

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 1288

Introduced by **Rep. Pablo P. Garcia**

EXPLANATORY NOTE

Not until fairly recently, the provisions of the new Civil Code concerning marriage and family relations had remained relatively constant if not firmly established for almost six decades since its adoption in 1950 and for more than 100 years before that under the Old Civil Code. Lately, however, in view of the effectivity and adoption of Executive Order No. (EO) 209 as amended by EO 227 (The Family Code of the Philippines), a radical change has been made with respect to the aforementioned provisions on property relations in marriage. Changes, which if analyzed with careful scrutiny, would have far-reaching ramifications leading one to question the very wisdom for the change.

A case in point is Art. 75 of Title IV of the Family Code of the Philippines which states that by virtue of a legal mandate, the property relations between husband and wife shall be under the system of absolute community which is a far departure from the long accepted system of conjugal partnership of gains. The system of absolute community as contemplated under the new family code partakes of the kind of property relations whereby both spouses, upon entering marriage, shall become owners in common of all properties they had previously owned individually prior to their marriage.

Put simply, the prior separate and personal ownership of each individual spouse's property ceases to exist but shall henceforth become common property of the marriage regardless of the size of contribution or value of property brought into the marriage by the respective spouses. Undoubtedly, from a theoretical standpoint, the system of absolute community would appear to be the most ideal type or mode of property relations between spouses because it impresses and projects an image of an "all for one and one for all" attitude for the marital partnership. It, however, fails to consider the vagaries of life, the idiosyncrasies of people, and that spouses, as human beings, are only too prone to human weaknesses and errors.

Although the provisions on absolute community under the Family Code contains safeguards designed purportedly to protect the spouses concerned in cases where certain types of abuses would be committed by the other spouse, it leaves too much leeway for the abuse to be flagrantly committed for the very reason that the safeguards are evidently very difficult to enforce. Likewise, from a practical and legal standpoint, it would appear that this provision of the Family Code suffers from a legal flaw which in all probability can be attributed to inadvertence because the system of absolute community had failed to take into consideration other provisions of the Civil Code which, in certain

unique instances, become interrelated because they involve a common subject matter; property.

By this, we refer to the inevitable violation of the provisions of the Civil Code under Wills and Succession regarding *reserva troncal* as provided for under Art. 891 of the Civil Code, which states, to wit;

"The ascendant who inherits from his descendant any property which the latter may have acquired by operation of law for the benefit of the relatives who are within the third degree and who belong to the line from which said property came."

Since under the system of absolute community all property, regardless of origin owned by the respective spouses prior to the marriage become by operation of law common property of the marriage, it covers all types of property and necessarily this includes properties inherited under circumstances where the obligation under *reserva troncal* obtains. The system of absolute community as mandated under the Family Code clearly cannot be reconciled with the provisions of *reserva troncal* under the Civil Code.

Apart from the legal infirmity from which the Family Code suffers, there are matters worthy of consideration. For one thing, the system of conjugal partnership – although has been adopted for over four decades – has been generally accepted, practiced, and yes, firmly established in our marital institutions and recognized in other institutions as well. Scores of jurisprudence from no less than the highest judicial institution itself would lend support to the fact that the system of conjugal partnership of gains has not only been firmly established, accepted, and recognized but has, in more ways than one, become an institution itself.

It may also be safe to say that no recent trend or current event or development has transpired in our jurisdiction which raises the moral and legal justification to warrant the change from the well established system of conjugal partnership of gains to the untried system of absolute community in our marital institutions. To effect a change just for the sake of change despite the absence of overriding grounds suits no purpose and becomes a needless exercise. The system of conjugal partnership of gains stands on a firm foundation, withstood the rigors of time, tested and proven. Evidently, there appears no cogent reason to effect a change.

Under the aforestated premises, it is therefore proposed that the provisions of the Family Code on the System of Absolute Community be revised and that the system of conjugal partnership of gains be reinstated as the basis for the property relations of our marital institutions.

This bill has been passed on Third and Final Reading by the 9th and 14th Congresses but, unfortunately, remained unacted by the Senate until both Congresses adjourned *sine die*. Approval, therefore, is earnestly sought.



PABLO P. GARCIA

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AN ACT
AMENDING ARTICLE 75 OF TITLE IV OF EXECUTIVE ORDER NO. 209, AS
AMENDED BY EXECUTIVE ORDER NO. 227, OTHERWISE KNOWN AS THE
FAMILY CODE OF THE PHILIPPINES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Article 75 of Title IV of the Family Code of the Philippines is hereby amended to read as follows;

"Art. 75 – The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of marriage settlements, or when the regime agreed upon is void, the system of CONJUGAL PARTNERSHIP OF GAINS [absolute community of property] as established in this Code shall govern."

SEC. 2. This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved,