

# SENATE . . . . No. 331

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To accompany the petition of Joseph C. White for legislation relative to the granting of relief from foreclosure of mortgages on real estate in certain cases. Banks and Banking.

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## The Commonwealth of Massachusetts

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

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An Act relating to the Granting of Relief in Certain Cases from Inequitable Foreclosure of Mortgages on Real Estate and Execution Sales of Real Estate and for postponing Certain Sales and for extending the Periods of Redemption from Certain Others.

1 *Whereas*, The severe financial and economic de-  
2 pression existing for several years past has resulted  
3 in extremely low prices for the products of the farms  
4 and the factories, a great amount of unemployment,  
5 and almost complete lack of credit for farmers, busi-  
6 ness men and property owners and a general and  
7 extreme stagnation of business, agriculture and  
8 industry; and

9 *Whereas*, Many owners of real property, by reason  
10 of said conditions, are unable, and it is believed,  
11 will for some time be unable to meet all payments  
12 as they come due of taxes, interest and principal of  
13 mortgages on their properties and are, therefore,  
14 threatened with loss of such properties through  
15 mortgage foreclosure and judicial sales thereof; and

16 *Whereas*, Many such properties have been and are

17 being bid in at mortgage foreclosure and execution sales  
18 for prices much below what is believed to be their  
19 real values and often for much less than the mort-  
20 gage or judgment indebtedness, thus entailing de-  
21 ficiency judgments against the mortgage and judg-  
22 ment debtors; and

23 *Whereas*, It is believed, and the general court of  
24 Massachusetts hereby declares its belief, that the  
25 conditions existing as hereinbefore set forth has  
26 created an emergency of such nature that justifies  
27 and validates legislation for the extension of the  
28 time of redemption from mortgage foreclosure and  
29 execution sales and other relief of like character; and

30 *Whereas*, The commonwealth of Massachusetts  
31 possesses the right under its police power to declare  
32 a state of emergency to exist; and

33 *Whereas*, The inherent and fundamental purposes  
34 of our government is to safeguard the public and  
35 promote the general welfare of the people; and

36 *Whereas*, Under existing conditions the foreclosure  
37 of many real estate mortgages by advertisement  
38 would prevent fair, open and competitive bidding  
39 at the time of sale in the manner now contemplated  
40 by law; and

41 *Whereas*, It is believed, and the general court of  
42 Massachusetts hereby declares its belief, that the  
43 conditions existing as hereinbefore set forth have  
44 created an emergency of such a nature as to justify  
45 and validate certain changes in the laws of the com-  
46 monwealth providing for the temporary manner,  
47 method, terms and conditions upon which mortgage  
48 foreclosure sales may be had or postponed and to  
49 administer equitable relief in connection therewith;  
50 and

51 *Whereas*, The deferred operation of this act would  
52 tend to defeat its purpose, therefore, it is hereby  
53 declared to be an emergency law, necessary for the  
54 immediate preservation of the public health, safety  
55 and convenience.

*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. In any proceedings heretofore com-  
2 menced for the foreclosure of a mortgage on real  
3 estate by advertisement, in which a sale of the prop-  
4 erty has not been had, or in any such proceedings  
5 hereafter commenced, when the mortgagor, or the  
6 owner in possession of the mortgaged premises, or  
7 any one claiming under said mortgagor, or any one  
8 liable for the mortgage debt, at any time after the  
9 issuance of the notice of such foreclosure proceedings,  
10 shall apply to the district court of the county wherein  
11 such foreclosure proceedings are being had, or are  
12 pending, by filing and serving a summons and verified  
13 complaint with prayer that the sale in foreclosure by  
14 advertisement shall be postponed and that the fore-  
15 closure, if any, shall proceed by action, the court  
16 may, if it appears to the court that granting of the  
17 relief as prayed would be equitable and just, postpone  
18 the foreclosure proceedings by an ex parte order which  
19 shall be served with the summons and complaint  
20 upon the party foreclosing or his attorney and at the  
21 time of hearing upon such order the court may then  
22 further postpone such sale, and the parties seeking  
23 to foreclose such mortgage shall proceed, if at all,  
24 to foreclose said mortgage by interposing a cross  
25 complaint in such action. Such service may be made

