

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 95

Session of 2003

INTRODUCED BY GREENLEAF, LEMMOND, TARTAGLIONE AND THOMPSON, JANUARY 29, 2003

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MAY 6, 2003

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, amending and adding provisions
3 relating to divorce. FURTHER DEFINING "SEPARATE AND APART"
4 FOR PURPOSES OF DIVORCE; PROVIDING FOR PREMARITAL AGREEMENTS;
5 FURTHER PROVIDING FOR DECREE OF COURT IN ACTIONS FOR DIVORCE;
6 FURTHER DEFINING "MARITAL PROPERTY" FOR PURPOSES OF CERTAIN
7 PROPERTY RIGHTS; AND FURTHER PROVIDING FOR EQUITABLE DIVISION
8 OF MARITAL PROPERTY, FOR DISPOSITION OF PROPERTY TO DEFEAT
9 OBLIGATIONS AND FOR STATEMENT OF REASONS FOR DISTRIBUTION.

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<—

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

12 Section 1. The definition of "separate and apart" in section
13 3103 of Title 23 of the Pennsylvania Consolidated Statutes is
14 amended to read:

15 § 3103. Definitions.

16 The following words and phrases when used in this part shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 \* \* \*

20 "Separate and apart." [Complete cessation] Cessation of [any
21 and all] cohabitation, whether living in the same residence or

1 not. In the event a complaint in divorce is filed and served, it  
2 shall be presumed that the parties commenced to live separate  
3 and apart not later than the date that the complaint was served.

4 \* \* \*

5 Section 2. Title 23 is amended by adding a section to read:  
6 § 3106. Premarital agreements.

7 (a) General rule.--The burden of proof to set aside a  
8 premarital agreement shall be upon the party alleging the  
9 agreement to be unenforceable. A premarital agreement shall not  
10 be enforceable if the party seeking to set aside the agreement  
11 proves, by clear and convincing evidence, that:

12 (1) the party did not execute the agreement voluntarily;

13 or

14 (2) the party, before execution of the agreement:

15 (i) was not provided a fair and reasonable  
16 disclosure of the property or financial obligations of  
17 the other party;

18 (ii) did not voluntarily and expressly waive, in  
19 writing, any right to disclosure of the property or  
20 financial obligations of the other party beyond the  
21 disclosure provided; and

22 (iii) did not have an adequate knowledge of the  
23 property or financial obligations of the other party.

24 (b) Void agreements.--A premarital agreement executed within  
25 60 days prior to the marriage shall be void. A waiver of this  
26 subsection shall be unenforceable.

27 (c) Definition.--As used in this section, the term  
28 "premarital agreement" means an agreement regarding matters  
29 within the jurisdiction of the court under this part between  
30 prospective spouses made in contemplation of marriage and to be

1 effective upon marriage.

2 ~~Section 3. Section 3301(d) of Title 23 is amended to read:~~ <—

3 ~~§ 3301. Grounds for divorce.~~

4 \* \* \*

5 ~~(d) Irretrievable breakdown.—~~

6 ~~(1) The court may grant a divorce where a complaint has~~  
7 ~~been filed alleging that the marriage is irretrievably broken~~  
8 ~~and an affidavit has been filed alleging that the parties~~  
9 ~~have lived separate and apart for a period of at least [two~~  
10 ~~years] one year and that the marriage is irretrievably broken~~  
11 ~~and the defendant either:~~

12 ~~(i) Does not deny the allegations set forth in the~~  
13 ~~affidavit.~~

14 ~~(ii) Denies one or more of the allegations set forth~~  
15 ~~in the affidavit but, after notice and hearing, the court~~  
16 ~~determines that the parties have lived separate and apart~~  
17 ~~for a period of at least [two years] one year and that~~  
18 ~~the marriage is irretrievably broken.~~

19 ~~(2) If a hearing has been held pursuant to paragraph~~  
20 ~~(1)(ii) and the court determines that there is a reasonable~~  
21 ~~prospect of reconciliation, then the court shall continue the~~  
22 ~~matter for a period not less than 90 days nor more than 120~~  
23 ~~days unless the parties agree to a period in excess of 120~~  
24 ~~days. During this period, the court shall require counseling~~  
25 ~~as provided in section 3302 (relating to counseling). If the~~  
26 ~~parties have not reconciled at the expiration of the time~~  
27 ~~period and one party states under oath that the marriage is~~  
28 ~~irretrievably broken, the court shall determine whether the~~  
29 ~~marriage is irretrievably broken. If the court determines~~  
30 ~~that the marriage is irretrievably broken, the court shall~~

1 ~~grant the divorce. Otherwise, the court shall deny the~~  
2 ~~divorce.~~

3 \* \* \*

4 Section 4 3. Sections 3323(c) and (d), 3501(a) and 3502(a) ←  
5 of Title 23 are amended and the sections are amended by adding  
6 subsections to read:

7 § 3323. Decree of court.

