

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 95

Session of
2003

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

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 15, 2004

AN ACT

1 Amending ~~Title~~ TITLES 20 (DECEDENTS, ESTATES AND FIDUCIARIES) <—
2 AND 23 (Domestic Relations) of the Pennsylvania Consolidated
3 Statutes, FURTHER PROVIDING FOR RIGHT OF SURVIVING SPOUSE TO <—
4 ELECTIVE SHARE; further defining "separate and apart" for
5 purposes of divorce; providing for premarital agreements;
6 further providing for decree of court in actions for divorce;
7 further defining "marital property" for purposes of certain
8 property rights; and further providing for equitable division
9 of marital property, for disposition of property to defeat
10 obligations and for statement of reasons for distribution.

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

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

16 SECTION 1. SECTION 2203(A) OF TITLE 20 OF THE PENNSYLVANIA <—
17 CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS AMENDED BY
18 ADDING A SUBSECTION TO READ:

19 § 2203. RIGHT OF ELECTION; RESIDENT DECEDENT.

20 (A) PROPERTY SUBJECT TO ELECTION.--[WHEN] EXCEPT AS PROVIDED

1 IN SUBSECTION (C), WHEN A MARRIED PERSON DOMICILED IN THIS
2 COMMONWEALTH DIES, HIS SURVIVING SPOUSE HAS A RIGHT TO AN
3 ELECTIVE SHARE OF ONE-THIRD OF THE FOLLOWING PROPERTY:

4 (1) PROPERTY PASSING FROM THE DECEDENT BY WILL OR
5 INTESTACY.

6 (2) INCOME OR USE FOR THE REMAINING LIFE OF THE SPOUSE
7 OF PROPERTY CONVEYED BY THE DECEDENT DURING THE MARRIAGE TO
8 THE EXTENT THAT THE DECEDENT AT THE TIME OF HIS DEATH HAD THE
9 USE OF THE PROPERTY OR AN INTEREST IN OR POWER TO WITHDRAW
10 THE INCOME THEREOF.

11 (3) PROPERTY CONVEYED BY THE DECEDENT DURING HIS
12 LIFETIME TO THE EXTENT THAT THE DECEDENT AT THE TIME OF HIS
13 DEATH HAD A POWER TO REVOKE THE CONVEYANCE OR TO CONSUME,
14 INVADE OR DISPOSE OF THE PRINCIPAL FOR HIS OWN BENEFIT.

15 (4) PROPERTY CONVEYED BY THE DECEDENT DURING THE
16 MARRIAGE TO HIMSELF AND ANOTHER OR OTHERS WITH RIGHT OF
17 SURVIVORSHIP TO THE EXTENT OF ANY INTEREST IN THE PROPERTY
18 THAT THE DECEDENT HAD THE POWER AT THE TIME OF HIS DEATH
19 UNILATERALLY TO CONVEY ABSOLUTELY OR IN FEE.

20 (5) SURVIVORSHIP RIGHTS CONVEYED TO A BENEFICIARY OF AN
21 ANNUITY CONTRACT TO THE EXTENT IT WAS PURCHASED BY THE
22 DECEDENT DURING THE MARRIAGE AND THE DECEDENT WAS RECEIVING
23 ANNUITY PAYMENTS THEREFROM AT THE TIME OF HIS DEATH.

24 (6) PROPERTY CONVEYED BY THE DECEDENT DURING THE
25 MARRIAGE AND WITHIN ONE YEAR OF HIS DEATH TO THE EXTENT THAT
26 THE AGGREGATE AMOUNT SO CONVEYED TO EACH DONEE EXCEEDS
27 \$3,000, VALUED AT THE TIME OF CONVEYANCE.

