

No. 135

AN ACT

SB 1144

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, making certain editorial corrections; expanding nonmandatory jurisdiction of the orphans' court division; reducing the period for making appeals from a decree of the register; making a bond discretionary with the court; providing for the effect of heirs surviving decedent for five days; adding certain adoption provisions; redefining advancements; changing certain time limitations; adding and redefining rules of interpretation; changing the bond requirement for a personal representative; extending the statute of limitation for certain debts due the estate; providing for the filing of a record of risk distributions; relieving a guardian of liability for certain distributions to a personal representative; authorizing a court having jurisdiction of an estate or trust to make a decree of death; raising the monetary limitation for termination of trusts; providing for annexation of distributed estate or trust; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "will" in section 102 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added June 30, 1972 (P.L.508, No.164), is amended to read:

§ 102. Definitions.

Except as otherwise defined hereinafter or unless the context otherwise requires, in this title:

* * *

"Will." Means a written will, codicil or other testamentary writing [**and a nuncupative will**].

Section 2. The introductory paragraph of section 712 of Title 20, amended December 10, 1974 (P.L.867, No.293), is amended and a paragraph is added to read:

§ 712. Nonmandatory exercise of jurisdiction through orphans' court division.

The jurisdiction of the court of common pleas over the following may be exercised through [**the**] *either its* orphans' court division *or other appropriate division*:

* * *

(3) Other matters.—The disposition of any case where there are substantial questions concerning matters enumerated in section 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general) and also matters not enumerated in that section.

Section 3. Subsections (a) and (b) of section 908 of Title 20 are amended to read:

§ 908. Appeals.

(a) When allowed.—Any party in interest who is aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within **[two years] one year** of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to **[six] three** months.

(b) Bond.—**[Anyone appealing from a decree of the register shall, within ten days after filing his appeal, file with the register his bond in the name of the Commonwealth with sufficient surety in such amount, not less than \$500 or more than \$5,000, as the register considers necessary, conditioned for the payment of any costs that may be decreed against him. If no bond is filed within the ten-day period, the appeal shall be considered abandoned.]** *The court, upon cause shown and after such notice, if any, as it shall direct, may require a surety bond to be filed by anyone appealing from a decree of the register conditioned for the payment of any costs or charges that may be decreed against him. The sufficiency of the surety shall be determined by the register in the first instance, with right of appeal to the court. If a bond in compliance with the final applicable order is not filed within ten days thereafter, the appeal shall be considered abandoned.*

* * *

Section 4. The heading of section 2104 of Title 20 is amended and a paragraph is added to read:

§ 2104. Rules of **[descent] succession.**

The provisions of this chapter shall be applied to both real and personal estate in accordance with the following rules:

* * *

(10) Requirement that heir survive decedent for five days.—Any person who fails to survive the decedent by five days shall be deemed to have predeceased the decedent for purposes of intestate succession and the decedent's heirs shall be determined accordingly. If the time of death of the decedent or of a person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir survived the decedent by five days, that person shall be deemed to have failed to survive for the required period. This section shall not be applied where its application would result in a taking by the Commonwealth under section 2103(6) (relating to shares of others than surviving spouse).

Section 5. Subsections (a) and (b) of section 2106 and section 2108 of Title 20 are amended to read:

§ 2106. Forfeiture.

(a) **[Husband's share.—A husband who, for one year or upwards previous to the death of his wife shall have wilfully neglected or refused to**

provide for her, or who for that period or upwards shall have wilfully and maliciously deserted her shall have no title or interest under this chapter in her real or her personal estate.] *Spouse's share.*—*A spouse who, for one year or upwards previous to the death of the other spouse, has wilfully neglected or refused to perform the duty to support the other spouse, or who for one year or upwards has wilfully and maliciously deserted the other spouse, shall have no right or interest under this chapter in the real or personal estate of the other spouse.*

[(b) *Wife's share.*—*A wife who, for one year or upwards previous to the death of her husband, shall have wilfully and maliciously deserted him, shall have no title or interest under this chapter in his real or personal estate.*]

* * *

§ 2108. Adopted person.

