

# HOUSE . . . . . No. 5538

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## *The Commonwealth of Massachusetts*

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HOUSE OF REPRESENTATIVES, April 30, 1992.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, House, No. 950) of Paul R. Haley for legislation to clarify homestead protection for elderly and disabled persons, the petition (accompanied by bill, House, No. 2330) of J. Michael Ruane for legislation to clarify homestead protection for elderly and disabled persons, the petition (accompanied by bill, House, No. 4899) of Marc D. Draisen and other members of the General Court for legislation to provide an automatic exemption of equity for personal residences, and the petition (accompanied by bill, House, No. 5074) of Ronald McLeish for legislation to further regulate estates of homestead, reports recommending that the accompanying bill (House, No. 5538) ought to pass.

For the committee,

SALVATORE F. DIMASI.

**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Ninety-Two.

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AN ACT PROVIDING AN AUTOMATIC EXEMPTION FROM LEVY OF EXECUTION  
IN A PERSONAL RESIDENCE.

*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. Chapter 235 of the General Laws is hereby  
2 amended by deleting paragraph "Fourteenth" of section 34, as  
3 most recently amended by Chapter 501 of the Acts of 1975, and  
4 inserting the following: —

5 Fourteenth, Estates of homestead as defined in chapter one  
6 hundred and eighty-eight, or, in lieu thereof, the amount of money  
7 each rental period, not exceeding two hundred dollars per month,  
8 necessary to pay the rent for the dwelling unit occupied by him  
9 and his family, or the equity in the personal residence of the  
10 debtor, as and to the extent provided under section 18A of Chap-  
11 ter 236.

1 SECTION 2. Chapter 236 of the General Laws is hereby  
2 amended by inserting after Section 18 the following new sec-  
3 tion: —

4 Section 18A. If a judgement or other creditor requires an  
5 execution to be levied on property of a debtor who is a natural  
6 person and the property is used as the debtor's principal residence,  
7 which term shall include a manufactured home, there shall be  
8 exempted from seizure on execution or levy by sale or setoff or  
9 otherwise from such execution and there shall be reserved to the  
10 debtor therefrom, the sum of one hundred thousand dollars of  
11 the equity in such principal residence or, in the event that the  
12 debtor is then sixty-two years of age or older, or is a disabled  
13 person as defined in section 1A of Chapter one hundred and  
14 eighty-eight, the amount of the exemption shall be two hundred  
15 thousand dollars. The amount of the exemption allowed under  
16 this section shall not exceed the amount specified in the event that

17 there is more than one owner of the personal residence entitled  
18 to the exemption, except that if more than one of the owners are  
19 sixty-two years of age or older or disabled persons as hereinbefore  
20 provided, the amount of such exemption shall be equal to four  
21 hundred thousand dollars. The exemption allowed under this  
22 section shall be in lieu of an estate of homestead that may have  
23 been acquired in the residence under Chapter one hundred and  
24 eighty-eight, unless the debtor makes a declaration to the contrary  
25 and records notice thereof in the registry of deeds for the county  
26 or district where such real estate lies or a writing by the debtor  
27 is filed at the city or town clerk's office in the municipality in which  
28 a manufactured home is located.

29 If the debtor is deceased at the time of levy, the exemption  
30 provided by this section shall continue for the benefit of the  
31 debtor's heirs or devisees provided that one or more of such  
32 persons are using the residence as such person's principal  
33 residence.

34 Nothing herein shall be construed to preclude or restrict the  
35 grant of any mortgage of any real property that may be subject  
36 to exemption hereunder or the enforcement of any such mortgage,  
37 whether a first or subsequent mortgage, and the rights of a holder  
38 thereof and his successors and assigns shall not be affected by this  
39 section.

40 The exemption allowed under this section shall not apply to  
41 (i) an order of a court concerning divorce, separate maintenance  
42 or child support under chapters two hundred and eight, two  
43 hundred and nine and two hundred and seventy-three, or (ii) in  
44 the event of the conviction of the debtor of a crime, an order of  
45 a court requiring the debtor to satisfy a monetary penalty or make  
46 restitution to the victim of such crime.

47 The exemption allowed under this section shall apply without  
48 the requirement of any designation or declaration by the debtor,  
49 and shall be enjoyed by all persons entitled thereto unless  
50 disallowed by order of a court having jurisdiction thereof. The  
51 exemption under this section may only be waived if such waiver  
52 is in writing and a notice thereof is recorded in the registry of deeds  
53 for the county or district where such real estate lies or a writing  
54 by the debtor is filed at the city or town clerk's office in the  
55 municipality in which a manufactured home is located.

56 The exemption allowed under this section shall apply to debts  
57 contracted for or incurred either prior to, on or after December  
58 31, 1992, unless the levy therefor shall have been completed by  
59 sale, setoff or otherwise and notice thereof recorded or filed as  
60 provided by applicable law on or before December 31, 1992.

1 SECTION 3. Section 10 of Chapter 188 of the General Laws,  
2 as most recently amended by chapter 131 of the acts of 1902, is  
3 hereby amended by deleting section 10 and inserting the  
4 following: —

5 Section 10. All existing estates of homestead which have been  
6 acquired under any law heretofore in force shall continue to be  
7 held and enjoyed notwithstanding the repeal or expiration of such  
8 law, except as provided in chapter 236. No estate of homestead  
9 shall be acquired by designation in the deed of conveyance or by  
10 declaration whether recorded in the registry of deeds for the  
11 county or district in which the property is situated or filed at the  
12 city or town clerk's office or otherwise unless such recording or  
13 filing shall have occurred on or prior to December 31, 1992.