

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

BILL NO. Senate Bill 53

PRINTER'S NO. 195

AMOUNT

No Fiscal Impact

FUND

General

DATE INTRODUCED

Jan. 20, 2009

PRIME SPONSOR

Senator Greenleaf

HISTORY OF BILL

Referred to JUDICIARY, Jan. 20, 2009

Reported as amended, Feb. 10, 2009

First consideration, Feb. 10, 2009

Corrective Reprint, Printer's No. 195, Feb. 11, 2009

Re-referred to APPROPRIATIONS, March 9, 2009

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 53 amends Title 20 (Decedents, Estates and Fiduciaries) with regard to the Uniform Trust Act, the repeal of the rule against perpetuities, the payment of the Federal estate tax, the Uniform Principal and Income Act, the rules governing the death of a party during a divorce proceeding, and powers of attorney. The legislation also makes technical and conforming amendments to other sections of the Probate Code and to the Corporations and Unincorporated Associations Code, Title 15 of the Pennsylvania Consolidated Statutes.

The legislation includes the recommendations of the Joint State Government Commission Advisory Committee on Decedents' Estates Laws. This legislative task force authorized the publication of a report containing the recommendations of the advisory committee. The report's Summary of Recommendations was used in the preparation of this fiscal note.

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Senate Bill 53 makes the following changes to Title 20:

§ 2106. Subsection (a)(2) is added to provide that a spouse has no right or interest in the real or personal 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. 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 divorce proceedings, no divorce decree has been entered and grounds have been established, unless it appears from the will that the provision was intended to survive a divorce.

§ 3162. This section is amended for organizational purposes (subsections are added). In addition, 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.

§ 3706. Subsection (a) is amended to provide that parties liable for apportionment of the Federal estate tax shall pay the amounts apportioned against them at the time the tax is due, without regard to any extension of time for paying the tax. Subsection (b) is amended to add a sentence providing 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. Subsection (c) is amended to provide that distribution or delivery of property to any party shall not be required of any fiduciary until that party pays the Federal estate tax apportioned to that party. Subsection (d) is amended for technical purposes.

§ 5603. Subsection (p)(3) is amended to provide that an agent and a beneficiary of a life insurance policy are liable to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal. Subsection (q) is amended to provide that (1) the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent or sibling of the principal and (2) an agent and a beneficiary of a retirement plan are liable to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

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§ 6107.1. Subsection (b) is amended to add new paragraphs (3) and (4). Paragraph (3) 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. Paragraph (4) provides that void interests shall be disposed of in the manner provided in § 6105.

§ 6111.1. This section 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, unless it appears in the governing instrument that the provision was intended to survive a divorce.

§ 6111.2. This section is amended for organizational purposes (subsections are added) and to provide that the designation of an individual's spouse or former spouse as beneficiary of a contractual arrangement (e.g., an insurance policy, annuity contract, pension or profit-sharing plan) 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 an instance, 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.

§ 7725. This section is amended to replace the provision that "[t]he person to whom the notice is given may decline the representation by a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice" with the provision that "[a] person to whom the notice is given is presumed to accept the representation unless the person declines the representation in a writing delivered to the trustee no later than 30 days after receipt of the notice."

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§ 7745. Paragraph (2) is amended to add the provision that the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor solely because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for any income tax payable by the settlor attributable to trust income or principal.

§ 7754. 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. Subsection (c) is amended to provide for a trustee's duty to advertise. Paragraph (1) specifies when a trustee of a revocable trust may advertise. Paragraph (2) provides that advertisements by the trustee shall be in the manner set forth in § 3162 and specifies what shall be included in the advertisements. Paragraph (3) provides that the personal representative of the settlor of a revocable trust shall send to the trustee copies of the proof of publication of the advertisement of the grant of letters.

§ 7780.3. Subsection (a) is amended to (1) provide that a trustee shall promptly respond to a settlor's reasonable request for information related to the trust's administration and clarify that a trustee shall promptly respond to a reasonable request by a beneficiary of an *irrevocable* trust for information related to the trust's administration and (2) provide that a trustee shall promptly respond to a reasonable request by the Department of Public Welfare for information related to the trust's administration when the 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. Subsection (f) is amended to add the following sentence: "With respect to a testamentary trust, the time specified in this subsection commences to run when the trust is first funded, whether or not the trust is completely funded on that date." Subsection (g) is amended for organizational purposes (paragraphs are added) and to provide that (1) each time there is a change in trusteeship of any trust, the trustee shall notify the settlor in writing of the change; (2) each time there is a change in trusteeship of any trust whose settlor is deceased or of an irrevocable trust whose settlor has been adjudicated incapacitated, the trustee shall notify the current beneficiaries in writing of the change; and (3) notice shall include the trustee's name, address and telephone number. The introductory language of subsection (i) is amended for technical purposes. In addition, paragraphs (4) and (5) of subsection

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(i) are amended to add "upon request," and paragraph (5) is amended to clarify that each current beneficiary has the right to receive an annual written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report. Subsection (k)(2) is amended to change "60 days" to "30 days." Subsection (l)(2) deletes a reference to subsection (c).

§ 7780.6. Subsection (a) is amended to add a new paragraph (33) ("to exercise elections with respect to Federal, State and local taxes.").

§ 7785. Subsection (a)(1)(i) is amended to clarify that a beneficiary may not challenge a transaction or assert a claim against a trustee for breach of trust on the basis of a transaction if the trustee provided the beneficiary with a single written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements for the full calendar year or entire part of the calendar year during which the trust was in existence in which the transaction occurred and for each of the four subsequent calendar years. Subparagraphs (iii) and (iv) of subsection (a)(1) are amended for technical purposes.

§ 8105. Subsection (d)(3)(i) is amended to reference "the preceding years in the smoothing period selected by the trustee." Subsection (e) is amended to add anew paragraph (5.1) ("whether to average the net assets of the trust over a smoothing period of three, four or five years.").

§ 8149. Subsection (c)(1) 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.

In addition, Senate Bill 53 contains amendments to §§ 5547 and 5548 of Title 15 of the Pennsylvania Consolidated Statutes, by replacing the references to repealed 20 Pa.C.S. Chapter 61 (relating to estates) with references to 20 Pa.C.S. Chapter 77 Subchapter D (relating to creation, validity, modification and termination of trust).

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The amendment of 20 Pa.C.S. § 6107.1 shall apply to any interest created after December 31, 2006.

The following provisions shall be retroactive to November 6, 2006:

- (1) The amendment of 20 Pa.C.S. § 7745.
- (2) The amendment of 20 Pa.C.S. § 7780.3(l)(2).
- (3) The amendment of 20 Pa.C.S. § 7780.6(a).

The amendment of 20 Pa.C.S. § 6107.1 shall be retroactive to January 1, 2007.

FISCAL IMPACT:

Enactment of this legislation will have no effect on General Fund revenues of the Commonwealth.