For purposes of [descent] *inheritance* by, from and through an adopted person he shall be considered the issue of his adopting parent or parents. [and not the issue of his natural parents: Provided, That if] *An adopted person shall not be considered as continuing to be the child or issue of his natural parents except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of [descent] inheritance by, from and through him shall also be considered the issue of such natural parent.*

Section 6. Sections 2109, 2112, 2113 and 2114 of Title 20 are repealed and a section is added to read:

§ 2109.1. *Advancements.*

If a person dies intestate as to all or any part of his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment so provides.

Section 7. Subsection (a) of section 2501 of Title 20, amended December 6, 1972 (P.L.1461, No.331), is amended to read:

§ 2501. Who may make a will.

[(a) *Persons 18 or older.*—*Any person of sound mind 18 years of age or older may by will dispose of all his real and personal estate subject to payment of debts and charges.*] *Any person 18 or more years of age who is of sound mind may make a will.*

Section 8. Paragraph (1) of section 2507 of Title 20 is repealed.

Section 9. Subsections (a) and (b) of section 2509, subsection (a) of section 2512 and section 2513 of Title 20 are amended to read:

§ 2509. Forfeiture of right of election.

(a) **[By husband.—A husband, who for one year or upwards previous to the death of his wife, shall have wilfully neglected or refused to provide for her, or who for that period or upwards shall have wilfully and maliciously deserted her, shall have no right of election.]** *General rule.—A spouse who, for one year or upwards previous to the death of the other spouse, has wilfully neglected or refused to perform the duty to support the other spouse, or who for one year or upwards has wilfully and maliciously deserted the other spouse, shall have no right of election.*

[(b) By wife.—A wife, who for one year or upwards previous to the death of her husband shall have wilfully and maliciously deserted him, shall have no right of election.]

* * *

§ 2512. Failure to make an election.

(a) Effect.—Except as provided in section 2507(3) (relating to marriage), failure to make an election in the manner and within the time limits set forth in section 2511 (relating to time for making election) shall be deemed an election to take under the will or an acquiescence in the provisions thereof. No payment or distribution from the estate, except the exemption allowed by law to the surviving spouse, shall be required to be made to the surviving spouse within **[one year] six months** after the probate of the will unless his election to take under or acquiesce in the will shall have been made and filed as provided in section 2510 (relating to how election made).

* * *

§ 2513. Grantee or lienholder.

An election shall be void as against a bona fide grantee of or holder of a lien on real estate in any county unless:

[(i)](1) the election or a duplicate original or certified copy thereof is recorded in such county within **[one year] six months** after the probate of the will or if thereafter then before the recording or entering of the instrument or lien under which such grantee or lienholder claims; or

[(ii)](2) a certified copy of the decree of the court extending the time for making the election has been recorded in such county within **[one year] six months** after the probate of the will or if thereafter then before the recording or entering of such instrument or lien and the election or a duplicate original or certified copy thereof has been recorded in such county within the time set by the court or if thereafter then before the recording or entering of such instrument or lien.

Section 10. Paragraphs (1), (2) and (12) of section 2514 of Title 20 are repealed.

Section 11. Section 2514 of Title 20 is amended by adding a paragraph to read:

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

* * *

(1.1) Construction that will passes all property.—A will shall be construed to apply to all property which the testator owned at his death, including property acquired after the execution of his will.

* * *

Section 12. Paragraph (7) of section 2514 of Title 20 is amended to read:

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

* * *

(7) Adopted children.—In construing paragraphs (9), (10) and (11) of this section, relating to lapsed and void devises and legacies, and in construing a will making a devise or bequest to a person or persons described by relationship to the testator or to another, any **adopted person [adopted before the death of the testator]** shall be considered the child of his adopting parent or parents, **[and not the child of his natural parents: Provided, That if]** *except that, in construing the will of a testator who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the child's minority. An adopted person who is considered the child of his adopting parent or parents under this paragraph shall not be considered as continuing to be the child of his natural parents except in construing the will of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, [before the testator's death] the adopted person shall also be considered the child of such natural parent.*

* * *

Section 13. Paragraph (16) of section 2514 of Title 20 is amended and the section is amended by adding paragraphs to read:

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

* * *

(12.1) Property subject to a security interest.—A specific devise or bequest of real or personal property passes that property subject to any security interest therein existing at the date of the testator's death, without any right of exoneration out of any other estate of the testator regardless whether the security interest was created by the testator or by a previous owner and any general directive in the will to pay debts.

