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By Mr. Heaney of Newton, petition of Donald M. Hill, Jr., and Arthur G. Heaney relative to the rights of surviving husbands or wives under the laws relating to descent and distribution of real and personal property. Legal Affairs.

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

### AN ACT RELATIVE TO RIGHTS OF A SURVIVING HUSBAND OR WIFE.

*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. Section 1 of chapter 190 of the General  
2 Laws, as most recently amended by section 1 of chapter  
3 238 of the acts of 1945, is hereby further amended by  
4 striking out paragraph (1) and inserting in place thereof  
5 the following paragraph:—

6 (1) If the deceased leaves kindred and no issue, and  
7 it appears on determination by the probate court, as  
8 hereinafter provided, that the whole estate does not ex-  
9 ceed fifty thousand dollars in value, the surviving hus-  
10 band or wife shall take the whole thereof; otherwise  
11 such survivor shall take fifty thousand dollars and one  
12 half of the remaining personal and one half of the remain-  
13 ing real property. If the personal property is insufficient  
14 to pay said fifty thousand dollars, the deficiency shall,  
15 upon the petition of any party in interest, be paid from  
16 the sale or mortgage, in the manner provided for the  
17 payment of debts or legacies, of any interest of the de-  
18 ceased in real property which he could have conveyed at  
19 the time of his death; and the surviving husband or wife  
20 shall be permitted, subject to the approval of the court,

21 to purchase at any such sale, notwithstanding the fact  
22 that he or she is the administrator of the estate of the de-  
23 ceased person. A further sale or mortgage of any real  
24 estate of the deceased may later be made to provide for  
25 any deficiency still remaining. Whenever it shall ap-  
26 pear, upon petition to the probate court of any party in  
27 interest, and after such notice as the court shall order,  
28 and after a hearing thereon, that the whole amount of  
29 the estate of the deceased, as found by the inventory  
30 and upon such other evidence as the court shall deem  
31 necessary, does not exceed the sum of fifty thousand  
32 dollars over and above the amount necessary to pay the  
33 debts and charges of administration, the court shall it-  
34 self by decree determine the value of said estate, which  
35 decree shall be binding upon all parties. If additional  
36 property is later discovered, the right or title to the  
37 estate covered by such decree shall not be affected  
38 thereby, but the court may make such further orders  
39 and decrees as are necessary to effect the distribution  
40 herein provided for.

1 SECTION 2. Chapter 191 of the General Laws is  
2 amended by striking out section 15 and inserting in  
3 place thereof the following section:—

4 *Section 15.* The surviving husband or wife of a de-  
5 ceased person, except as provided in section thirty-five  
6 or thirty-six of chapter two hundred and nine, within  
7 six months after the probate of the will of such deceased,  
8 may file in the registry of probate a writing signed by  
9 him or by her, waiving any provisions that may have  
10 been made in it for him or for her, claiming such por-  
11 tion of the estate of the deceased as he or she is given  
12 the right to claim under this section, and if the deceased  
13 left issue, he or she shall thereupon take one third of the  
14 personal and one third of the real property; and if the  
15 deceased left kindred but no issue, he or she shall take  
16 ten thousand dollars and one half of the remaining per-  
17 sonal and one half of the remaining real property; ex-  
18 cept that in either case if he or she would thus take real

19 and personal property to an amount exceeding ten thou-  
20 sand dollars in value, he or she shall receive, in addition  
21 to that amount, only the income during his or her life  
22 of the excess of his or her share of such estate above that  
23 amount, the personal property to be held in trust and the  
24 real property vested in him or her for life, from the death  
25 of the deceased. If the deceased left no issue or kindred,  
26 the surviving husband or wife shall take ten thousand  
27 dollars and one half of the remaining personal and one  
28 half of the remaining real property absolutely. If the  
29 real and personal property of the deceased which the  
30 surviving husband or wife takes under the foregoing  
31 provisions exceeds ten thousand dollars in value, and  
32 the surviving husband or wife is to take only ten thou-  
33 sand dollars absolutely, the ten thousand dollars above  
34 given absolutely shall be paid out of that part of the  
35 personal property in which the husband or wife is inter-  
36 ested; and if such part is insufficient the deficiency shall,  
37 upon the petition of any person interested, be paid from  
38 the sale or mortgage in fee, in the manner provided for  
39 the payment of debts or legacies, of that part of the real  
40 property in which he or she is interested. Such sale or  
41 mortgage may be made either before or after such part  
42 is set off from the other real property of the deceased for  
43 the life of the husband or widow. If, after probate of  
44 such will, legal proceedings have been instituted wherein  
45 its validity or effect is drawn in question, the probate  
46 court may, within said six months, on petition and after  
47 such notice as it orders, extend the time for filing the  
48 aforesaid claim and waiver until the expiration of six  
49 months from the termination of such proceedings.

1 SECTION 3. This act shall apply only in case of  
2 estates of persons dying on or after August first of the  
3 current year.

