

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1084 Session of  
2001

INTRODUCED BY GREENLEAF, COSTA, TARTAGLIONE AND THOMPSON,  
OCTOBER 9, 2001

REFERRED TO JUDICIARY, OCTOBER 9, 2001

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, amending and adding provisions  
3 relating to divorce.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. The definition of "separate and apart" in section  
7 3103 of Title 23 of the Pennsylvania Consolidated Statutes is  
8 amended to read:

9 § 3103. Definitions.

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

13 \* \* \*

14 "Separate and apart." [Complete cessation] Cessation of [any  
15 and all] cohabitation, whether living in the same residence or  
16 not. In the event a complaint in divorce is filed and served, it  
17 shall be presumed that the parties commenced to live separate  
18 and apart not later than the date that the complaint was served.

1       \* \* \*

2       Section 2. Title 23 is amended by adding a section to read:

3   § 3106. Premarital agreements.

4       (a) General rule.--The burden of proof to set aside a  
5 premarital agreement shall be upon the party alleging the  
6 agreement to be unenforceable. A premarital agreement shall not  
7 be enforceable if the party seeking to set aside the agreement  
8 proves, by clear and convincing evidence, that:

9           (1) the party did not execute the agreement voluntarily;  
10       or

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

12               (i) was not provided a fair and reasonable  
13 disclosure of the property or financial obligations of  
14 the other party;

15               (ii) did not voluntarily and expressly waive, in  
16 writing, any right to disclosure of the property or  
17 financial obligations of the other party beyond the  
18 disclosure provided; and

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

21       (b) Void agreements.--Any premarital agreement executed  
22 within 60 days prior to the marriage shall be void. Any waiver  
23 of this subsection shall be unenforceable.

24       (c) Definition.--As used in this section, the term  
25 "premarital agreement" means an agreement regarding matters  
26 within the jurisdiction of the court under this part between  
27 prospective spouses made in contemplation of marriage and to be  
28 effective upon marriage.

29       Section 3. Section 3301(d) of Title 23 is amended to read:

30   § 3301. Grounds for divorce.

1 \* \* \*

2 (d) Irretrievable breakdown.--

3 (1) The court may grant a divorce where a complaint has  
4 been filed alleging that the marriage is irretrievably broken  
5 and an affidavit has been filed alleging that the parties  
6 have lived separate and apart for a period of at least [two  
7 years] one year and that the marriage is irretrievably broken  
8 and the defendant either:

9 (i) Does not deny the allegations set forth in the  
10 affidavit.

11 (ii) Denies one or more of the allegations set forth  
12 in the affidavit but, after notice and hearing, the court  
13 determines that the parties have lived separate and apart  
14 for a period of at least [two years] one year and that  
15 the marriage is irretrievably broken.

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

30 \* \* \*

Section 4. Sections 3323(c) and (d), 3501(a) and 3502(a) of Title 23 are amended and the sections are amended by adding subsections to read:

§ 3323. Decree of court.

\* \* \*

[(c) Bifurcation.--In the event that the court is unable for any reason to determine and dispose of the matters provided for in subsection (b) within 30 days after the report of the master has been filed, it may enter a decree of divorce or annulment. Upon the request of either party and after a hearing, the court may order alimony pendente lite, reasonable counsel fees, costs and expenses and may make a temporary order necessary to protect the interests of the parties pending final disposition of the matters in subsection (b).

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

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

(1) at least one year has elapsed since grounds have been established as provided in subsection (g); and

1       (2) the moving party has demonstrated that:

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

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

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

15       \* \* \*

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

18           (1) In the case of an action for divorce under section  
19      3301(a) or (b) (relating to grounds for divorce), the court  
20      adopts a report of the master or makes its own findings that  
21      grounds for divorce exist.

22           (2) In the case of an action for divorce under section  
23      3301(c), both parties have filed affidavits of consent.

24           (3) In the case of an action for divorce under section  
25      3301(d), an affidavit has been filed and no counter-affidavit  
26      has been filed or, if a counter-affidavit has been filed  
27      denying the affidavit's averments, the court determines that  
28      the marriage was irretrievably broken and the parties had  
29      lived separate and apart for at least one year at the time of  
30      the filing of the affidavit.

1 § 3501. Definitions.

2 (a) General rule.--As used in this chapter, "marital  
3 property" means all property acquired by either party during the  
4 marriage[, including the increase in value, prior to the date of  
5 final separation,] and the increase in value of any nonmarital  
6 property acquired pursuant to paragraphs (1) and (3)[, except:]  
7 as measured and determined under subsection (a.1). However,  
8 marital property does not include:

9 (1) Property acquired prior to marriage or property  
10 acquired in exchange for property acquired prior to the  
11 marriage.

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

14 (3) Property acquired by gift, except between spouses,  
15 bequest, devise or descent or property acquired in exchange  
16 for such nonmarital property.

17 (4) Property acquired after final separation until the  
18 date of divorce, except for property acquired in exchange for  
19 marital assets.

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

23 (6) Veterans' benefits exempt from attachment, levy or  
24 seizure pursuant to the act of September 2, 1958 (Public Law  
25 85-857, 72 Stat. 1229), as amended, except for those benefits  
26 received by a veteran where the veteran has waived a portion  
27 of his military retirement pay in order to receive veterans'  
28 compensation.

29 (7) Property to the extent to which the property has  
30 been mortgaged or otherwise encumbered in good faith for

value prior to the date of final separation.

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

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

\* \* \*

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

(1) In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the total benefit, and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which

1 the coverture fraction is applied shall include all  
2 postseparation enhancements except for enhancements arising  
3 from postseparation monetary contributions made by the  
4 employee spouse, including the gain or loss on such  
5 contributions.