* * *

[(16) Ademption. A specific devise or bequest shall not be adeemed when the testator or the testator's estate receives an asset in

exchange for the subject of the devise or bequest and the act which otherwise would have caused the ademption occurs while the testator is an adjudged incompetent. In such case the devise or bequest shall be deemed to apply to whatever was received in exchange.]

(16.1) Nonademption; incompetency.—If property of an incompetent specifically devised or bequeathed is sold or exchanged or if a condemnation award or insurance proceeds are paid to the estate of an incompetent as a result of condemnation, fire or casualty, the specific legatee or devisee has the right to the net sale price, the property received in exchange, the condemnation award or the insurance proceeds. This paragraph does not apply if subsequent to the sale, exchange, condemnation, or casualty, the testator has been adjudicated competent and survives the adjudication by one year.

(17) Change in securities.—If the testator intended a specific bequest of securities owned by him at the time of the execution of his will, rather than the equivalent value thereof, the legatee is entitled only to:

(i) as much of those securities as formed a part of the testator's estate at the time of his death;

(ii) any additional or other securities issued by the same entity thereon and owned by the testator by reason of a stock dividend, stock split or other action by the entity, excluding any acquired by exercise of purchase options for more than a fractional share; and

(iii) securities of another entity received thereon or in exchange therefor and owned by the testator as a result of a merger, consolidation or reorganization of the entity or other similar change.

(18) Nonademption; balance.—A devisee or legatee of property specifically devised or bequeathed has the right to any of that property which the testator still owned at his death and:

(i) any balance of the purchase price or balance of property to be received in exchange, together with any security interest, owing from a purchaser to the testator at his death by reason of a sale or exchange of the property by the testator;

(ii) any amount due for the condemnation of the property and unpaid at the testator's death;

(iii) any proceeds unpaid at the testator's death on fire or casualty insurance on the property; and

(iv) property owned by the testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically bequeathed obligation.

(19) Employee benefits.—Benefits received by a trust under a Federally qualified profit sharing, pension or stock bonus plan shall not be available for the payment of obligations of the decedent or of his estate.

Section 14. Section 2520 of Title 20 is repealed.

Section 15. Sections 3101 and 3174 of Title 20, section 3101 amended December 19, 1975 (No.163), are amended to read:

§ 3101. **[Payment of wages, salary, vacation benefits to family]**
Payments to family.

Any employer of a person dying domiciled in the Commonwealth at any time after the death of the employee, whether or not a personal representative has been appointed, may pay wages, salary or any **[accrued vacation] employee** benefits **[or pension]** due the deceased in an amount not exceeding \$3,500 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

§ 3174. When not required.

(a) Corporate personal representative.—No bond shall be required of: **[a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, or, in the discretion of the register, of a foreign corporation,]**

(1) A bank and trust company or of a trust company incorporated in the Commonwealth.

(2) A national bank having its principal office in the Commonwealth.

(3) A foreign corporate fiduciary or [of] a national bank having its principal office out of the Commonwealth, otherwise qualified to act if the laws of the state in which it is incorporated or in which the national bank is located provide a similar exemption for corporations existing under the laws of this Commonwealth.

(b) Resident **[executor] personal representative**.—No bond shall be required of an individual **[executor] personal representative** who is a resident of the Commonwealth *if he is named in the will as an original or as a successor personal representative* unless it is required by the will or is ordered by the court.

