

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1120 Session of 2023

INTRODUCED BY HOWARD, RABB, MADDEN, HILL-EVANS, BURGOS, PROBST, SANCHEZ, CERRATO, FLICK, McNEILL, SHUSTERMAN AND OTTEN, MAY 5, 2023

REFERRED TO COMMITTEE ON JUDICIARY, MAY 5, 2023

AN ACT

1 Amending Titles 20 (Decedents, Estates and Fiduciaries) and 23
 2 (Domestic Relations) of the Pennsylvania Consolidated
 3 Statutes, in intestate succession, further providing for
 4 forfeiture; in elective share of surviving spouse, further
 5 providing for right of election and resident decedent; in
 6 wills, further providing for modification by circumstances;
 7 in estates, further providing for modification by divorce or
 8 pending divorce and for effect of divorce or pending divorce
 9 on designation of beneficiaries; in preliminary provisions,
 10 further providing for legislative findings and intent, for
 11 definitions and for premarital agreements; in dissolution of
 12 marital status, further providing for grounds for divorce,
 13 repealing provisions relating to counseling, further
 14 providing for grounds for annulment of voidable marriages,
 15 repealing provisions relating to defenses, to action where
 16 defendant suffering from mental disorder and to general
 17 appearance and collusion, providing for general order of
 18 divorce proceedings, repealing provisions relating to jury
 19 trial, further providing for decree of court and repealing
 20 provisions relating to limitations on attacks upon decrees
 21 and to opening or vacating decrees; in alimony and support,
 22 further providing for bar to alimony; and, in mediation,
 23 further providing for mediation programs.

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

26 Section 1. Sections 2106(a)(2), 2203(c), 2507(2), 6111.1 and
 27 6111.2(a) of Title 20 of the Pennsylvania Consolidated Statutes
 28 are amended to read:

1 § 2106. Forfeiture.

2 (a) Spouse's share.--

3 * * *

4 (2) A spouse shall have no right or interest under this
5 chapter in the real or personal estate of the other spouse
6 if:

7 (i) the other spouse dies domiciled in this
8 Commonwealth during the course of divorce proceedings;
9 and

10 (ii) no decree of divorce has been entered pursuant
11 to 23 Pa.C.S. § 3323 (relating to decree of court) [; and

12 (iii) grounds have been established as provided in
13 23 Pa.C.S. § 3323(g)].

14 * * *

15 § 2203. Right of election; resident decedent.

16 * * *

17 (c) Nonapplicability.--Pursuant to 23 Pa.C.S. § 3323(d.1)
18 (relating to decree of court), this section shall not apply in
19 the event a married person domiciled in this Commonwealth dies
20 during the course of divorce proceedings[,] and no decree of
21 divorce has been entered pursuant to 23 Pa.C.S. § 3323 [and
22 grounds have been established as provided in 23 Pa.C.S. §
23 3323(g)].

24 § 2507. Modification by circumstances.

25 Wills shall be modified upon the occurrence of any of the
26 following circumstances, among others:

27 (2) Divorce or pending divorce.--Any provision in a
28 testator's will in favor of or relating to the testator's
29 spouse shall become ineffective for all purposes unless it
30 appears from the will that the provision was intended to

1 survive a divorce, if the testator:

2 (i) is divorced from such spouse after making the
3 will; or

4 (ii) dies domiciled in this Commonwealth during the
5 course of divorce proceedings[,] and no decree of divorce
6 has been entered pursuant to 23 Pa.C.S. § 3323 (relating
7 to decree of court) [and grounds have been established as
8 provided in 23 Pa.C.S. § 3323(g)].

9 * * *

10 § 6111.1. Modification by divorce or pending divorce.

11 Any provision in a conveyance which was revocable by a
12 conveyor at the time of the conveyor's death and which was to
13 take effect at or after the conveyor's death in favor of or
14 relating to the conveyor's spouse shall become ineffective for
15 all purposes unless it appears in the governing instrument that
16 the provision was intended to survive a divorce, if the
17 conveyor:

18 (1) is divorced from such spouse after making the
19 conveyance; or

20 (2) dies domiciled in this Commonwealth during the
21 course of divorce proceedings[,] and no decree of divorce has
22 been entered pursuant to 23 Pa.C.S. § 3323 (relating to
23 decree of court) [and grounds have been established as
24 provided in 23 Pa.C.S. § 3323(g)].

25 § 6111.2. Effect of divorce or pending divorce on designation
26 of beneficiaries.