26 as now provided for the service of a summons in a  
27 civil action, or by registered mail on the person fore-  
28 closing or his authorized agent or attorney at the  
29 last known address of such person, agent or attorney,  
30 respectively. As a condition precedent to such post-  
31 ponement of such foreclosure sale by advertisement,  
32 the party filing such verified complaint shall pay to  
33 the clerk for the person foreclosing the mortgage  
34 the expenses incurred, not including attorney's fees,  
35 which may accrue prior to any postponement. The  
36 filing of such verified complaint shall be deemed a  
37 waiver of publication of notice of postponement of  
38 the foreclosure sale and the sale at the time which  
39 may be fixed by the court shall be deemed to be a  
40 sale postponed in lieu of the time of sale specified in  
41 the published notice of mortgage foreclosure sale.

1 SECTION 2. The court shall have the same jurisdic-  
2 tion to postpone the enforcement of judgment by ex-  
3 ecution sale or to order resale or give other relief where  
4 such judgment is rendered in an action to collect a  
5 debt or obligation secured by a real estate mortgage,  
6 the foreclosure of which might be affected under the  
7 terms of this act, as is conferred by this act with  
8 regard to the mortgage.

1 SECTION 3. Where any mortgage upon real prop-  
2 erty has been foreclosed and the period of redemp-  
3 tion has not yet expired, or where a sale is hereafter  
4 had, in the case of real estate mortgage foreclosure  
5 proceedings, now pending, or which may hereafter  
6 be instituted prior to the expiration of two years  
7 from and after the passage of this act, or upon the  
8 sale of any real property under any judgment or

9 execution where the period of redemption has not  
10 yet expired, or where such sale is made hereafter  
11 within two years from and after the passage of this  
12 act, the period of redemption may be extended for  
13 such additional time as the court may deem just  
14 and equitable but in no event beyond May first,  
15 nineteen hundred and thirty-seven; provided, that the  
16 mortgagor or the owner in possession of said prop-  
17 erty, in the case of mortgage foreclosure proceed-  
18 ings, or the judgment debtor, in case of sale under  
19 judgment or execution, shall prior to the expiration  
20 of the period of redemption, apply to the district  
21 court having jurisdiction of the matter, on not less  
22 than ten days' written notice to the mortgagee or  
23 judgment creditor, or the attorney of either, as the  
24 case may be, for an order determining the reasonable  
25 value of the income on said property, or, if the prop-  
26 erty has no income, then the reasonable rental value,  
27 of the property involved in such sale; and directing  
28 and requiring such mortgagor or judgment debtor  
29 to pay all or a reasonable part of such income or  
30 rental value, in or toward the payment of taxes,  
31 insurance, interest, mortgage or judgment indebted-  
32 ness at such times and in such manner as shall be  
33 fixed and determined and ordered by the court; and  
34 the court shall thereupon hear said application and  
35 after such hearing shall make and file its order direct-  
36 ing the payment by such mortgagor, or judgment  
37 debtor, of such an amount at such times and in such  
38 manner as to the court shall, under all the circum-  
39 stances, appear just and equitable; provided, that  
40 upon the service of the notice or demand aforesaid  
41 that the running of the period of redemption shall  
42 be tolled until the court shall make its order upon

