

HOUSE No. 417

By Messrs. Lobel of Boston and Jordan of Revere, petition of Louis Lobel and Peter J. Jordan for legislation to establish community property rights between husband and wife. Legal Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Eight.

AN ACT ESTABLISHING COMMUNITY PROPERTY RIGHTS BETWEEN HUSBAND AND WIFE IN THIS COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would
2 tend to defeat its purpose which is to save the people
3 of Massachusetts one hundred million dollars that
4 they are unjustly forced to pay the federal govern-
5 ment because the people of Massachusetts are being
6 discriminated against by the federal tax laws; there-
7 fore it is hereby declared to be an emergency law,
8 necessary for the immediate preservation of the public
9 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. All property of the husband, both
2 real and personal, owned or claimed by him before
3 marriage or before the effective date of this act,
4 whichever is later, and that acquired afterwards by
5 gift devise or descent, or received as compensation
6 for personal injuries, shall be his separate property.

1 SECTION 2. All property of the wife, both real
2 and personal, owned or claimed by her before mar-
3 riage or before the effective date of this act, whichever
4 is later, and that acquired afterwards by gift devise
5 or descent, or received as compensation for personal
6 injuries, shall be her separate property.

1 SECTION 3. All property acquired by either the
2 husband or wife during marriage and after the effec-
3 tive date of this act, except that which is the separate
4 property of either as hereinabove defined, shall be
5 deemed the community or common property of the
6 husband and wife, and each shall be vested with an
7 undivided one half interest therein; and all the
8 effects which the husband and wife possess at the
9 time the marriage may be dissolved shall be regarded
10 as common effects or gains unless the contrary be
11 satisfactorily proved.

1 SECTION 4. The wife shall have the management
2 and control and may dispose of her separate property,
3 both real and personal, and that portion of the common
4 or community property consisting of her earnings,
5 all rents, interest, dividends, and other income from
6 her separate property, and all other common or
7 community property, the title to which stands in her
8 name. The husband shall have the management
9 and control and may dispose of his separate property,
10 both real and personal, and all community property,
11 the management, control, and disposition of which is
12 not conferred upon the wife hereby.

1 SECTION 5. The homestead, whether the separate
2 property of the husband or wife or the community
3 or common property of both, shall not be sold, en-

4 cumbered or otherwise disposed of except in the
5 manner provided by law prior to the enactment of
6 this act.

1 SECTION 6. Any funds on deposit in any bank or
2 banking institution whether in the name of the hus-
3 band or wife, shall be presumed to be the separate
4 property of the party in whose name they stand,
5 regardless of who made the deposit, and unless said
6 bank or banking institution is notified to the con-
7 trary, it shall be governed accordingly in honoring
8 checks and orders against such account.

1 SECTION 7. That portion of the community prop-
2 erty under the management, control, and disposition
3 of the wife or which stands in her name shall be liable
4 for debts contracted by the wife and for torts of the
5 wife committed in the course of acquiring, holding,
6 or managing such community property, but not
7 otherwise. That portion of the community property
8 which is under the management, control, and dis-
9 position of the husband shall be liable for debts con-
10 tracted by the husband and for torts of the husband
11 committed in the course of acquiring, managing,
12 holding, or disposing of the community property,
13 but not otherwise. The husband and wife, and each
14 of them, shall be entitled to the exemptions to which
15 they, or either of them, are entitled under existing
16 laws. All debts created by the husband or wife after
17 marriage or after the effective date of this act, which-
18 ever is later, shall be regarded as community debts
19 unless the contrary be satisfactorily proved.

1 SECTION 8. No creditor shall have recourse to the
2 community property for the payment of debts or

3 liabilities created by either the husband or the wife,
4 except as provided in section seven of this act; pro-
5 vided, however, that any creditor may satisfy his
6 claim or demand out of the community property
7 which was under the management, control and dis-
8 position of the spouse incurring the indebtedness or
9 liability at the time the debt or liability was con-
10 tracted or created, and which has been subsequently
11 conveyed or transferred to the other spouse and is
12 under the management, control and disposition of
13 said other spouse, without proof that said creditor
14 relied upon said community property in advancing
15 said credit, but without prejudice to the rights of
16 the third party purchasers, encumbrancers, or other
17 creditors or grantees; and provided, further, that the
18 husband or wife on paying community debts shall,
19 as between themselves, charge the same against
20 community property.