6 (2) In the case of the marital portion of a defined  
7 benefit retirement plan being distributed by means of an  
8 immediate offset, the defined benefit plan shall be allocated  
9 between its marital and nonmarital portions solely by use of  
10 a coverture fraction. The denominator of the coverture  
11 fraction shall be the number of months the employee spouse  
12 worked to earn the accrued benefit as of a date as close to  
13 the time of trial as reasonably possible, and the numerator  
14 shall be the number of such months during which the parties  
15 were married and not finally separated. The benefit to which  
16 the coverture fraction is applied shall include all  
17 postseparation enhancements up to a date as close to the time  
18 of trial as reasonably possible except for enhancements  
19 arising from postseparation monetary contributions made by  
20 the employee spouse, including the gain or loss on such  
21 contributions.

22 § 3502. Equitable division of marital property.

23 (a) General rule.--[In] Upon the request of either party in  
24 an action for divorce or annulment, the court shall[, upon  
25 request of either party,] equitably divide, distribute or  
26 assign, in kind or otherwise, the marital property between the  
27 parties without regard to marital misconduct in such  
28 [proportions] percentages and in such manner as the court deems  
29 just after considering all relevant factors[, including:]. The  
30 court may consider each marital asset or group of assets



1 independently and apply a different percentage to each marital  
2 asset or group of assets. Factors which are relevant to the  
3 equitable division of marital property include the following:

4 (1) The length of the marriage.

5 (2) Any prior marriage of either party.

6 (3) The age, health, station, amount and sources of  
7 income, vocational skills, employability, estate, liabilities  
8 and needs of each of the parties.

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

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

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

16 (7) The contribution or dissipation of each party in the  
17 acquisition, preservation, depreciation or appreciation of  
18 the marital property, including the contribution of a party  
19 as homemaker.

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

21 (9) The standard of living of the parties established  
22 during the marriage.

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

26 (10.1) The Federal, State and local tax ramifications  
27 associated with each asset to be divided, distributed or  
28 assigned, which ramifications need not be immediate and  
29 certain.

30 (10.2) The expense of sale, transfer or liquidation

1     associated with a particular asset, which expense need not be  
2     immediate and certain.

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

5     \* \* \*

6     (f) Partial distribution.--The court, upon the request of  
7     either party, may at any stage of the proceedings enter an order  
8     providing for an interim partial distribution or assignment of  
9     marital property.

10    Section 5. Sections 3505(d) and 3506 of Title 23 are amended  
11    to read:

12    § 3505. Disposition of property to defeat obligations.

13    \* \* \*

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

29    \* \* \*

30    § 3506. Statement of reasons for distribution.

1 In an order made under this chapter for the distribution of  
2 property, the court shall set forth the percentage of  
3 distribution for each marital asset or group of assets and the  
4 reason for the distribution ordered.

5 Section 6. This act shall apply as follows:

6 (1) The amendment of the definition of "separate and  
7 apart" in 23 Pa.C.S. § 3103 shall apply to complaints served  
8 before, on or after the effective date of this paragraph.

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

12 (3) The amendment of 23 Pa.C.S. § 3301(d) shall apply to  
13 final separations which begin on or after the effective date  
14 of this paragraph.

15 (4) The amendment or addition of 23 Pa.C.S. § 3323(c)  
16 and (c.1) shall apply to bifurcation proceedings commenced on  
17 or after the effective date of this paragraph.

18 (5) The amendment or addition of 23 Pa.C.S. § 3323(d)  
19 and (d.1) shall apply to the death of one of the parties on  
20 or after the effective date of this paragraph.

21 (6) The addition of 23 Pa.C.S. § 3323(g) shall apply to  
22 bifurcation proceedings commenced on or after the effective  
23 date of this paragraph and cases in which one of the parties  
24 dies on or after the effective date of this paragraph. For  
25 those cases under 23 Pa.C.S. § 3323(g)(3) where the one-year  
26 separation period of 23 Pa.C.S. § 3301(d) is not applicable,  
27 the court shall determine that the parties had lived separate  
28 and apart for at least two years at the time of the filing of  
29 the affidavit.

30 (7) The amendment or addition of 23 Pa.C.S. § 3501(a)(3)

1 and (a.1) shall apply to all equitable distribution  
2 proceedings irrespective of whether the proceeding was  
3 commenced before, on or after the effective date of this  
4 paragraph.

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

8 (9) The amendment or addition of 23 Pa.C.S. § 3502(a)  
9 introductory paragraph, (10.1) and (10.2) shall apply to all  
10 equitable distribution proceedings irrespective of whether  
11 the proceeding was commenced before, on or after the  
12 effective date of this paragraph.

13 (10) The addition of 23 Pa.C.S. § 3502(f) shall apply to  
14 all divorce proceedings irrespective of whether the action  
15 was commenced before, on or after the effective date of this  
16 paragraph.

17 (11) The amendment of 23 Pa.C.S. § 3505(d) shall apply  
18 to all equitable distribution proceedings irrespective of  
19 whether the proceeding was commenced before, on or after the  
20 effective date of this paragraph.

21 (12) The amendment of 23 Pa.C.S. § 3506 shall apply to  
22 all orders made on or after the effective date of this  
23 paragraph.

24 Section 7. This act shall take effect as follows:

25 (1) The addition of 23 Pa.C.S. § 3106 shall take effect  
26 in six months.

27 (2) Section 6(2) of this act shall take effect in six  
28 months.

29 (3) The remainder of this act shall take effect in 60  
30 days.