 Debtor, or such child's parent, legal guardian, or responsible relative for the purpose
- 57 of collecting the Debt.
- 58 (h) The terms "Exempt" or "Exemption" shall mean the Debtor's right to protect his or her
- 59 Equity in property to the extent provided under this Chapter from subsection to a judicial
- 60 lien, legal process, or proceeding to collect a debt and, to the extent made applicable by this
- 61 Chapter, a non-possessory non-purchase-money security interest.
- 62 (i) The term "Entity" includes a person, an estate, a trust, or governmental unit.
- 63 (j) The term "Equity" shall mean that sum in dollars that represents the fair market value of the
- 64 Debtor's interest in any property claimed as exempt in excess of the amounts due under the
- 65 dollar sum of all Security Interests and all Liens encumbering such property but only to the
- 66 extent that such Liens are not subject to avoidance under this Chapter or any other provision
- 67 of applicable state or federal law.
- 68 (k) The term "Judicial Lien" shall mean any Lien obtained by judgment, levy, sequestration, or
- 69 other legal or equitable process or proceeding.

- 70 (l) The term “Lien” shall mean any charge against or interest in property taken in order to
71 secure payment of a debt or performance of any legally enforceable obligation.
- 72 (m)The term “Primary Proceeds” shall mean the money, negotiable instruments, deposits or
73 other property immediately realized from the liquidation, sale, hypothecation, encumbering
74 of property of the Debtor.
- 75 (n) The term “Secondary Proceeds” shall mean the money, negotiable instruments, deposits or
76 other property immediately realized from Primary Proceeds
- 77 (o) The term “Security Agreement” shall mean any agreement that creates or provides for a
78 Security Interest with respect to a Claim of a Creditor.
- 79 (p) The term “Security Interest” shall mean any Lien that is or was created or provided for by an
80 agreement.
- 81 (q) The term “Statutory Lien” shall mean a Lien arising by force of statute under specified
82 circumstances or conditions, but does not include a Security Interest or Judicial Lien.

83 § 2 Application of Chapter.

- 84 (a) The residents of the Commonwealth of Massachusetts are entitled to the exemptions
85 provided by this Chapter. Nonresidents are entitled to the exemptions provided by the
86 law of the jurisdiction of their resident state.
- 87 (b) For the purposes of this section, the term “resident” shall mean an individual who has
88 both manifested his intent to maintain his primary domicile in the Commonwealth of

89 Massachusetts and has been physically present in the Commonwealth of Massachusetts
90 for no less than the last sixty calendar (60) days.

91 § 3 Homestead Exemption.

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

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

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

107 (1) Any Security Interest created by a written Security Agreement executed by the
108 Debtor;

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

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

111 § 4 No Incarceration or Threat of Incarceration in any Mesne or Supplementary Process

112 (a) Notwithstanding any other provision of the Law or any other Rule of Court
113 providing otherwise, absent direct contempt such as the failure to appear before or
114 obey an order of such court, no Debtor shall be subject to physical arrest or
115 incarceration on any Mesne or Supplementary Process issued under Chapter 224, nor
116 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
118 Chapter 218, § 21, et seq. A Debtor's failure to pay a Debt shall not constitute
119 contempt of court.

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

129 § 5 Avoidance of the Fixing of Judicial Liens and Certain Security Interests; Requirement for
130 Obtaining Pre- and Post-Judgment Security in Civil Actions

131 (a) Notwithstanding any waiver of exemptions, the Debtor may avoid the fixing of a lien
132 on an interest of the Debtor in property to the extent that such lien impairs an
133 exemption to which the Debtor would have been entitled under §§ 3 or 4 of this
134 Chapter, if such lien is:

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

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

147 (b) For the purposes of this section, subject to subsection (c) below, a lien or liens shall
148 be deemed to impair an exemption to the extent that the sum of (1) the lien or liens
149 the fixing of which is sought to be avoided, (2) the aggregate of all other liens on the
150 property in question and (3) the amount of the exemption that the Debtor could claim
151 in the absence of any lien on the property exceeds the fair market value of the
152 property. In the case of a property subject to more than one lien that is subject to

153 avoidance, a lien that has already been avoided shall not be considered in making the
154 calculation under this subsection.

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

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

168 (e) In any civil action, a party that seeks to impose a judicial lien as security for the
169 payment of a judgment before such judgment is received, including any attachment,
170 attachment on trustee process, or any other legal or equitable remedy that may be
171 considered to create a lien at law or in equity, shall, in addition to all other
172 requirements provided for by other applicable law, provide proof demonstrating by a
173 preponderance of evidence that the imposition of such lien requested as security will
174 not be deemed to impair any claim of exemption to which the Debtor might be

175 entitled under section (4), above. To the extent that, after such lien is allowed by the
176 court, it is determined that the fixing of the lien did in fact impair a claim of
177 exemption under subsection (b), above, at the time that the request was made, not
178 only will the lien be avoided, but the underlying claim or claims sought to be secured
179 by such lien shall be dismissed by the court.