43 such application; and provided, further, that if  
44 such mortgagor or judgment debtor, or personal  
45 representative, shall default in the payments, or any  
46 of them, in such order required, on his part to be  
47 done, or commits waste, his right to redeem from said  
48 sale shall terminate thirty days after such default,  
49 and holders of subsequent liens may redeem in the  
50 order and manner now provided by law, beginning  
51 thirty days after the filing of notice of such default  
52 with the clerk of such district court, and his right to  
53 possession shall cease and the party acquiring title  
54 to any such real estate shall then be entitled to the  
55 immediate possession of said premises. If default  
56 is claimed by allowance of waste, such thirty day  
57 period shall not begin to run until the filing of an  
58 order of the court finding such waste; provided,  
59 that the time of redemption from any real estate  
60 mortgage foreclosure or judgment or execution sale  
61 heretofore made, which otherwise would expire less  
62 than thirty days after the effective date of this act,  
63 shall be and the same hereby is extended to a date  
64 thirty days after said effective date, and in such  
65 case the mortgagor or judgment debtor, or the as-  
66 signs or personal representative of either, as the case  
67 may be, or the owner in the possession of the property,  
68 may, prior to said date, apply to said court for, and  
69 the court may thereupon grant, the relief hereinbe-  
70 fore and in this section provided; and provided,  
71 further, that prior to May first, nineteen hundred  
72 and thirty-seven, no action shall be maintained in this  
73 commonwealth for a deficiency judgment until the  
74 period of redemption as allowed by existing law or  
75 as extended under the provision of this act has ex-  
76 pired.

1 SECTION 4. Upon the application of either party  
2 prior to the expiration of the extended period of  
3 redemption as provided in this act and upon the  
4 presentation of evidence that the terms fixed by the  
5 court are no longer just and reasonable, the court  
6 may revise and alter said terms, in such manner as  
7 the changed circumstances and conditions may re-  
8 quire.

1 SECTION 5. The trial of any action, hearing or  
2 proceeding mentioned in this act shall be held within  
3 thirty days after the filing by either party of notice  
4 of hearing or trial, as the case may be, and such hear-  
5 ing or trial may be held at any general or special  
6 session, or in chambers, or during vacation of the  
7 court, and the order of the court shall be filed within  
8 five days after trial or hearing, no more than five  
9 days stay shall be granted and review by the supreme  
10 judicial court may be had by certiorari, if applica-  
11 tion for the writ shall be made within fifteen days  
12 after notice of such order and such writ shall be  
13 returnable within thirty days after the filing of such  
14 order.

1 SECTION 6. The provisions of this act shall not  
2 apply to mortgages made after the effective date  
3 hereof nor to mortgages made prior to the passage  
4 of this act which shall hereafter be renewed or ex-  
5 tended to become due more than a year after such  
6 effective date; neither shall this act apply in any  
7 way which would allow a resale, stay, postponement  
8 or extension to such time that any right might be  
9 adversely affected by a statute of limitation.

1 SECTION 7. No postponement or extension shall  
2 be ordered under conditions which, under the tem-  
3 porary emergency, would substantially diminish or  
4 impair the value of the contract or obligation of the  
5 person against whom the relief is sought, without  
6 reasonable allowance to justify the exercise of the  
7 police power hereby authorized.

1 SECTION 8. The provisions of this act shall be  
2 severable. The invalidity of any one provision,  
3 section or part shall not affect the validity of the  
4 remainder.

1 SECTION 9. This act shall remain in effect only  
2 during the continuance of the emergency, the termi-  
3 nation of which may be declared by proclamation of  
4 the governor at any time the governor may deem  
5 it proper. In no event shall this act remain in force  
6 beyond May first, nineteen hundred and thirty-seven.  
7 No extension of the period for redemption nor any  
8 postponement of sale shall be ordered or allowed  
9 under this act which would have the effect of extend-  
10 ing the period for redemption beyond May first,  
11 nineteen hundred and thirty-seven.

1 SECTION 10. Every law and all the provisions  
2 thereof now in force in so far as inconsistent with the  
3 provisions of this act, are hereby suspended until  
4 May first, nineteen hundred and thirty-seven. No  
5 extension of the period for redemption nor any post-  
6 ponement of sale shall be ordered or allowed under  
7 this act which would have the effect of extending  
8 the period of redemption beyond said May first.