27 (a) Applicability.--This section is applicable if an
28 individual:

29 (1) is domiciled in this Commonwealth;

30 (2) designates the individual's spouse as beneficiary of

1 the individual's life insurance policy, annuity contract,
2 pension or profit-sharing plan or other contractual
3 arrangement providing for payments to the spouse; and

4 (3) either:

5 (i) at the time of the individual's death is
6 divorced from the spouse; or

7 (ii) dies during the course of divorce
8 proceedings[,] and no decree of divorce has been entered
9 pursuant to 23 Pa.C.S. § 3323 (relating to decree of
10 court) [and grounds have been established as provided in
11 23 Pa.C.S. § 3323(g)].

12 * * *

13 Section 2. Section 3102(a) of Title 23 is amended and the
14 section is amended by adding a subsection to read:

15 § 3102. Legislative findings and intent.

16 [(a) Policy.--The family is the basic unit in society and
17 the protection and preservation of the family is of paramount
18 public concern. Therefore, it is the policy of the Commonwealth
19 to:

20 (1) Make the law for legal dissolution of marriage
21 effective for dealing with the realities of matrimonial
22 experience.

23 (2) Encourage and effect reconciliation and settlement
24 of differences between spouses, especially where children are
25 involved.

26 (3) Give primary consideration to the welfare of the
27 family rather than the vindication of private rights or the
28 punishment of matrimonial wrongs.

29 (4) Mitigate the harm to the spouses and their children
30 caused by the legal dissolution of the marriage.

1 (5) Seek causes rather than symptoms of family
2 disintegration and cooperate with and utilize the resources
3 available to deal with family problems.

4 (6) Effectuate economic justice between parties who are
5 divorced or separated and grant or withhold alimony according
6 to the actual need and ability to pay of the parties and
7 insure a fair and just determination and settlement of their
8 property rights.]

9 (a.1) Policy.--It is the policy of the Commonwealth to:

10 (1) Create a more efficient and just process of marriage
11 dissolution.

12 (2) Mitigate the harm to the spouses and their children
13 caused by the legal dissolution of the marriage.

14 (3) Effectuate economic justice between parties who are
15 divorced or separated and grant or withhold alimony according
16 to the actual need and ability to pay of the parties and
17 ensure a fair and just determination and settlement of their
18 property rights.

19 (4) Treat marriage as a contract and dissolve marriages
20 according to the established standards of contract law,
21 except where otherwise specified in law.

22 * * *

23 Section 3. The definitions of "qualified professionals" and
24 "separate and apart" in section 3103 of Title 23 are amended to
25 read:

26 § 3103. Definitions.

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

30 * * *

1 ["Qualified professionals." Includes marriage counselors,
2 psychologists, psychiatrists, social workers, ministers,
3 priests, rabbis or other persons who, by virtue of their
4 training and experience, are able to provide counseling.]

5 "Separate and apart." Cessation of cohabitation, whether
6 living in the same residence or not. [In the event a complaint
7 in divorce is filed and served, it shall be presumed that the
8 parties commenced to live separate and apart not later than the
9 date that the complaint was served.]

10 * * *

11 Section 4. Sections 3106 and 3301 of Title 23 are amended to
12 read:

13 § 3106. Premarital agreements.

14 (a) General rule.--The burden of proof to set aside a
15 premarital agreement shall be upon the party alleging the
16 agreement to be unenforceable. A premarital agreement shall not
17 be enforceable if the party seeking to set aside the agreement
18 proves, by [clear and convincing evidence] a preponderance of
19 the evidence, that:

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

21 [or]

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

23 (i) was not provided a fair and reasonable
24 disclosure of the property or financial obligations of
25 the other party;

26 (ii) did not voluntarily and expressly waive, in
27 writing, any right to disclosure of the property or
28 financial obligations of the other party beyond the
29 disclosure provided; and

30 (iii) did not have an adequate knowledge of the

1 property or financial obligations of the other party[.];

2 or

3 (3) the party did not sufficiently understand the
4 agreement due to excessive complexity of the language in
5 which it was written. Excessive complexity shall be
6 determined by the totality of the circumstances, including
7 the legal education of the party, fluency in the language and
8 any other relevant factor that may have reasonably impeded
9 comprehension. Representation by legal counsel at the time of
10 the execution conveys understanding of the agreement.

11 (b) Definition.--As used in this section, the term
12 "premarital agreement" means an agreement between prospective
13 spouses made in contemplation of marriage and to be effective
14 upon marriage.

15 § 3301. Grounds for divorce.