28 IN CONSTRUING THIS SUBSECTION, A POWER IN THE DECEDENT TO
29 WITHDRAW INCOME OR PRINCIPAL, OR A POWER IN ANY PERSON WHOSE
30 INTEREST IS NOT ADVERSE TO THE DECEDENT TO DISTRIBUTE TO OR USE

1 FOR THE BENEFIT OF THE DECEDENT ANY INCOME OR PRINCIPAL, SHALL
2 BE DEEMED TO BE A POWER IN THE DECEDENT TO WITHDRAW SO MUCH OF
3 THE INCOME OR PRINCIPAL AS IS SUBJECT TO SUCH POWER, EVEN THOUGH
4 SUCH INCOME OR PRINCIPAL MAY BE DISTRIBUTED ONLY FOR SUPPORT OR
5 OTHER PARTICULAR PURPOSE OR ONLY IN LIMITED PERIODIC AMOUNTS.

6 * * *

7 (C) NONAPPLICABILITY.--PURSUANT TO 23 PA.C.S. § 3323(D.1)
8 (RELATING TO DECREE OF COURT), THIS SECTION SHALL NOT APPLY IN
9 THE EVENT A MARRIED PERSON DOMICILED IN THIS COMMONWEALTH DIES
10 DURING THE COURSE OF DIVORCE PROCEEDINGS, NO DECREE OF DIVORCE
11 HAS BEEN ENTERED PURSUANT TO 23 PA.C.S. § 3323 AND GROUNDS HAVE
12 BEEN ESTABLISHED AS PROVIDED IN 23 PA.C.S. § 3323(G).

13 SECTION 1.1. THE DEFINITION OF "SEPARATE AND APART" IN
14 SECTION 3103 OF TITLE 23 IS 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
22 not. In the event a complaint in divorce is filed and served, it
23 shall be presumed that the parties commenced to live separate
24 and apart not later than the date that the complaint was served.

25 * * *

26 Section 2. Title 23 is amended by adding a section to read:
27 § 3106. Premarital agreements.

28 (a) General rule.--The burden of proof to set aside a
29 premarital agreement shall be upon the party alleging the
30 agreement to be unenforceable. A premarital agreement shall not

1 be enforceable if the party seeking to set aside the agreement
2 proves, by clear and convincing evidence, that:

3 (1) the party did not execute the agreement voluntarily;
4 or

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

6 (i) was not provided a fair and reasonable
7 disclosure of the property or financial obligations of
8 the other party;

9 (ii) did not voluntarily and expressly waive, in
10 writing, any right to disclosure of the property or
11 financial obligations of the other party beyond the
12 disclosure provided; and

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

15 ~~(b) Void agreements. A premarital agreement executed within~~ <—
16 ~~60 days prior to the marriage shall be void. A waiver of this~~
17 ~~subsection shall be unenforceable.~~

18 ~~(c) (B) Definition.--As used in this section, the term~~ <—
19 ~~"premarital agreement" means an agreement regarding matters~~ <—
20 ~~within the jurisdiction of the court under this part between~~
21 ~~prospective spouses made in contemplation of marriage and to be~~
22 ~~effective upon marriage.~~

23 Section 3. Sections 3323(c) and ~~(d)~~, 3501(a) and 3502(a) of <—
24 Title 23 are amended and the sections are amended by adding
25 subsections to read:

26 § 3323. Decree of court.

27 * * *

28 [(c) Bifurcation.--In the event that the court is unable for
29 any reason to determine and dispose of the matters provided for
30 in subsection (b) within 30 days after the report of the master

1 has been filed, it may enter a decree of divorce or annulment.
2 Upon the request of either party and after a hearing, the court
3 may order alimony pendente lite, reasonable counsel fees, costs
4 and expenses and may make a temporary order necessary to protect
5 the interests of the parties pending final disposition of the
6 matters in subsection (b).] <—

7 ~~(d) Substitution for deceased party. If one of the parties <—~~
8 ~~dies after the decree of divorce has been entered, but prior to~~
9 ~~the final determination in such proceeding of the property~~
10 ~~rights and interests of the parties under this part, the~~
11 ~~personal representative of the deceased party shall be~~
12 ~~substituted as a party as provided by law and the action shall~~
13 ~~proceed.]~~

