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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 95**

Session of  
2003

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INTRODUCED BY GREENLEAF, LEMMOND, TARTAGLIONE AND THOMPSON,  
JANUARY 29, 2003

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, SEPTEMBER 29, 2004

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AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, further defining "separate and apart"  
3 for purposes of divorce; providing for premarital agreements;  
4 further providing for decree of court in actions for divorce;  
5 further defining "marital property" for purposes of certain  
6 property rights; and further providing for equitable division  
7 of marital property, for disposition of property to defeat  
8 obligations and for statement of reasons for distribution.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. The definition of "separate and apart" in section  
12 3103 of Title 23 of the Pennsylvania Consolidated Statutes is  
13 amended to read:

14 § 3103. Definitions.

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

18 \* \* \*

19 "Separate and apart." [Complete cessation] Cessation of [any

1 and all] cohabitation, whether living in the same residence or  
2 not. In the event a complaint in divorce is filed and served, it  
3 shall be presumed that the parties commenced to live separate  
4 and apart not later than the date that the complaint was served.

5 \* \* \*

6 Section 2. Title 23 is amended by adding a section to read:  
7 § 3106. Premarital agreements.

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

13 (1) the party did not execute the agreement voluntarily;  
14 or

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

16 (i) was not provided a fair and reasonable  
17 disclosure of the property or financial obligations of  
18 the other party;

19 (ii) did not voluntarily and expressly waive, in  
20 writing, any right to disclosure of the property or  
21 financial obligations of the other party beyond the  
22 disclosure provided; and

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

25 ~~(b) Void agreements. A premarital agreement executed within~~ <—  
26 ~~60 days prior to the marriage shall be void. A waiver of this~~  
27 ~~subsection shall be unenforceable.~~

28 ~~(c) (B) Definition.--As used in this section, the term~~ <—  
29 ~~"premarital agreement" means an agreement regarding matters~~  
30 ~~within the jurisdiction of the court under this part between~~

1 prospective spouses made in contemplation of marriage and to be  
2 effective upon marriage.

3 Section 3. Sections 3323(c) and (d), 3501(a) and 3502(a) of  
4 Title 23 are amended and the sections are amended by adding  
5 subsections to read:

6 § 3323. Decree of court.

7 \* \* \*

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

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

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

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

3           (2) the moving party has demonstrated that:

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

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

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

17          \* \* \*

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

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

24           (2) In the case of an action for divorce under section  
25           3301(c), both parties have filed affidavits of consent.

26           (3) In the case of an action for divorce under section  
27           3301(d), an affidavit has been filed and no counter-affidavit  
28           has been filed or, if a counter-affidavit has been filed  
29           denying the affidavit's averments, the court determines that  
30           the marriage is irretrievably broken and the parties have

1 lived separate and apart for at least two years at the time  
2 of the filing of the affidavit.

3 § 3501. Definitions.

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

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

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

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

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

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

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

1 (7) Property to the extent to which the property has  
2 been mortgaged or otherwise encumbered in good faith for  
3 value prior to the date of final separation.

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

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

21 \* \* \*

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

24 (1) In the case of the marital portion of a defined  
25 benefit retirement plan being distributed by means of a  
26 deferred distribution, the defined benefit plan shall be  
27 allocated between its marital and nonmarital portions solely  
28 by use of a coverture fraction. The denominator of the  
29 coverture fraction shall be the number of months the employee  
30 spouse worked to earn the total benefit and the numerator

1 shall be the number of such months during which the parties  
2 were married and not finally separated. The benefit to which  
3 the coverture fraction is applied shall include all  
4 postseparation enhancements except for enhancements arising  
5 from postseparation monetary contributions made by the  
6 employee spouse, including the gain or loss on such  
7 contributions.

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

24 § 3502. Equitable division of marital property.

25 (a) General rule.--[In] Upon the request of either party in  
26 an action for divorce or annulment, the court shall[, upon  
27 request of either party,] equitably divide, distribute or  
28 assign, in kind or otherwise, the marital property between the  
29 parties without regard to marital misconduct in such  
30 [proportions] percentages and in such manner as the court deems

1 just after considering all relevant factors[, including:]. The  
2 court may consider each marital asset or group of assets  
3 independently and apply a different percentage to each marital  
4 asset or group of assets. Factors which are relevant to the  
5 equitable division of marital property include the following:

6 (1) The length of the marriage.

7 (2) Any prior marriage of either party.

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

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

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

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

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

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

23 (9) The standard of living of the parties established  
24 during the marriage.

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

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



1 certain.

2 (10.2) The expense of sale, transfer or liquidation  
3 associated with a particular asset, which expense need not be  
4 immediate and certain.

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

7 \* \* \*

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

12 Section 4. Sections 3505(d) and 3506 of Title 23 are amended  
13 to read:

14 § 3505. Disposition of property to defeat obligations.

15 \* \* \*

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

1 \* \* \*

2 § 3506. Statement of reasons for distribution.

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

7 Section 5. This act shall apply as follows:

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

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

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

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

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

29 (6) The amendment or addition of 23 Pa.C.S. § 3501(a)(3)  
30 and (a.1) shall apply to all equitable distribution

1 proceedings irrespective of whether the proceeding was  
2 commenced before, on or after the effective date of this  
3 paragraph.

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

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

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

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

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

23 Section 6. This act shall take effect as follows:

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

26 (2) Section 5(2) of this act shall take effect in six  
27 months.

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