180 § 6 Continuation of Exempt Status in Proceeds of Property

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

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

193 (c) Any Primary Proceeds arising from exempt property that is subject to a claim of
194 exemption under Ch. 235 § 34 may be converted into Secondary Proceeds without
195 the loss of any protections provided under this Chapter to the extent of that the

196 amount realized as primary proceeds does not exceed the amount of the exemption
197 set forth under Ch. 235 § 34, above.

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

202 § 7 Notification of Exemption Rights in Any Action Involving Civil Process

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

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

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

216 § 8 Conflict with Prior Inconsistent Law

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

219 SECTION 2: Chapter 235 § 34 of the General Laws of Massachusetts is hereby amended as
220 follows:

221 Paragraph 1 beginning with “The following property of the debtor shall be...” through
222 paragraph 17 ending with “...not exceeding seven hundred dollars in value” are hereby deleted.

223 In their place shall read:

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

- 227 (a) The Debtor’s equity held in one motor vehicle, not to exceed \$6,000 in value;
- 228 (b) The Debtor’s equity and interests in all household furnishings, household goods,
229 wearing apparel, and home or gardening appliances, without regard to such
230 property’s value, other than the specific categories of such types of personal property
231 otherwise provided for under this section;
- 232 (c) The Debtor’s combined equity in any books, musical instruments, jewelry or pieces
233 of art not to exceed \$6,000 in total value;
- 234 (d) The Debtor’s equity and interests in all crops grown by the Debtor as part of any
235 commercial farming operations or enterprise regularly conducted by the Debtor,

236 whether or not such crops have been harvested, in an amount not to exceed \$30,000
237 in value;

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

242 (f) The Debtor's equity and interest in cattle, sheep, swine, or other animals kept or
243 housed by the Debtor as part of any commercial farming operations or enterprise
244 regularly conducted by the Debtor, in any amount not to exceed \$30,000 in value
245 and any feed for such animals kept by the Debtor in an amount not to exceed
246 \$10,000 in value;

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

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

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

- 256 (j) The Debtor's equity in one or more deposit, brokerage or mutual fund accounts in
257 any insured depository institution, stock brokerage or mutual fund, notwithstanding
258 any claim of set-off or recoupment made by any Creditor on any Claim arising by
259 any agreement created or established at the time or as part of the creation of such
260 account with such insured depository institution or brokerage, not to exceed \$5,000;
- 261 (k) The Debtor's equity in any annuity or pension in a Credit Union Retirement
262 Association under Chapter 171;
- 263 (l) The Debtor's equity in any Group Annuity Contract under Chapter 175;
- 264 (m) The Debtor's equity in any interest in annuity, pension or retirement benefit
265 provided for under Chapter 32;
- 266 (n) The Debtor's equity in any form of retirement funds to the extent that those funds
267 or account is exempt from taxation under sections 401, 403, 408, 408A, 414, 457,
268 or 501(a) of the Internal Revenue Code of 1986;
- 269 (o) The Debtor's equity in any annuity, pension, Keough, profit sharing plan or other
270 retirement plan established and subject to Title I of the Employee Retirement
271 Income Security Act of 1974, including but not limited to any retirement or
272 savings plans described in §§ 401(a), 403, and 457 of the Internal Revenue Code,
273 and any annuity or similar contract purchased with the proceeds of such annuity,
274 pension, profit sharing plan or other retirement plan;
- 275 (p) The Debtor's equity in any lump-sum payment or stream of payments made as an
276 award or benefit for Workmens' Compensation under Chapter 152;

277 (q) The Debtor's equity in and right to receive payments as public assistance, a social
278 security benefit, an unemployment compensation benefit, a veteran's benefit, a
279 disability, illness or unemployment benefit;

280 (r) The Debtor's equity in, right to receive or other property that is traceable as
281 primary or secondary proceeds to:

282 i. An award under a crime victim's reparation law;

283 ii. An award from the Massachusetts Client Security Board;

284 iii. A payment or series of payments on account of the wrongful death of an
285 individual of whom the Debtor was a dependent;

286 iv. A payment or series of payments under a life insurance contract that
287 insured the life of an individual of whom the Debtor was a dependent;

288 v. A payment or series of payments on account of personal injuries, either
289 physical, mental or both, suffered by the Debtor, a family member of the
290 Debtor, or a dependent of the Debtor in compensation for loss of future
291 earnings, the cost of future medical treatment or therapy, or for actual
292 pecuniary loss other than a claim for loss or consortium, society, pain and
293 suffering or other element of damages in sounding in tort;

294 vi. A payment or series of payments on account of personal injuries, either
295 physical, mental or both, suffered by the Debtor, a family member of the
296 Debtor, or a dependent of the Debtor in compensation for a claim for loss or

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

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

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

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

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

311 SECTION 3: Chapter 218 § 22 of the General Laws of Massachusetts is hereby amended as
312 follows:

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

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

317 Notwithstanding any other provision of the Law or any other Rule of Court providing
318 otherwise, the interests of any Debtor in any tangible or intangible form of property shall not be

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