1 SECTION 9. The husband may give, grant, bargain,
2 sell or convey directly to his wife, and a wife may
3 give, grant, bargain, sell or convey directly to her
4 husband, his or her community property in esse.
5 Every deed and conveyance made from the husband
6 to the wife or from the wife to the husband shall
7 operate to divest the property therein described of
8 every claim or demand as community property to the
9 extent herein provided, and shall vest the same in the
10 grantee as the separate property of the grantee;
11 provided, however, that the deeds, conveyances or
12 transfers hereby authorized shall not affect any
13 existing equity in favor of creditors of the grantor at
14 the time of such transfer, gift or encumbrance.

1 SECTION 10. In the event of the dissolution of
2 marriage by decree of any court of competent jurisdic-
3 tion, the husband and wife shall each be vested with
4 an undivided one half interest in the community
5 property as tenants in common, but nothing herein
6 shall prevent the court from having the same powers
7 with respect to said property as to other property
8 of either the husband or wife.

1 SECTION 11. Whenever the husband or the wife
2 is non compos mentis, or has been convicted of a
3 felony or sentenced to imprisonment for a period of
4 more than one year, or whenever the husband has
5 abandoned his wife and family and left her and his
6 family, if they have children, without support, or
7 whenever the husband or the wife is an habitual
8 drunkard or for any other reason is incapacitated to
9 manage, control or dispose of the community prop-
10 erty, the other spouse may present a petition, duly
11 verified, to the probate court of the county wherein
12 they reside, or if they are non-residents, wherein any
13 of the community property is located or situated,
14 stating the name of the incapacitated spouse, a
15 description of all community property, and praying
16 that the spouse filing the petition be substituted for
17 the incapacitated spouse as to the management,
18 control and disposition of said spouse with the same
19 power of managing, controlling and disposing of the
20 community property as was vested in the incapacitated
21 spouse.

1 SECTION 12. In all such cases service of process
2 shall be had as the court shall order.

1 SECTION 13. Upon the hearing of the petition so
2 filed, the court shall render judgment therein either
3 dismissing said petition or adjudging the spouse
4 filing same to have such power of managing, con-
5 trolling, and disposing of the community property,
6 either real or personal, formerly under the manage-
7 ment, control and disposition of the other spouse as
8 to the court may appear to be just, proper, equitable,
9 and to the best interests of said estate.

1 SECTION 14. All judgments rendered as in the
2 preceding section provided shall be recorded in the
3 office of the registrar of deeds of the county where
4 real property affected thereby is situated, and with
5 the city or town clerk where personal property af-
6 fected thereby is situated, and such judgment when
7 so rendered shall be notice of the facts therein set out.

1 SECTION 15. Upon the death of the husband or
2 wife, the surviving spouse shall administer all com-
3 munity property in the same manner and with the
4 same duties, privileges and authority as are vested in
5 a surviving partner to administer and settle the
6 affairs of a partnership upon the death of the other
7 partner; provided, that the surviving husband or
8 wife shall not be disqualified from acting as executor
9 or administrator of the estate of the deceased husband
10 or wife; and provided, further, that the survivor of
11 the husband or wife shall pay out of the community
12 property except the homestead and exempt property,
13 all debts of the community, whether created by the
14 husband or the wife; and provided, further, that
15 when all debts of the community shall have been
16 fully satisfied the survivor shall transfer and convey

17 to the administrator or executor of the deceased one
18 half of the community property remaining to be
19 administered and distributed as other property of the
20 estate either subject to the terms of the will of the
21 deceased or under the laws of descent and distribution
22 as the case may be, and thereafter all the interest of
23 the surviving partner in said community property
24 shall be that of a tenant in common; and provided,
25 further, that any interest in a homestead so con-
26 veyed shall not be subject to administration under
27 the laws of this state, except in the manner provided
28 by law at the time of the enactment of this act.

1 SECTION 16. If any section, subsection, sentence,
2 clause or phrase of this act is for any reason held to
3 be invalid, or the application thereof to any person
4 or circumstance is held invalid, such decision shall
5 not affect the remainder of the act, and the applica-
6 tion thereof to other persons or circumstances shall
7 not be affected thereby. The legislature hereby
8 declares that it would have passed this act and each
9 section, subsection, sentence, clause or phrase thereof,
10 irrespective of the fact that any one or more sections,
11 subsections, sentences, clauses or phrases be declared
12 invalid.

