

## No. 1980-118

## AN ACT

## SB 768

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for petitions attested by verified statements, increasing intestate share of surviving spouse; clarifying certain provisions relating to spouses' elections; authorizing certain payments to family and funeral directors; changing bond requirements; adding provisions for distributees; increasing interest rates; changing provisions concerning termination of trusts and combination of trusts; making technical and editorial changes and making repeals.

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

Section 1. Section 761 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, amended April 28, 1978 (P.L.202, No.53), is amended to read:

§ 761. Petitions.

All applications to the orphans' court division shall be by petition in the form prescribed by general rules *and shall be attested either by an affidavit or by a verified statement. In the case of the latter alternative, the statement shall set forth that it is subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).*

Section 2. Section 2102, subsection (a) of section 2203 and subsection (c) of section 2204 of Title 20, amended or added April 18, 1978 (P.L.42, No.23), are amended to read:

§ 2102. Share of surviving spouse.

The intestate share of a decedent's surviving spouse is:

(1) If there is no surviving issue or parent of the decedent, the entire intestate estate.

(2) If there is no surviving issue of the decedent but he is survived by a parent or parents, the first ~~[\$20,000]~~ **\$30,000** plus one-half of the balance of the intestate estate.

(3) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the first ~~[\$20,000]~~ **\$30,000** plus one-half of the balance of the intestate estate.

(4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

(5) In case of partial intestacy any property received by the surviving spouse under the will shall satisfy pro tanto the ~~[\$20,000]~~ **\$30,000** allowance under paragraphs (2) and (3).

§ 2203. Right of election; resident decedent.

(a) Property subject to election.—When a married person domiciled in this Commonwealth dies, his surviving spouse has a right to an elective share of one-third of the following property:

- (1) Property passing from the decedent by will or intestacy.
- (2) Income or use for the remaining life of the spouse of property conveyed by the decedent during the marriage to the extent that the decedent at the time of his death had the use of the property or an interest in or power to withdraw the income thereof.
- (3) Property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had a power to revoke the conveyance or to consume, invade or dispose of the principal for his own benefit.
- (4) Property conveyed by the decedent during the marriage to himself and another or others with right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee.
- (5) Survivorship rights conveyed to a beneficiary of an annuity contract to the extent it was purchased by the decedent during the marriage and the decedent was receiving annuity payments therefrom at the time of his death.
- (6) **[Property in excess of \$3,000 in value conveyed to any one donee by the decedent during the marriage within one year of his death.] *Property conveyed by the decedent during the marriage and within one year of his death to the extent that the aggregate amount so conveyed to each donee exceeds \$3,000, valued at the time of conveyance.***

In construing this subsection, a power in the decedent to withdraw income or principal, or a power in any person whose interest is not adverse to the decedent to distribute to or use for the benefit of the decedent any income or principal, shall be deemed to be a power in the decedent to withdraw so much of the income or principal as is subject to such power, even though such income or principal may be distributed only for support or other particular purpose or only in limited periodic amounts.

\* \* \*

§ 2204. Disclaimers, releases and charges against elective share.

\* \* \*

(c) Charges against elective share.—Notwithstanding the provisions of subsections (a) and (b), the spouse may elect to retain any beneficial interest described in subsection (a) which immediately after the decedent's death consists of property owned by the spouse outright or in fee simple absolute, and have the value thereof at the time of the decedent's death charged against the elective share. The value at the time of the decedent's death of any beneficial interest described in subsection (a), regardless of its form, shall also be so charged against the elective share to the extent that it cannot be disclaimed, conveyed or released. *If any property retained by the spouse pursuant to this subsection would have reverted to the personal representative of the decedent's estate under section 2211(b)(2) and (3) (relating to determi-*

*nation of effect of election; enforcement) had the property been disclaimed, its value shall be added to the value of the property passing by will or intestacy for the purpose of computing the spouse's elective share under section 2203(a)(1) (relating to right of election; resident decedent).*

\* \* \*

Section 3. Sections 3101 and 3102 of Title 20 are amended to read: § 3101. Payments to family *and funeral directors.*

*(a) Wages, salary or employee benefits.—Any employer of a person dying domiciled in [the] this 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 employee benefits 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.*