8 \* \* \*

9 [(c) Bifurcation.--In the event that the court is unable for  
10 any reason to determine and dispose of the matters provided for  
11 in subsection (b) within 30 days after the report of the master  
12 has been filed, it may enter a decree of divorce or annulment.  
13 Upon the request of either party and after a hearing, the court  
14 may order alimony pendente lite, reasonable counsel fees, costs  
15 and expenses and may make a temporary order necessary to protect  
16 the interests of the parties pending final disposition of the  
17 matters in subsection (b).

18 (d) Substitution for deceased party.--If one of the parties  
19 dies after the decree of divorce has been entered, but prior to  
20 the final determination in such proceeding of the property  
21 rights and interests of the parties under this part, the  
22 personal representative of the deceased party shall be  
23 substituted as a party as provided by law and the action shall  
24 proceed.]

25 (c.1) Bifurcation.--With the consent of both parties, the  
26 court may enter a decree of divorce or annulment prior to the  
27 final determination and disposition of the matters provided for  
28 in subsection (b). In the absence of the consent of both  
29 parties, the court may enter a decree of divorce or annulment  
30 prior to the final determination and disposition of the matters

1 provided for in subsection (b) if:

2 (1) ~~at least one year has elapsed since grounds have~~ ←  
3 been established as provided in subsection (g); and

4 (2) the moving party has demonstrated that:

5 (i) compelling circumstances exist for the entry of  
6 the decree of divorce or annulment; and

7 (ii) sufficient economic protections have been  
8 provided for the other party during the pendency of the  
9 disposition of the matters provided for in subsection  
10 (b).

11 (d.1) Death of a party.--In the event one party dies during  
12 the course of divorce proceedings, no decree of divorce has been  
13 entered and grounds have been established as provided in  
14 subsection (g), the parties' economic rights and obligations  
15 arising under the marriage shall be determined under this part  
16 rather than under 20 Pa.C.S. (relating to decedents, estates and  
17 fiduciaries).

18 \* \* \*

19 (g) Grounds established.--For purposes of subsections (c.1)  
20 and (d.1), grounds are established as follows:

21 (1) In the case of an action for divorce under section  
22 3301(a) or (b) (relating to grounds for divorce), the court  
23 adopts a report of the master or makes its own findings that  
24 grounds for divorce exist.

25 (2) In the case of an action for divorce under section  
26 3301(c), both parties have filed affidavits of consent.

27 (3) In the case of an action for divorce under section  
28 3301(d), an affidavit has been filed and no counter-affidavit  
29 has been filed or, if a counter-affidavit has been filed  
30 denying the affidavit's averments, the court determines that

1 the marriage is irretrievably broken and the parties have  
2 lived separate and apart for at least ~~one year~~ TWO YEARS at ←  
3 the time of the filing of the affidavit.

4 § 3501. Definitions.

5 (a) General rule.--As used in this chapter, "marital  
6 property" means all property acquired by either party during the  
7 marriage[, including the increase in value, prior to the date of  
8 final separation,] and the increase in value of any nonmarital  
9 property acquired pursuant to paragraphs (1) and (3)[, except:]  
10 as measured and determined under subsection (a.1). However,  
11 marital property does not include:

12 (1) Property acquired prior to marriage or property  
13 acquired in exchange for property acquired prior to the  
14 marriage.

15 (2) Property excluded by valid agreement of the parties  
16 entered into before, during or after the marriage.

17 (3) Property acquired by gift, except between spouses,  
18 bequest, devise or descent or property acquired in exchange  
19 for such property.

20 (4) Property acquired after final separation until the  
21 date of divorce, except for property acquired in exchange for  
22 marital assets.

23 (5) Property which a party has sold, granted, conveyed  
24 or otherwise disposed of in good faith and for value prior to  
25 the date of final separation.

26 (6) Veterans' benefits exempt from attachment, levy or  
27 seizure pursuant to the act of September 2, 1958 (Public Law  
28 85-857, 72 Stat. 1229), as amended, except for those benefits  
29 received by a veteran where the veteran has waived a portion  
30 of his military retirement pay in order to receive veterans'

1 compensation.

2 (7) Property to the extent to which the property has  
3 been mortgaged or otherwise encumbered in good faith for  
4 value prior to the date of final separation.