16 [(a) Fault.--The court may grant a divorce to the innocent
17 and injured spouse whenever it is judged that the other spouse
18 has:

19 (1) Committed willful and malicious desertion, and
20 absence from the habitation of the injured and innocent
21 spouse, without a reasonable cause, for the period of one or
22 more years.

23 (2) Committed adultery.

24 (3) By cruel and barbarous treatment, endangered the
25 life or health of the injured and innocent spouse.

26 (4) Knowingly entered into a bigamous marriage while a
27 former marriage is still subsisting.

28 (5) Been sentenced to imprisonment for a term of two or
29 more years upon conviction of having committed a crime.

30 (6) Offered such indignities to the innocent and injured

1 spouse as to render that spouse's condition intolerable and
2 life burdensome.

3 (b) Institutionalization.--The court may grant a divorce
4 from a spouse upon the ground that insanity or serious mental
5 disorder has resulted in confinement in a mental institution for
6 at least 18 months immediately before the commencement of an
7 action under this part and where there is no reasonable prospect
8 that the spouse will be discharged from inpatient care during
9 the 18 months subsequent to the commencement of the action. A
10 presumption that no prospect of discharge exists shall be
11 established by a certificate of the superintendent of the
12 institution to that effect and which includes a supporting
13 statement of a treating physician.

14 (c) Mutual consent.--

15 (1) The court may grant a divorce where it is alleged
16 that the marriage is irretrievably broken and 90 days have
17 elapsed from the date of commencement of an action under this
18 part and an affidavit has been filed by each of the parties
19 evidencing that each of the parties consents to the divorce.

20 (2) The consent of a party shall be presumed where that
21 party has been convicted of committing a personal injury
22 crime against the other party.

23 (d) Irretrievable breakdown.--

24 (1) The court may grant a divorce where a complaint has
25 been filed alleging that the marriage is irretrievably broken
26 and an affidavit has been filed alleging that the parties
27 have lived separate and apart for a period of at least one
28 year and that the marriage is irretrievably broken and the
29 defendant either:

30 (i) Does not deny the allegations set forth in the

1 affidavit.

2 (ii) Denies one or more of the allegations set forth
3 in the affidavit but, after notice and hearing, the court
4 determines that the parties have lived separate and apart
5 for a period of at least one year and that the marriage
6 is irretrievably broken.

7 (2) If a hearing has been held pursuant to paragraph (1)
8 (ii) and the court determines that there is a reasonable
9 prospect of reconciliation, then the court shall continue the
10 matter for a period not less than 90 days nor more than 120
11 days unless the parties agree to a period in excess of 120
12 days. During this period, the court shall require counseling
13 as provided in section 3302 (relating to counseling). If the
14 parties have not reconciled at the expiration of the time
15 period and one party states under oath that the marriage is
16 irretrievably broken, the court shall determine whether the
17 marriage is irretrievably broken. If the court determines
18 that the marriage is irretrievably broken, the court shall
19 grant the divorce. Otherwise, the court shall deny the
20 divorce.

21 (e) No hearing required in certain cases.--If grounds for
22 divorce alleged in the complaint or counterclaim are established
23 under subsection (c) or (d), the court shall grant a divorce
24 without requiring a hearing on any other grounds.] The court
25 shall grant a divorce upon the petition of either spouse.

26 Section 5. Section 3302 of Title 23 is repealed:

27 [~~§ 3302. Counseling.~~

28 (a) Indignities.--Whenever indignities under section 3301(a)
29 (6) (relating to grounds for divorce) is the ground for divorce,
30 the court shall require up to a maximum of three counseling

1 sessions where either of the parties requests it.

2 (b) Mutual consent.--Whenever mutual consent under section
3 3301(c) is the ground for divorce, the court shall require up to
4 a maximum of three counseling sessions within the 90 days
5 following the commencement of the action where either of the
6 parties requests it.

7 (c) Irretrievable breakdown.--Whenever the court orders a
8 continuation period as provided for irretrievable breakdown in
9 section 3301(d) (2), the court shall require up to a maximum of
10 three counseling sessions within the time period where either of
11 the parties requests it or may require such counseling where the
12 parties have at least one child under 16 years of age.

13 (d) Notification of availability of counseling.--Whenever
14 section 3301(a) (6), (c) or (d) is the ground for divorce, the
15 court shall, upon the commencement of an action under this part,
16 notify both parties of the availability of counseling and, upon
17 request, provide both parties a list of qualified professionals
18 who provide such services.

19 (e) Choice of qualified professionals unrestricted.--The
20 choice of a qualified professional shall be at the option of the
21 parties, and the professional need not be selected from the list
22 provided by the court.