14 (c.1) Bifurcation.--With the consent of both parties, the
15 court may enter a decree of divorce or annulment prior to the
16 final determination and disposition of the matters provided for
17 in subsection (b). In the absence of the consent of both
18 parties, the court may enter a decree of divorce or annulment
19 prior to the final determination and disposition of the matters
20 provided for in subsection (b) if:

21 (1) grounds have been established as provided in
22 subsection (g); and

23 (2) the moving party has demonstrated that:

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

26 (ii) sufficient economic protections have been
27 provided for the other party during the pendency of the
28 disposition of the matters provided for in subsection
29 (b).

30 * * *

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

8 * * *

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

11 (1) In the case of an action for divorce under section
12 3301(a) or (b) (relating to grounds for divorce), the court
13 adopts a report of the master or makes its own findings that
14 grounds for divorce exist.

15 (2) In the case of an action for divorce under section
16 3301(c), both parties have filed affidavits of consent.

17 (3) In the case of an action for divorce under section
18 3301(d), an affidavit has been filed and no counter-affidavit
19 has been filed or, if a counter-affidavit has been filed
20 denying the affidavit's averments, the court determines that
21 the marriage is irretrievably broken and the parties have
22 lived separate and apart for at least two years at the time
23 of the filing of the affidavit.

24 § 3501. Definitions.

25 (a) General rule.--As used in this chapter, "marital
26 property" means all property acquired by either party during the
27 marriage[, including the increase in value, prior to the date of
28 final separation,] and the increase in value of any nonmarital
29 property acquired pursuant to paragraphs (1) and (3)[, except:]
30 as measured and determined under subsection (a.1). However,

1 marital property does not include:

2 (1) Property acquired prior to marriage or property
3 acquired in exchange for property acquired prior to the
4 marriage.

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

7 (3) Property acquired by gift, except between spouses,
8 bequest, devise or descent or property acquired in exchange
9 for such property.

10 (4) Property acquired after final separation until the
11 date of divorce, except for property acquired in exchange for
12 marital assets.

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

16 (6) Veterans' benefits exempt from attachment, levy or
17 seizure pursuant to the act of September 2, 1958 (Public Law
18 85-857, 72 Stat. 1229), as amended, except for those benefits
19 received by a veteran where the veteran has waived a portion
20 of his military retirement pay in order to receive veterans'
21 compensation.

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

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

29 (a.1) Measuring and determining the increase in value of
30 nonmarital property.--The increase in value of any nonmarital

1 property acquired pursuant to subsection (a)(1) and (3) shall be
2 measured from the date of marriage or later acquisition date to
3 either the date of final separation or the date as close to the
4 hearing on equitable distribution as possible, whichever date
5 results in a lesser increase. Any decrease in value of the
6 nonmarital property of a party shall be offset against any
7 increase in value of the nonmarital property of that party.
8 However, a decrease in value of the nonmarital property of a
9 party shall not be offset against any increase in value of the
10 nonmarital property of the other party or against any other
11 marital property subject to equitable division.

12 * * *

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

15 (1) In the case of the marital portion of a defined
16 benefit retirement plan being distributed by means of a
17 deferred distribution, the defined benefit plan shall be
18 allocated between its marital and nonmarital portions solely
19 by use of a coverture fraction. The denominator of the
20 coverture fraction shall be the number of months the employee
21 spouse worked to earn the total benefit and the numerator
22 shall be the number of such months during which the parties
23 were married and not finally separated. The benefit to which
24 the coverture fraction is applied shall include all
25 postseparation enhancements except for enhancements arising
26 from postseparation monetary contributions made by the
27 employee spouse, including the gain or loss on such
28 contributions.

