

**SENATE . . . . . No. 00862**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Karen E. Spilka*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage 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:

*Second Middlesex and Norfolk*

# SENATE . . . . . No. 00862

By Ms. Spilka, petition (accompanied by bill, Senate, No. 862) of Spilka for legislation to promote consumer rights and enhance exemptions in the small claims courts [Joint Committee on the Judiciary].

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

## The Commonwealth of Massachusetts

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**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 new

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,  
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 breach gives  
12 rise 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 unsecured.

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

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

21                   (1) A single- or multiple-family structure, including incidental property, together  
22 with the 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 intended  
24 to be occupied within the 60 days following the purchase or acquisition of the property as a  
25 primary residence by the debtor; and

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

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

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

40 (1) owed to or recoverable by—

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

43 (ii) a governmental unit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77 (q) "Statutory Lien", A lien arising by force of statute under specified circumstances or  
78 conditions, but does not include a security interest or judicial lien.

79 Section 2. Application of Chapter.

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

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

87 Section 3. Homestead Exemption.

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

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

102 (c) The homestead exemption provided for under subsection (a) shall not apply with  
103 respect to:

104 (1) Any security interest created by a written security agreement executed by  
105 the debtor;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203           Section 8. Conflict with Prior Inconsistent Law

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

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

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

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

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

215 the specific categories of such types of personal property otherwise provided for under this  
216 section;

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

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

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

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

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

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

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

236 any materials and stock necessary for carrying on such trade, in an amount not to exceed  
237 \$15,000;

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

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

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

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

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

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

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

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

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

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

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

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

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

269 was a dependent;

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

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

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

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

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

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

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

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

288 (v) To the extent that a debtor files a bankruptcy case under Title 11 of the United States Code,  
289 the debtor may exempt any additional personal property interest to an aggregate maximum of  
290 \$20,000 per each individual debtor

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

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



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