(b.1) Nonresident co-personal representative.—No bond shall be required of an individual named in the will who is not a resident of the Commonwealth but who will serve with a resident co-personal representative who is also named in the will, if the petition for letters includes an averment that all assets will remain in the custody and control of the resident co-personal representative, unless a bond is required by the will or is ordered by the court.

(c) Nonresident **[executor] personal representative**.—No bond shall be required of an individual **[executor] personal representative** not a resident of the Commonwealth who *is named in the will and* has been excused from filing a bond by the express direction of the testator in his will unless the register *or the court*, for cause, deems it necessary, in which event the

register *or the court*, in fixing the amount of the bond, shall have regard to all the circumstances, including the amount of **[transfer]** inheritance tax and estate tax due the Commonwealth and the amount of the decedent's debts.

Section 16. Sections 3357 and 3376 of Title 20 are amended to read: § 3357. Title of purchaser.

(a) General rule.—If the personal representative has given such bond, if any, as shall be required in accordance with this title, any sale, mortgage, or exchange by him, whether pursuant to a decree or to the exercise of a testamentary power or of a power under this title, shall pass the full title of the decedent therein, unless otherwise specified, discharged from the lien of legacies, from liability for all debts and obligations of the decedent, from all liabilities incident to the administration of the decedent's estate, and from all claims of distributees and of persons claiming in their right, except that

[(1)] no such sale, mortgage or exchange by a personal representative, *unless made under section 3353 (relating to order of court) for the purpose of divesting a lien existing at the decedent's death*, shall divest the interest of a *bona fide* grantee of, or a holder of a lien on, real property of the decedent who has acquired such interest for value under a prior recorded document from or through those entitled to the interest of the decedent in the real property by will or by intestacy, either:

[(i)] (1) more than one year after the death of the decedent *and* when no letters **[theretofore have been]** issued in the Commonwealth upon the decedent's estate *were in effect*; or

[(ii)] (2) within such year if no letters upon the decedent's estate have been issued in the Commonwealth during that year. **[, unless the sale by the personal representative is made under section 3353 of this code (relating to order of court) for the purpose of divesting a lien existing at decedent's death; and**

(2) only a sale under section 3353 of this code shall divest liens of record at the time of the decedent's death.]

(b) Effect of certain circumstances.—Persons dealing with the personal representative shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the estate. Any sale or exchange by a personal representative pursuant to a decree under section 3353 shall have the effect of a judicial sale, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the terms of any will or codicil thereafter probated or by the subsequent revocation of the letters of the personal representative who made the sale, mortgage, exchange, or conveyance if the person dealing with the personal representative did so in good faith.

§ 3376. Limitations against debt due estate.

Any statute of limitation which would bar any debt or liability owed the estate of a decedent within one year after the decedent's death shall be

extended until the end of one year following the decedent's death. Failure or delay in taking out letters testamentary or of administration shall not affect the operation of any statute of limitations applicable to a debt or liability owed the estate of a decedent.

Section 17. Section 3532 of Title 20 is amended by adding a subsection to read:

§ 3532. At risk of personal representative.

* * *

(c) Record of risk distributions.—The personal representative may file with the clerk receipts, releases and refunding agreements which he may have received from persons to whom he has made a risk distribution, or from other parties in interest. Receipts, releases and refunding agreements so filed shall be indexed under the name of the estate. Their acceptance shall not be construed as court approval of any act of administration or distribution therein reflected.

Section 18. Subsection (a) of section 3703 of Title 20 is amended to read:

§ 3703. General rules.

(a) Powers of testator or settlor.—A testator, settlor, or possessor of any appropriate power of appointment may direct how the estate tax shall be apportioned or allocated or grant a discretionary power to another so to direct. Any such direction shall take precedence over the provisions of this chapter in so far as the direction provides for the payment of the estate tax or any part thereof from property, the disposition of which can be controlled by the instrument containing the direction or delegating the power to another, *provided that any such direction shall not be effective to increase the share of a spouse who has elected to take against the will or other conveyance of the decedent.*

* * *

Section 19. Title 20 is amended by adding a section to read:

§ 5163.1. *Distribution to personal representative.*

A guardian shall be relieved of liability with respect to all real and personal property distributed by him to the personal representative of his ward and thereafter distributed by the personal representative in conformity with a decree of court, or in accordance with a rule of court upon an accounting of such personal representative and confirmation thereof.

