



# HOUSE COMMITTEE ON APPROPRIATIONS

2009-10 Legislative Session

## FISCAL NOTE

SENATE BILL: 53

PRINTER'S NO: 2228

PRIME SPONSOR: Greenleaf

FISCAL IMPACT SUMMARY	FY 2010/11	FY 2011/12
<b>Expenditure Increase/(Decrease):</b>		
General Fund	\$0	\$0

### OVERVIEW:

Senate Bill 53 is an Act amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes further providing for forfeiture; for modification of wills; providing for formula clauses for Federal tax purposes; further providing for advertisement of grant of letters; further providing for duty of personal representative; further providing for enforcement of contribution of exoneration of Federal estate tax; further proving for implementation of power of attorney; further providing for applicability for rule against perpetuities and for modification of conveyance by divorce and for the effect of divorce on designation of beneficiaries; further providing for notice of representation, for creditor's claim against settlor, for actions contesting validity of revocable trusts, for claims and distribution after settlor's death, for removal of trustee, for trustee's duty to inform and report, for illustrative powers of trustee and for limitation of action against trustee; further providing for power to convert to unitrust and for retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments; and making conforming amendments.

This legislation is the result of recommendations of the Joint State Government Commission's (JSGC) Advisory Committee on Decedents' Estate Laws.

Senate Bill 53 makes the following changes to Title 20 (Decedents, Estates and Fiduciaries):

- §2106 (Forfeiture). A new subsection (a)(2) is added to provide that a spouse has no right or interest in the real estate of the other spouse if the other spouse dies during the course of divorce proceedings, no divorce decree has been entered, and grounds have been established.
- §2507 (Modification by circumstances). Paragraph (2) is amended to provide that a provision in a testator's will in favor of the testator's spouse becomes ineffective if the testator dies during the course of the divorce proceedings, and no divorce decree has been entered and grounds have been established.
- §3162 (Advertisement of grant of letters). A new subsection (b) provides that a personal representative who has advertised the grant of letters and received the required notice shall promptly send copies of the proofs of that advertisement to the trustee.

- §3301 (Duty of personal representative). This section provides that the court may direct the personal representative to file an inventory of estate assets at any time.
- §3706 (Enforcement of contribution of exoneration of Federal estate tax). Subsection (a) is amended to provide that parties liable for apportionment of the Federal estate tax shall pay the amount apportioned against them at the time the tax is due, regardless any time extension for paying the tax. Subsection (b) is amended to provide that if the fiduciary pays the tax apportioned against another party, the fiduciary may recover from the other party the tax payment so advanced, together with interest of 5% per annum from the date of payment. An agent and a beneficiary of a life insurance policy shall be liable as equity and justice may require to the extent that, as determined by a court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal. The agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent, brother, or sister of the principal.
- §6107.1 (Applicability of rule against perpetuities). Subsection (b) is amended to add a new paragraph (3) which provides that if a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment is invalid if it does not vest within 360 years of the creation of the original power of appointment, unless the exercise of the new power of appointment expressly states that this provision shall not apply to the interests created by the exercise. A new paragraph (4) also is added to provide that void interests shall be disposed of in the manner provided in §6105.
- §6111.1 (Modification by divorce). “Pending divorce” is included in the heading for §6111.1. This section also is amended to provide that a provision in a conveyance that was revocable by a conveyer at the time of the conveyer’s death in favor of or relating to the conveyer’s spouse becomes ineffective if the conveyer dies during the course of divorce proceedings, no divorce decree has been entered, and grounds have been established.
- §6111.2 (Effect of divorce on designation of beneficiaries). “Pending divorce” is included in the heading for §6111.2. This section is amended to provide that the designation of an individual’s spouse or former spouse as a beneficiary of a contractual arrangement providing payments to the spouse, if the designation was revocable by the individual at the time of the individual’s death, becomes ineffective if the individual dies during the course of divorce proceedings, no decree of divorce has been entered, and grounds have been established. In such a case, the designation will be construed as if the spouse or former spouse predeceased the individual, unless it appears that the designation was intended to survive the divorce, based on the wording of the designation, a court order, or a written contract between the individual and the spouse or former spouse.
- §7754 (Actions contesting validity of revocable trust). A new subsection (d) is added to provide that the competency of a witness in an action contesting the validity of a revocable trust shall be governed by the same rules that apply in actions contesting the validity of a will.