*(b) Deposit account.—Any bank, savings association, savings and loan association, building and loan association, credit union or other savings organization, at any time after the death of a depositor, member or certificate holder, may pay the amount on deposit or represented by the certificate, when the total standing to the credit of the decedent in that institution does not exceed \$1,500, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased depositor, member or certificate holder, provided that a receipted funeral bill or an affidavit, executed by a licensed funeral director which sets forth that satisfactory arrangements for payment of funeral services have been made, is presented. Any bank, association, union or other savings organization 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 it 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.*

*(c) Payments to funeral directors.—When the decedent was a qualified recipient of medical assistance from the Department of Public Welfare, the facility in which he was a patient may make payment of funds, if any, remaining in the patient's care account, for the decedent's burial expenses to a licensed funeral director in an amount not exceeding \$1,000 whether or not a personal representative has been appointed. Any facility 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 it shall not be required to see to the application thereof. Any licensed funeral director to whom*

*payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.*

§ 3102. Settlement of small estates on petition.

When any person dies domiciled in the Commonwealth owning property (exclusive of real estate and of property payable under section 3101 (relating to payments to family *and funeral directors*), but including personal property claimed as the family exemption) of a gross value not exceeding \$10,000, the orphans' court division of the county wherein the decedent was domiciled at the time of his death, upon petition of any party in interest, in its discretion, with or without appraisal, and with such notice as the court shall direct, and whether or not letters have been issued or a will probated, may direct distribution of the property (including property not paid under section 3101) to the parties entitled thereto. The authority of the court to award distribution of personal property under this section shall not be restricted because of the decedent's ownership of real estate, regardless of its value. The decree of distribution so made shall constitute sufficient authority to all transfer agents, registrars and others dealing with the property of the estate to recognize the persons named therein as entitled to receive the property to be distributed without administration, and shall in all respects have the same effect as a decree of distribution after an accounting by a personal representative. Within one year after such a decree of distribution has been made, any party in interest may file a petition to revoke it because an improper distribution has been ordered. If the court shall find that an improper distribution has been ordered, it shall revoke the decree and shall direct restitution as equity and justice shall require.

Section 4. Subsection (c) of section 3133 and paragraph (1) of section 3153 of Title 20 are amended to read:

§ 3133. Limit of time for probate.

\* \* \*

(c) Effect upon grantee or [mortgagee] *lienholder*.—A will offered for original or subsequent probate more than [two years] *one year* after the [decedent's] *testator's* death shall be void against a bona fide grantee or [mortgagee of] *holder of a lien on* real estate of the [decedent] *testator* if the conveyance or [mortgage] *lien* is [recorded] *entered of record* before the will is offered for probate.

§ 3153. Contents of petition.

A petition for the grant of letters testamentary or of administration shall state, under oath, so far as they are known:

(1) The decedent's name, age, state or country of domicile, his last family or principal residence, and the place *and* day [and hour] of his death.

\* \* \*

Section 5. Section 3174 of Title 20, amended April 18, 1978 (P.L.42, No.23), is amended to read:

§ 3174. When not required.

(a) Corporate personal representative.—No bond shall be required of:

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

(2) A national bank having its principal office in [the] *this* Commonwealth.

(3) A foreign corporate fiduciary or a national bank having its principal office out of [the] *this* 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 personal representative.—No bond shall be required of an individual 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 personal representative.—No bond shall be required of an individual 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 inheritance tax and estate tax due the Commonwealth and the amount of the decedent's debts.

(d) Estates under \$5,000.—No bond shall be required of a personal representative of an estate having a value of less than \$5,000 unless a person having an interest in the estate requests that a bond be required.]

*(b) Individual personal representative.—Unless a bond is ordered by the court or is required by the will, if any, no bond shall be required of an individual personal representative who:*

*(1) Is named in the will as an original or successor personal representative and:*

*(i) is a resident of this Commonwealth;*

*(ii) has been excused from filing a bond by the express direction of the testator in his will; or*

*(iii) is not a resident of this Commonwealth but will serve with a resident co-personal representative of whom no bond is*

*required if the petition for letters includes an averment that all assets will remain in the custody and control of the resident co-personal representative.*

*(2) Is not named in the will, if any, as an original or successor personal representative but is a resident of this Commonwealth and is either the sole residuary legatee or next of kin or is the nominee of all residuary legatees or next of kin who are adult and sui juris.*

Section 6. Title 20 is amended by adding sections to read:

§ 3539. *(Reserved).*

§ 3540. *Absentee and additional distributees.*

*(a) Distributions due absentees.—*

*(1) If the continued existence or whereabouts of an heir, devisee or legatee who once existed cannot be ascertained at the time of the audit of the personal representative's account, the court, unless it finds pursuant to section 5701 (relating to proof of death) that the absentee's death has disqualified him as a distributee of the estate, or unless a trustee has been appointed for such absentee pursuant to section 5702 (relating to trustee for absentee), shall direct that any property distributable to the absentee shall be converted into money that shall be paid into the State Treasury, through the Department of Revenue. The moneys shall be held in a custodial capacity subject to refund, without appropriation, pursuant to section 24 of Article III of the Constitution of Pennsylvania.*

*(2) The court shall retain jurisdiction with respect to any claim to such moneys. Upon further findings and order of court that a claimant is entitled to all or a part of the moneys, the Board of Finance and Revenue, upon petition, shall refund such moneys pursuant to the order of court.*

*(b) Possibility of additional distributees.—If the existence of a person or persons would affect the distribution of an estate but there is no proof that such a person ever existed, and the court is satisfied that all reasonable steps have been taken to determine whether such a person existed, the court may award distribution of the estate to those who would be entitled if no such person existed, with or without refunding bonds. Any such bond shall be without security, shall be in such form and amount as the court directs, shall be executed by each distributee and filed with the clerk, and shall provide that if, within seven years or any shorter period fixed by the court, it is later established that there is an additional person or persons entitled to share in the distribution of the estate, the distributee upon demand will return such portion or all of the property received by him as the court may direct or, if it has been disposed of, will make such restitution as the court deems equitable.*

Section 7. Subsections (a) and (c) of section 3543 of Title 20 are amended to read:

§ 3543. Interest or income on distributive shares.

(a) Pecuniary legacy.—A pecuniary legacy bequeathed in trust shall bear interest at the rate of [3%] 5% per annum from the death of the decedent until the payment of the legacy, and when not in trust shall bear interest at the rate of [3%] 5% per annum from one year after the death of the decedent until the payment of the legacy.

\* \* \*

(c) Demonstrative legacy.—A demonstrative legacy shall bear interest from the death of the decedent until the payment of the legacy at the rate earned by the property out of which it is primarily payable, and to the extent that it is not paid from that source, shall bear interest at the rate of [3%] 5% per annum from one year after the death of the decedent until the payment of the legacy.

\* \* \*

Section 8. 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 [\$50,000] \$100,000 from all trusts created by the same conveyor.

\* \* \*

Section 9. Section 6109 of Title 20 is repealed.

Section 10. 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:

\* \* \*

(15) *Absentee and additional distributees, as in section 3540 (relating to absentee and additional distributees).*

Section 11. Paragraph (1) of section 7187 and section 7192 of Title 20 are amended to read:

§ 7187. Interest or income on distributive shares.

Except as otherwise provided by the trust instrument or by the provisions of section 3543 (relating to interest or income on distributive shares):

(1) Pecuniary gift.—When a sum of money is directed to be set aside at a specified time as a separate trust, it shall bear interest at the rate of [3%] 5% per annum from the date it was to be set aside until it is set aside. When a sum of money is directed to be paid outright, it shall bear interest at the rate of [3%] 5% per annum from three months after it became payable until it is paid.

\* \* \*

§ 7192. Combination of trusts.

**[Whenever the trust instrument provides for the creation of separate trusts, the court, for cause shown and with the consent of all parties in interest, may authorize the trusts to be combined.] *The court, for cause shown, may authorize the combination of separate trusts with substantially similar provisions upon such terms and conditions and with such notice as the court shall direct notwithstanding that the trusts may have been created by separate instruments and by different persons. If necessary to protect possibly different future interests, the assets shall be valued at the time of any such combination and a record made of the proportionate interest of each separate trust in the combined fund.***

Section 12. The act of August 9, 1971 (P.L.286, No.74), known as the "Disposition of Abandoned and Unclaimed Property Act," is repealed insofar as it is inconsistent with the provisions of 20 Pa.C.S. § 3540 (relating to absentee and additional distributees).

Section 13. This act shall take effect in 60 days, except that the provisions of 20 Pa.C.S. § 3540 (relating to absentee and additional distributees) shall take effect immediately and apply to estates and trusts now existing or hereafter arising, and the provisions of 20 Pa.C.S. §§ 3543 (relating to interest or income on distributive shares) and 7187 (relating to interest or income on distributive shares) shall take effect immediately and apply to interest accruing on or after January 1 of the year next following the date of final enactment.

APPROVED—The 11th day of July, A. D. 1980.

DICK THORNBURGH