5 (8) Any payment received as a result of an award or  
6 settlement for any cause of action or claim which accrued  
7 prior to the marriage or after the date of final separation  
8 regardless of when the payment was received.

9 (a.1) Measuring and determining the increase in value of  
10 nonmarital property.--The increase in value of any nonmarital  
11 property acquired pursuant to subsection (a)(1) and (3) shall be  
12 measured from the date of marriage or later acquisition date to  
13 either the date of final separation or the date as close to the  
14 hearing on equitable distribution as possible, whichever date  
15 results in a lesser increase. Any decrease in value of the  
16 nonmarital property of a party shall be offset against any  
17 increase in value of the nonmarital property of that party.  
18 However, a decrease in value of the nonmarital property of a  
19 party shall not be offset against any increase in value of the  
20 nonmarital property of the other party or against any other  
21 marital property subject to equitable division.

22 \* \* \*

23 (c) Defined benefit retirement plans.--Notwithstanding  
24 subsections (a), (a.1) and (b):

25 (1) In the case of the marital portion of a defined  
26 benefit retirement plan being distributed by means of a  
27 deferred distribution, the defined benefit plan shall be  
28 allocated between its marital and nonmarital portions solely  
29 by use of a coverture fraction. The denominator of the  
30 coverture fraction shall be the number of months the employee

1 spouse worked to earn the total benefit and the numerator  
2 shall be the number of such months during which the parties  
3 were married and not finally separated. The benefit to which  
4 the coverture fraction is applied shall include all  
5 postseparation enhancements except for enhancements arising  
6 from postseparation monetary contributions made by the  
7 employee spouse, including the gain or loss on such  
8 contributions.

9 (2) In the case of the marital portion of a defined  
10 benefit retirement plan being distributed by means of an  
11 immediate offset, the defined benefit plan shall be allocated  
12 between its marital and nonmarital portions solely by use of  
13 a coverture fraction. The denominator of the coverture  
14 fraction shall be the number of months the employee spouse  
15 worked to earn the accrued benefit as of a date as close to  
16 the time of trial as reasonably possible and the numerator  
17 shall be the number of such months during which the parties  
18 were married and not finally separated. The benefit to which  
19 the coverture fraction is applied shall include all  
20 postseparation enhancements up to a date as close to the time  
21 of trial as reasonably possible except for enhancements  
22 arising from postseparation monetary contributions made by  
23 the employee spouse, including the gain or loss on such  
24 contributions.

25 § 3502. Equitable division of marital property.

26 (a) General rule.--[In] Upon the request of either party in  
27 an action for divorce or annulment, the court shall[, upon  
28 request of either party,] equitably divide, distribute or  
29 assign, in kind or otherwise, the marital property between the  
30 parties without regard to marital misconduct in such

1 [proportions] percentages and in such manner as the court deems  
2 just after considering all relevant factors[, including:]. The  
3 court may consider each marital asset or group of assets  
4 independently and apply a different percentage to each marital  
5 asset or group of assets. Factors which are relevant to the  
6 equitable division of marital property include the following:

7 (1) The length of the marriage.

8 (2) Any prior marriage of either party.

9 (3) The age, health, station, amount and sources of  
10 income, vocational skills, employability, estate, liabilities  
11 and needs of each of the parties.

12 (4) The contribution by one party to the education,  
13 training or increased earning power of the other party.

14 (5) The opportunity of each party for future  
15 acquisitions of capital assets and income.

16 (6) The sources of income of both parties, including,  
17 but not limited to, medical, retirement, insurance or other  
18 benefits.

19 (7) The contribution or dissipation of each party in the  
20 acquisition, preservation, depreciation or appreciation of  
21 the marital property, including the contribution of a party  
22 as homemaker.

23 (8) The value of the property set apart to each party.

24 (9) The standard of living of the parties established  
25 during the marriage.

26 (10) The economic circumstances of each party[,  
27 including Federal, State and local tax ramifications,] at the  
28 time the division of property is to become effective.

29 (10.1) The Federal, State and local tax ramifications  
30 associated with each asset to be divided, distributed or

1 assigned, which ramifications need not be immediate and  
2 certain.

3 (10.2) The expense of sale, transfer or liquidation  
4 associated with a particular asset, which expense need not be  
5 immediate and certain.

6 (11) Whether the party will be serving as the custodian  
7 of any dependent minor children.

8 \* \* \*

9 (f) Partial distribution.--The court, upon the request of  
10 either party, may at any stage of the proceedings enter an order  
11 providing for an interim partial distribution or assignment of  
12 marital property.

