

HOUSE No. 3588

The Commonwealth of Massachusetts

PRESENTED BY:

Frank A. Moran

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 relative to valuing professional practices at fair market value in divorce proceedings.

PETITION OF:

NAME:

Sharon Stotsky-Hilman

DISTRICT/ADDRESS:

2 Chongris Circle Andover, MA 01810

HOUSE No. 3588

By Mr. Moran of Lawrence, a petition (accompanied by bill, House, No. 3588) of Sharon Stotsky-Hilman relative to valuing professional practices at fair market value in divorce proceedings. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to valuing professional practices at fair market value in divorce proceedings.

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 208 of the General Laws is hereby amended by inserting after
2 section 34D the following section:-

3 Section 34E. (a) For the purposes of this section, the following terms shall have the
4 following meanings, unless the context clearly requires otherwise:

5 “Discount for lack of marketability”, an amount or percentage deducted from the value of
6 an ownership interest to reflect the relative absence of liquidity of that interest.

7 “Fair market value”, the price at which property would change hands between a willing
8 buyer and a willing seller, neither being under any compulsion to buy or sell and both having
9 reasonable knowledge of the relevant facts.

10 “Key man discount”, an amount or percentage deducted from the value of an ownership
11 interest to reflect the reduction in value resulting from the actual or potential loss of a key person
12 whose continued services are critical to the financial success of the business.

13 “Small business”, a business that has fewer than 500 employees.

14 (b) Notwithstanding any general or special law to the contrary, a small business owned in
15 whole or in part by 1 or both parties to a proceeding for divorce shall be valued at fair market
16 value; provided, however, that in assessing the value of such business, a court shall take into
17 account additional factors, as follows:

18 (i) when appropriate, key man discounts and discounts for lack of marketability shall be
19 included in the valuation calculation;

20 (ii) the value of the small business shall be tax-effected at the current rate applicable to
21 that business, however organized under state and federal laws;

22 (iii) the court shall consider and account for the need of the small business to retain a
23 reasonable amount of working capital upon the division of the marital estate;

24 (iv) an assessment of value of a small business shall not be artificially inflated by an
25 effective reduction of the pay of the employees of the business; and

26 (v) a court may consider granting a delay period of up to 3 years for a business owner-
27 spouse to pay or begin installment payments to a non-business owner-spouse if reasonably
28 necessary to ensure the continued operation of the small business.

29 (c) Notwithstanding section 34 or any general or special law to the contrary, a court may,
30 upon receipt of a complaint for modification by either party to a proceeding for divorce that was

31 previously heard before said court, review and amend any business valuation made during a
32 divorce proceeding decided on or after September 15, 2007, that does not conform with the
33 requirements for valuation of a small business pursuant to this section.

34 SECTION 2. This act shall take effect upon its passage.