29 (2) In the case of the marital portion of a defined
30 benefit retirement plan being distributed by means of an

1 immediate offset, the defined benefit plan shall be allocated
2 between its marital and nonmarital portions solely by use of
3 a coverture fraction. The denominator of the coverture
4 fraction shall be the number of months the employee spouse
5 worked to earn the accrued benefit as of a date as close to
6 the time of trial as reasonably possible and the numerator
7 shall be the number of such months during which the parties
8 were married and not finally separated. The benefit to which
9 the coverture fraction is applied shall include all
10 postseparation enhancements up to a date as close to the time
11 of trial as reasonably possible except for enhancements
12 arising from postseparation monetary contributions made by
13 the employee spouse, including the gain or loss on such
14 contributions.

15 § 3502. Equitable division of marital property.

16 (a) General rule.--[In] Upon the request of either party in
17 an action for divorce or annulment, the court shall[, upon
18 request of either party,] equitably divide, distribute or
19 assign, in kind or otherwise, the marital property between the
20 parties without regard to marital misconduct in such
21 [proportions] percentages and in such manner as the court deems
22 just after considering all relevant factors[, including:]. The
23 court may consider each marital asset or group of assets
24 independently and apply a different percentage to each marital
25 asset or group of assets. Factors which are relevant to the
26 equitable division of marital property include the following:

27 (1) The length of the marriage.

28 (2) Any prior marriage of either party.

29 (3) The age, health, station, amount and sources of

30 income, vocational skills, employability, estate, liabilities

1 and needs of each of the parties.

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

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

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

9 (7) The contribution or dissipation of each party in the
10 acquisition, preservation, depreciation or appreciation of
11 the marital property, including the contribution of a party
12 as homemaker.

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

14 (9) The standard of living of the parties established
15 during the marriage.

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

19 (10.1) The Federal, State and local tax ramifications
20 associated with each asset to be divided, distributed or
21 assigned, which ramifications need not be immediate and
22 certain.

23 (10.2) The expense of sale, transfer or liquidation
24 associated with a particular asset, which expense need not be
25 immediate and certain.

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

28 * * *

29 (f) Partial distribution.--The court, upon the request of
30 either party, may at any stage of the proceedings enter an order

1 providing for an interim partial distribution or assignment of
2 marital property.

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

5 § 3505. Disposition of property to defeat obligations.

6 * * *

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

22 * * *

23 § 3506. Statement of reasons for distribution.

24 In an order made under this chapter for the distribution of
25 property, the court shall set forth the percentage of
26 distribution for each marital asset or group of assets and the
27 reason for the distribution ordered.

28 Section 5. This act shall apply as follows:

29 (1) The amendment of the definition of "separate and
30 apart" in 23 Pa.C.S. § 3103 shall apply to complaints served

1 before, on or after the effective date of this paragraph.

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

5 (3) The amendment or addition of 23 Pa.C.S. § 3323(c)
6 and (c.1) shall apply to bifurcation proceedings commenced on
7 or after the effective date of this paragraph.

8 (4) The amendment or addition of ~~23 Pa.C.S. § 3323(d)~~ <—
9 ~~and (d.1)~~ 20 PA.C.S. § 2203(A) AND (C) AND 23 PA.C.S. § <—
10 3323(D.1) shall apply to the death of one of the parties on
11 or after the effective date of this paragraph IRRESPECTIVE OF <—
12 WHETHER THE DIVORCE PROCEEDING WAS COMMENCED BEFORE, ON OR
13 AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

14 (5) The addition of 23 Pa.C.S. § 3323(g) shall apply to
15 bifurcation proceedings commenced on or after the effective
16 date of this paragraph and cases in which one of the parties
17 dies on or after the effective date of this paragraph. ~~For~~ <—
18 ~~those cases under 23 Pa.C.S. § 3323(g)(3) where the one year~~
19 ~~separation period of 23 Pa.C.S. § 3301(d) is not applicable,~~
20 ~~the court shall determine that the parties had lived separate~~
21 ~~and apart for at least two years at the time of the filing of~~
22 ~~the affidavit.~~

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

28 (7) The amendment of 23 Pa.C.S. § 3501(c) shall apply to
29 all equitable distribution proceedings commenced on or after
30 the effective date of this paragraph.