13 Section 5 4. Sections 3505(d) and 3506 of Title 23 are  
14 amended to read:

<—

15 § 3505. Disposition of property to defeat obligations.

16 \* \* \*

17 (d) Constructive trust for undisclosed assets.--If a party  
18 fails to disclose information required by [subsection (b)]  
19 general rule of the Supreme Court and in consequence thereof an  
20 asset or assets with a fair market value of [\$500] \$1,000 or  
21 more is omitted from the final distribution of property, the  
22 party aggrieved by the nondisclosure may at any time petition  
23 the court granting the award to declare the creation of a  
24 constructive trust as to all undisclosed assets for the benefit  
25 of the parties and their minor or dependent children, if any.  
26 The party in whose name the assets are held shall be declared  
27 the constructive trustee unless the court designates a different  
28 trustee, and the trust may include any terms and conditions the  
29 court may determine. The court shall grant the petition upon a  
30 finding of a failure to disclose the assets as required [under

1 subsection (b)] by general rule of the Supreme Court.

2 \* \* \*

3 § 3506. Statement of reasons for distribution.

4 In an order made under this chapter for the distribution of  
5 property, the court shall set forth the percentage of  
6 distribution for each marital asset or group of assets and the  
7 reason for the distribution ordered.

8 Section ~~6~~ 5. This act shall apply as follows: <—

9 (1) The amendment of the definition of "separate and  
10 apart" in 23 Pa.C.S. § 3103 shall apply to complaints served  
11 before, on or after the effective date of this paragraph.

12 (2) The addition of 23 Pa.C.S. § 3106 shall apply to  
13 premarital agreements executed on or after the effective date  
14 of this paragraph.

15 ~~(3) The amendment of 23 Pa.C.S. § 3301(d) shall apply to~~ <—  
16 ~~final separations which begin on or after the effective date~~  
17 ~~of this paragraph.~~

18 ~~(4)~~ (3) The amendment or addition of 23 Pa.C.S. § <—  
19 3323(c) and (c.1) shall apply to bifurcation proceedings  
20 commenced on or after the effective date of this paragraph.

21 ~~(5)~~ (4) The amendment or addition of 23 Pa.C.S. § <—  
22 3323(d) and (d.1) shall apply to the death of one of the  
23 parties on or after the effective date of this paragraph.

24 ~~(6)~~ (5) The addition of 23 Pa.C.S. § 3323(g) shall apply <—  
25 to bifurcation proceedings commenced on or after the  
26 effective date of this paragraph and cases in which one of  
27 the parties dies on or after the effective date of this  
28 paragraph. For those cases under 23 Pa.C.S. § 3323(g)(3)  
29 where the one-year separation period of 23 Pa.C.S. § 3301(d)  
30 is not applicable, the court shall determine that the parties

1 had lived separate and apart for at least two years at the  
2 time of the filing of the affidavit.

3 ~~(7)~~ (6) The amendment or addition of 23 Pa.C.S. § ←  
4 3501(a)(3) and (a.1) shall apply to all equitable  
5 distribution proceedings irrespective of whether the  
6 proceeding was commenced before, on or after the effective  
7 date of this paragraph.

8 ~~(8)~~ (7) The amendment of 23 Pa.C.S. § 3501(c) shall ←  
9 apply to all equitable distribution proceedings commenced on  
10 or after the effective date of this paragraph.

11 ~~(9)~~ (8) The amendment or addition of 23 Pa.C.S. § ←  
12 3502(a) introductory paragraph, (10.1) and (10.2) shall apply  
13 to all equitable distribution proceedings irrespective of  
14 whether the proceeding was commenced before, on or after the  
15 effective date of this paragraph.

16 ~~(10)~~ (9) The addition of 23 Pa.C.S. § 3502(f) shall ←  
17 apply to all divorce proceedings irrespective of whether the  
18 action was commenced before, on or after the effective date  
19 of this paragraph.

20 ~~(11)~~ (10) The amendment of 23 Pa.C.S. § 3505(d) shall ←  
21 apply to all equitable distribution proceedings irrespective  
22 of whether the proceeding was commenced before, on or after  
23 the effective date of this paragraph.

24 ~~(12)~~ (11) The amendment of 23 Pa.C.S. § 3506 shall apply ←  
25 to all orders made on or after the effective date of this  
26 paragraph.

27 Section 7 6. This act shall take effect as follows: ←

28 (1) The addition of 23 Pa.C.S. § 3106 shall take effect  
29 in six months.

30 (2) Section ~~6(2)~~ 5(2) of this act shall take effect in ←

1 six months.

2 (3) The remainder of this act shall take effect in 60  
3 days.