



HOUSE COMMITTEE ON APPROPRIATIONS

2009-10 Legislative Session

FISCAL NOTE

HOUSE BILL: 120

PRINTER'S NO: 344

PRIME SPONSOR: Marsico

FISCAL IMPACT SUMMARY	FY 2008/09	FY 2009/10
Expenditure Increase/(Decrease):		
General Fund	\$0	\$0

OVERVIEW:

House Bill 120 amends Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for forfeiture, for modification of wills, for advertisement of grant of letters, for duty of personal representative, for enforcement of contribution or exoneration of Federal estate tax, for implementation of power of attorney, for applicability of rule against perpetuities, for modification of conveyance by divorce, for effect of divorce on designation of beneficiaries, 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 trustee's duty to inform and report, for illustrative powers of trustee, for limitation of action against trustee, for power to convert to unitrust and for retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments; and making conforming amendments to Title 15.

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

House Bill 120 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, 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 (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. 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 pay the Federal estate tax apportioned to that party. Subsection (d) is amended for technical reasons.
- §5603 (Implementation of power of attorney). Subsection (3) is amended to provide that 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 the court, a beneficiary designation made by the agent is inconsistent with the know or probable intent of the principal. Subsection (q) is amended to provide that 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. Furthermore, 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.
- §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) is also 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 is also 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. An exception is made if it appears in the governing instrument that the provision was intended to survive a divorce.
- §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.

- §7725 (Notice of representation). This section is amended to provide that a person receiving notice of representation 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 the receipt of the notice.
- §7745 (Creditor's claim against settlor – UTC 505 (a)). This section is amended to provide that 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 (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.
- §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.

House Bill 120 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).

House Bill 120 takes effect as follows: the amendments to §7745, §7780.3, and §7780.6 are retroactive to November 6, 2006. Section 6107 is retroactive to January 7, 2007. The remainder of the act takes effect in 60 days.

ANALYSIS:

According to the Administrative Office of Pennsylvania Courts, there should be no discernable financial effect on the courts; therefore, the enactment of House Bill 120 will not have an adverse impact on Commonwealth funds.

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DATE: June 24, 2009

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.*