

# SENATE . . . . No. 263

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To accompany the petition of Henry C. Rowland for legislation relative to the establishment of community property rights between husband and wife in this Commonwealth. Legal Affairs.

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## The Commonwealth of Massachusetts

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

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AN ACT RELATING TO ESTABLISHMENT OF COMMUNITY PROPERTY RIGHTS BETWEEN HUSBAND AND WIFE IN THIS COMMONWEALTH.

*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 real  
2 and personal, owned or claimed by him 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 his separate property.

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

1 SECTION 3. All property acquired by either the  
2 husband or wife during marriage and after the effective

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

1 SECTION 4. The real and personal property of a  
2 woman shall upon her marriage remain her separate  
3 property, and a married woman may receive, receipt  
4 for, hold, manage and dispose of property, real and  
5 personal, in the same manner as if she were sole.  
6 The wife shall have the management and control  
7 and may dispose of her separate property, both real  
8 and personal, and that portion of the common or  
9 community property consisting of her earnings, all  
10 rents, interest, dividends, and any other income from  
11 her separate property, and all other common or com-  
12 munity property, the title to which stands in her  
13 name. The husband shall have the management and  
14 control and may dispose of his separate property,  
15 both real and personal, and all community property,  
16 the management, control, and disposition of which is  
17 not conferred upon the wife hereby. But neither  
18 spouse may make unreasonable gifts of community  
19 property, nor shall either spouse make gifts of com-  
20 munity property in bad faith.

1 SECTION 5. Gifts of separate or common personal  
2 property, and conveyances of separate or common  
3 real estate other than by way of mortgage, between  
4 husband and wife, shall be valid to the same extent

5 as if they were sole, except that no such conveyance  
6 of real estate shall have any effect, either in passing  
7 title or otherwise, until the deed describing the prop-  
8 erty is recorded in the registry of deeds for the dis-  
9 trict where the land lies.

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 prop-  
4 erty of the party in whose name they stand, regardless  
5 of who made the deposit, and unless said bank or bank-  
6 ing institution is notified to the contrary, it shall be  
7 governed accordingly in honoring checks and orders  
8 against such account.

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

1 SECTION 8. No creditor shall have recourse to the  
2 community property for the payment of debts or liabil-  
3 ities created by either the husband or the wife except as  
4 provided in section seven of this act: Provided, how-  
5 ever, that any creditor may satisfy his claim or de-  
6 mand out of the community property which was under  
7 the management, control and disposition of the spouse  
8 incurring the indebtedness or liability at the time the  
9 debt or liability was contracted or created, and which  
10 has been subsequently conveyed or transferred to the  
11 other spouse and is under the management, control and  
12 disposition of said other spouse without proof that  
13 said creditor relied upon said community property in  
14 advancing said credit, but without prejudice to the  
15 rights of the third party purchasers, encumbrancers  
16 or other creditors or grantees; and provided, further,  
17 that the husband or wife on paying community debts  
18 shall, as between themselves, charge the same against  
19 community property.

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

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

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

1 SECTION 12. In all such cases service of process shall  
2 be had as in actions of contract, or in such other man-  
3 ner as may be directed by the court.

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

1 SECTION 14. All judgments rendered, as provided  
2 in section thirteen, shall be recorded in the office of the  
3 register of probate of the county where said property  
4 affected thereby is situated, and such judgment, when  
5 so rendered, shall be notice of the facts therein set out.

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

15 have been fully satisfied, the survivor shall transfer and  
16 convey to the administrator or executor of the deceased  
17 one half of the community property remaining to be  
18 administered and distributed as other property of the  
19 estate, either subject to the terms of the will of the  
20 deceased, or under the laws of descent and distribution,  
21 as the case may be, and thereafter all the interest of the  
22 surviving partner in said community property shall be  
23 that of a tenant in common.