- §7755 (Claims and distribution after settlor's death). Subsection (c) is amended to provide for a trustee's duty to advertise so that creditors will be able to file claims against the trust. The trustee may advertise the death anytime after the settlor dies and must also include the trustee's name and address.
- §7766 (Removal of trustee – UTC 706). Clarifies that a corporate reorganization or merger of an institutional trustee is not, in and of itself, such a substantial change in circumstances so as to justify filing for removal of a trustee.
- §7780.3 (Duty to inform and report). Changes to §7780.3 provide greater responsibilities for trustees to inform the beneficiaries of the settlor regarding information about the trust, as well as the trustee's duty to inform the settlor or beneficiaries of a change of trustee. Also, a trustee shall promptly respond to the Department of Public Welfare's request for information related to the trust's administration when a settlor, trustee, or beneficiary is a resident in a state-owned facility or an applicant for or recipient of cash or medical assistance from the Commonwealth.
- §7780.6 (Illustrative powers of trustee). A new provision provides trustees the power to exercise elections with respect to Federal, state, and local taxes.
- §7785 (Limitation of action against trustee). This section is amended to provide that a beneficiary may raise an objection to the trustee regarding a transaction within 30 months of the trustee's issuing a report that discloses the transaction. In such a case, the beneficiary preserves the right to sue the trustee for breach of trust.
- §8105 (Power to convert to unitrust). This section is amended to provide that a trustee in a unitrust may use an average value over three, four, or five years in order to provide a more even rate of return for the beneficiary.
- §8149 (Retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments). This section is amended for technical purposes and to add that the internal net income of the fund shall be considered to be the income earned by the fund. Subsection (c)(3) is added to provide that §8104, §8105, and §8107 apply to retirement benefits covered by this subsection which are payable to a trust. The powers may be exercised separately and independently by the payee trustee or in the governing instrument as between the retirement benefits and the trust as if they were separate trusts subject to this chapter.

Senate Bill 53 amends §5547 and §5548 to Title 15 (Corporations and Unincorporated Associations) by replacing the references to repealed 20 Pa.C.S. Chapter 61 (related to estates) with references to 20 Pa.C.S. Chapter 77 Subchapter D (relating to creation, validity, modification, and termination of trust).

Senate Bill 53 creates a new Chapter 28 in Title 20 called "Formula Clauses for Federal Tax Purposes." According to the (JSGC) this is to preclude the disruption that could be caused by the unanticipated repeal of the Federal estate tax and the generation-skipping transfer tax. This chapter creates a rebuttable presumption that a decedent who dies after December 31, 2009, and prior to reinstatement of these two Federal taxes, intended that his will or trust be interpreted as if these two Federal taxes were still applicable.

Senate Bill 53 shall apply as follows:

1. The addition of 20 Pa.C.S. Ch. 28 shall apply to any decedent dying after December 31, 2009.
2. The amendment of 20 Pa.C.S. §6107.1 shall apply to any interest created after December 6, 2006:
  - a. The amendment of 20 Pa.C.S. §7745.
  - b. The amendment of 20 Pa.C.S. §7780.3 (1) (2).
  - c. The amendment of 20 Pa.C.S. §7780.6 (a).
3. The amendment of 20 Pa.C.S. §6107.1 shall be retroactive to January 1, 2007.

This act shall take effect as follows:

1. The following provisions shall take effect immediately:
  - a. The section relating to effective dates.
  - b. Section 9 and 10 of this act.
  - c. The addition of 20 Pa.C.S. Ch. 28.
  - d. The amendment of 20 Pa.C.S. §§ 6107.1, 7745, 7780.3 (1) (2), and 7780.6 (a).
2. The remainder of this act shall take effect in 60 days.

**ANALYSIS:**

According to the Administrative Office of Pennsylvania Courts, they have concluded that there should be no discernable financial effect on the courts; therefore, the enactment of Senate Bill 53 will not have an adverse impact on Commonwealth funds.

**PREPARED BY:** Rayko Pacana, Budget Analyst  
House Appropriations Committee, (D)

**DATE:** October 4, 2010

**General Note and Disclaimer:** *This Fiscal Note was prepared pursuant to House Rule 19(a), and the elements considered and reported above are required by Section 5 of the rule. Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*