23 (f) Report.--Where the court requires counseling, a report
24 shall be made by the qualified professional stating that the
25 parties did or did not attend.

26 (g) Exception.--Notwithstanding any other provision of law,
27 in no case may the court require counseling over the objection
28 of a party that has a protection from abuse order, enforceable
29 under Chapter 61 (relating to protection from abuse) against the
30 other party, or where that party was the victim of a personal

1 injury crime for which the other party was convicted or has
2 entered into an Accelerated Rehabilitative Disposition program
3 as a result of conduct for which the other party was a victim.]

4 Section 6. Section 3305(a)(5) of Title 23 is amended to
5 read:

6 § 3305. Grounds for annulment of voidable marriages.

7 (a) General rule.--The marriage of a person shall be deemed
8 voidable and subject to annulment in the following cases:

9 * * *

10 (5) Where one party was induced to enter into the
11 marriage due to fraud, duress, coercion or force attributable
12 to the other party [and there has been no subsequent
13 voluntary cohabitation after knowledge of the fraud or
14 release from the effects of fraud, duress, coercion or
15 force].

16 * * *

17 Section 7. Sections 3307, 3308 and 3309 of Title 23 are
18 repealed:

19 [§ 3307. Defenses.

20 (a) General rule.--Existing common-law defenses are retained
21 as to the grounds enumerated in section 3301(a) and (b)
22 (relating to grounds for divorce). The defenses of condonation,
23 connivance, collusion, recrimination and provocation are
24 abolished as to the grounds enumerated in section 3301(c) and
25 (d).

26 (b) Adultery.--In an action for divorce on the ground of
27 adultery, it is a good defense and a perpetual bar against the
28 action if the defendant alleges and proves, or if it appears in
29 the evidence, that the plaintiff:

30 (1) has been guilty of like conduct;

1 (2) has admitted the defendant into conjugal society or
2 embraces after the plaintiff knew of the fact;

3 (3) allowed the defendant's prostitution or received
4 hire from it; or

5 (4) exposed the defendant to lewd company whereby the
6 defendant became involved in the adultery.

7 § 3308. Action where defendant suffering from mental disorder.

8 If a spouse is insane or suffering from serious mental
9 disorder, an action may be commenced under this part against
10 that spouse upon any ground for divorce or annulment.

11 § 3309. General appearance and collusion.

12 The entry of a general appearance by, or in behalf of, a
13 defendant does not constitute collusion. Collusion shall be
14 found to exist only where the parties conspired to fabricate
15 grounds for divorce or annulment, agreed to and did commit
16 perjury or perpetrated fraud on the court. Negotiation and
17 discussion of terms of property settlement and other matters
18 arising by reason of contemplated divorce or annulment do not
19 constitute collusion.]

20 Section 8. Title 23 is amended by adding a section to read:

21 § 3321.1. General order of divorce proceedings.

22 (a) Divorce proceedings.--A divorce shall be resolved in the
23 minor judiciary or Philadelphia Municipal Court at the request
24 of either party when the following requirements are met:

25 (1) If the parties have children, the parties have
26 created an agreement regarding custody arrangements, which
27 may be shared with the court.

28 (2) There are no adversarial claims about property.

29 (3) Both parties aver they are cognizant of renouncing
30 claims regarding the future financial interests of the other

1 party, including, but not limited to, private pension
2 benefits.

3 (4) Neither party is making an alimony claim.

4 (b) Claims.--If any of the requirements of subsection (a)
5 are not met, the divorce shall be granted, but all claims
6 regarding custody arrangements, property, future financial
7 interests or alimony shall be bifurcated to the court of common
8 pleas or, if mutually consented to by the parties, the mediation
9 process.

10 Section 9. Section 3322 of Title 23 is repealed:

11 [~~§ 3322. Jury trial.~~]

12 ~~(a) Application for jury trial.--After service of the~~
13 ~~complaint in divorce or annulment on the defendant in the manner~~
14 ~~prescribed by general rules or entry of a general appearance for~~
15 ~~the defendant, if either of the parties desires any matter of~~
16 ~~fact that is affirmed by one and denied by the other to be tried~~
17 ~~by a jury, that party may take a rule upon the opposite party,~~
18 ~~to be allowed by a judge of the court, to show cause why the~~
19 ~~issues of fact set forth in the rule should not be tried by a~~
20 ~~jury, which rule shall be served upon the opposite party or~~
21 ~~counsel for the opposite party.~~

22 ~~(b) Disposition of application.--Upon the return of the~~
23 ~~rule, after hearing, the court may discharge it, make it~~
24 ~~absolute or frame issues itself. Only the issues ordered by the~~
25 ~~court shall be tried. The rule shall not be made absolute when,~~
26 ~~in the opinion of the court, a trial by jury cannot be had~~
27 ~~without prejudice to the public morals.]~~

28 Section 10. Section 3323(a), (b), (c.1) and (g) of Title 23,
29 amended November 3, 2022 (P.L.1691, No.106), are amended to
30 read:

1 § 3323. Decree of court.

