SENATE DOCKET, NO. 972 FILED ON: 1/17/2013

SENATE . . . . . No. 731

The Commonwealth of Massachusetts

PRESENTED BY:

***Barry R. Finegold*, (BY REQUEST)**

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect small businesses from insolvency in divorce..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sharon Hilman	*2 Chongris Circle* *Andover, MA 01810*
Frank A. Moran	*17th Essex*

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By Mr. Finegold (by request), a petition (accompanied by bill, Senate, No. 731) of Sharon Hilman and Frank A. Moran for legislation to protect small businesses from insolvency in divorce. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to protect small businesses from insolvency in divorce..

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to promote and maintain the growth and continuity of small business, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law or rule or regulation to the contrary, the following shall be mandated: (a) Business shall be valued for divorce at fair market value with appropriate discounts. Business valuation calculations shall include a provision for working capital that is greater than zero and calculations of business valuation shall be inflated by the inclusion of a pay-cut of the actual compensation paid to the employees of the business.

(b) The Tax Effect in the Bernier case of 2007 and 2012 shall be overruled. In its place, the actual tax rate for a sub(s) corporation should be used.

(c) Allow up to 3 years delay of payments to the former spouse of the small business owner, if the business has reasonable need to delay the payments.

(d) Payment to the ex-spouse is considered after, not before, payment for the normal operations of the business. Payment to the ex-spouse be calculated from the owner's benefit, after the owner has received reasonable compensation. The starting point of the sharing of the owner's benefit would be 60% to the owner and 40% to the ex-spouse.

(e) Payments to the ex-spouse endure no more after 5 years.

(f) The effective date would be retroactive back to September 2007, when the Bernier case was initially decided. (as fair value with the Bernier tax effect is an impossible amount to pay).

(g) Immediate Amnesty for 2013 and 2014 be provided to small business owners making payments to former spouses.

(h) Whereas, small businesses valued for divorce using the “bernier tax effect” are paying fair value, increased by about 25 %, and with the rise in tax rates, that effect will increase to 50%.

(i) The former spouse is paid ahead of all other business expenses, enforceable with contempt of court and incarceration.

(j) This strains the ability of businesses to meet their ordinary expenses, and grow.

(k) Be it mandated that payment be postponed for two years, to allow for business to recuperate from the strain of divorce and have adequate funds to grow.

(l) This would be effective immediately upon passage or retroactive back to January 1, 2013 (when the tax rates increased) and last until December 31, 2014.