Section 20. Section 5701 of Title 20 is amended by adding a subsection to read:

§ 5701. Proof of death.

* * *

(e) Distribution of estate or trust.—If the continued existence of an absentee would affect the distribution of an estate or trust, the court having jurisdiction of the estate or trust may, for purposes of distribution of that estate or trust, make a finding and decree of death, as provided in this section, regardless of where the absentee was domiciled or last resided.

Section 21. Subsection (a) of section 6102 of Title 20 is amended to read:

§ 6102. Termination of trusts.

(a) Failure of original purpose.—The court having jurisdiction of a trust heretofore or hereafter created, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to a conveyor, his spouse, issue, parents, or any of them, who is an income beneficiary, provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyor, and notice is given to all parties in interest or to their duly appointed fiduciaries. But, distributions of principal under this section, whether by termination, partial termination, or allowance, shall not exceed an aggregate value of **[\$25,000] \$50,000** from all trusts created by the same conveyor.

* * *

Section 22. Paragraph (4) of section 6114 of Title 20 is amended and a paragraph is added to read:

§ 6114. Rules of interpretation.

In the absence of a contrary intent appearing therein, conveyances shall be construed, as to real and personal estate, in accordance with the following rules:

* * *

(4) Adopted children.—In construing a conveyance to a person or persons described by relationship to the conveyor or to another, any *adopted* person **[adopted before the effective date of the conveyance]** shall be considered the child of his adopting parent or parents, **[and not the child of his natural parents: Provided, That if] except that, in construing the conveyance of a conveyor who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the child's minority. An adopted person who is considered the child of his adopting parent or parents under this paragraph shall not be considered as continuing to be the child of his natural parents except in construing the conveyance of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person.** If a natural parent shall have married the adopting parent **[before the effective date of the conveyance]**, the adopted person shall also be considered the child of such natural parent.

* * *

(7) *Employee benefits.*—*Benefits received by a trust under a Federally qualified profit sharing, pension or stock bonus plan shall not be available for the payment of obligations of the decedent or of his estate.*

Section 23. Section 6118 of Title 20, added December 10, 1974 (P.L.867, No.293), is repealed.

Section 24. Section 7183 of Title 20 is amended by adding a paragraph to read:

§ 7183. Notice, audits, reviews, and distribution.

The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in this title for the administration of a decedent's estate, with regard to the following:

* * *

(13) Record of risk distributions as provided in section 3532(c) (relating to at risk of personal representative).

Section 25. Title 20 is amended by adding a section to read:

§ 7188. *Annexation of account of distributed estate or trust.*

A trustee who has received property from a personal representative or from another trustee in distribution of an estate or another trust, may annex a copy of an account of the administration of such estate or other trust to an account filed by the trustee covering the administration of the trust under his management. If notice of the annexation of the account of the estate or other trust is given to the persons required to be notified of the filing of the trustee's account of the principal trust, confirmation of the principal account shall relieve both the trustee of the principal trust and the personal representative or trustee of the distributed estate or other trust of all liability to beneficiaries of the principal trust for transactions shown in the account so annexed to the same extent as if the annexed account had been separately filed and confirmed.

Section 26. Subsection (d) of section 8111 of Title 20 is amended to read:

§ 8111. Expenses; trust estates.

* * *

(d) Interest and penalties on taxes.—**[Interest]** *Except as otherwise provided in Chapter 37 (relating to estate tax apportionment), interest and penalties on inheritance and estate taxes, levied by any authority, Federal, State or foreign, shall be paid out of principal to the extent that such interest and penalties are in excess of the rate of return which has been or shall be realized from the estate during the time that such interest and penalty have accrued.*

* * *

Section 27. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1976.

MILTON J. SHAPP