2 (a) General rule.--In all matrimonial causes, the court [may
3 either dismiss the complaint or] shall enter a decree of divorce
4 or annulment of the marriage.

5 (b) Contents of decree.--A decree granting a divorce or an
6 annulment shall include[, after a full hearing, where these
7 matters are raised in any pleadings, an order determining and
8 disposing of] an order bifurcating the resolution of disputes,
9 raised in a timely manner to the court, relating to existing
10 property rights and interests between the parties, custody,
11 partial custody and visitation rights, child support, alimony,
12 reasonable attorney fees, costs and expenses and any other
13 related matters, including the enforcement of agreements
14 voluntarily entered into between the parties and accompanied by
15 the information required under subsection (b.1). In the
16 enforcement of the rights of any party to any of these matters,
17 the court shall have all necessary powers, including, but not
18 limited to, the power of contempt and the power to attach wages.

19 * * *

20 [(c.1) Bifurcation.--With the consent of both parties, the
21 court may enter a decree of divorce or annulment prior to the
22 final determination and disposition of the matters provided for
23 in subsection (b) if the court determines that doing so provides
24 sufficient economic protections for any minor children of the
25 marriage. In the absence of 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) if:

29 (1) grounds have been established as provided in
30 subsection (g); and

1 (2) the moving party has demonstrated that:

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

4 (ii) sufficient economic protections have been
5 provided for the other party and any minor children of
6 the marriage during the pendency of the disposition of
7 the matters provided for in subsection (b).]

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 or, if
17 the presumption in section 3301(c)(2) is established, one
18 party has filed an affidavit of consent.

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

26 Section 11. Sections 3331 and 3332 of Title 23 are repealed:
27 [§ 3331. Limitations on attacks upon decrees.

28 The validity of a decree of divorce or annulment issued by a
29 court shall not be questioned, except by appeal, in any court or
30 place in this Commonwealth after the death of either party to

1 the proceeding. If it is shown that a party who subsequently
2 attempts to question the validity of the decree had full
3 knowledge of the facts and circumstances later complained of at
4 the time of issuance of the decree or failed to take any action
5 despite this knowledge within two years after the date of the
6 decree, the party shall be barred from questioning the decree,
7 and it shall be valid in all courts and places within this
8 Commonwealth.

9 § 3332. Opening or vacating decrees.

10 A motion to open a decree of divorce or annulment may be made
11 only within the period limited by 42 Pa.C.S. § 5505 (relating to
12 modification of orders) and not thereafter. The motion may lie
13 where it is alleged that the decree was procured by intrinsic
14 fraud or that there is new evidence relating to the cause of
15 action which will sustain the attack upon its validity. A motion
16 to vacate a decree or strike a judgment alleged to be void
17 because of extrinsic fraud, lack of jurisdiction over the
18 subject matter or a fatal defect apparent upon the face of the
19 record must be made within five years after entry of the final
20 decree. Intrinsic fraud relates to a matter adjudicated by the
21 judgment, including perjury and false testimony, whereas
22 extrinsic fraud relates to matters collateral to the judgment
23 which have the consequence of precluding a fair hearing or
24 presentation of one side of the case.]

25 Section 12. Sections 3706 and 3901(c)(2) of Title 23 are
26 amended to read:

27 § 3706. Bar to alimony.

28 No petitioner is entitled to receive an award of alimony
29 where the petitioner, subsequent to the divorce pursuant to
30 which alimony is being sought, has entered into cohabitation

1 with a person [of the opposite sex who is not a member of the
2 family of the petitioner within the degrees of consanguinity.]
3 who has an ongoing intimate relationship with the petitioner.

4 § 3901. Mediation programs.

5 * * *

6 (c) Local rules.--

7 * * *

8 (2) The court shall not order an orientation session or
9 mediation in a case where either party or child of either
10 party is or has been a subject of domestic violence or child
11 abuse [at any time during the pendency of an action under
12 this part or within 24 months preceding the filing of any
13 action under this part].

14 * * *

15 Section 13. This act shall take effect in 60 days.