
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1034 Session of
2022

INTRODUCED BY BROWNE, MENSCH, STEFANO, PITTMAN AND SCHWANK,
JANUARY 26, 2022

REFERRED TO JUDICIARY, JANUARY 26, 2022

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in intestate succession,
3 further providing for share of surviving spouse; in wills,
4 further providing for modification by circumstances and for
5 penalty clause for contest; in administration and personal
6 representatives, providing for application to co-personal
7 representatives; in estates, further providing for
8 modification by divorce or pending divorce; and, in trusts,
9 further providing for rules of construction - UTC 112 and
10 providing for modification by circumstances and for penalty
11 clause for contest.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 2102 of Title 20 of the Pennsylvania
15 Consolidated Statutes is amended by adding a paragraph to read:

16 § 2102. Share of surviving spouse.

17 The intestate share of a decedent's surviving spouse is:

18 * * *

19 (6) If a surviving spouse is entitled to an intestate
20 share under both sections 2507(3) (relating to modification
21 by circumstances) and 7710.3(a)(2) (relating to modification
22 by circumstances), the surviving spouse shall be entitled to

1 only one allowance of \$30,000 under either paragraph (2) or
2 (3), with such amount being paid first from the estate under
3 section 2507(3) before any portion of the \$30,000 allowance
4 is paid under section 7710.3(a)(2).

5 Section 2. Sections 2507(3) and (4) and 2521 of Title 20 are
6 amended to read:

7 § 2507. Modification by circumstances.

8 Wills shall be modified upon the occurrence of any of the
9 following circumstances, among others:

10 * * *

11 (3) Marriage.--

12 (i) If the testator marries after making a will, the
13 surviving spouse shall receive the share of the estate
14 [to which he would have been entitled had the testator
15 died intestate unless] under subparagraph (ii), unless:

16 (A) the will shall give [him] the surviving
17 spouse a greater share [or unless];

18 (B) it appears from the will that the will was
19 made in contemplation of marriage to the surviving
20 spouse[.]; or

21 (C) upon the testator's death there exists a
22 revocable trust that was made or amended by the
23 testator on or after the date of the testator's
24 marriage to the surviving spouse.

25 (ii) The share to which the surviving spouse is
26 entitled under this paragraph is the share to which the
27 surviving spouse would have been entitled had the
28 testator died intestate, but if the testator is survived
29 by one or more children who are not children of the
30 surviving spouse, or by issue of that child or children,

1 the share shall be calculated based on, and paid only
2 from, the portion, if any, of the testator's estate not
3 passing to that child or issue.

4 (4) Birth or adoption.--If the testator fails to provide
5 in [his] the testator's will for [his] the testator's child
6 born or adopted after making [his] the will, [unless it
7 appears from the will that the failure was intentional, such]
8 the child shall receive out of the testator's property not
9 passing to a surviving spouse, [such] the share as [he] the
10 child would have received if the testator had died unmarried
11 and intestate owning only that portion of [his] the
12 testator's estate not passing to a surviving spouse[.],
13 unless:

14 (i) it appears from the will that the failure was
15 intentional; or

16 (ii) upon the testator's death there exists a
17 revocable trust that was made or amended by the testator
18 on or after the date that the omitted child was born or
19 adopted.

20 * * *

21 § 2521. Penalty clause for contest.

22 [A provision in a will or trust purporting to penalize an
23 interested person for contesting the will or trust or
24 instituting other proceedings relating to the estate or trust is
25 unenforceable if probable cause exists for instituting
26 proceedings.] A provision in a will purporting to penalize a
27 beneficiary for contesting the will or instituting other
28 proceedings relating to the estate is enforceable unless the
29 court finds that there was probable cause for contesting the
30 will or instituting the proceedings.

1 Section 3. Title 20 is amended by adding a section to read:

2 § 3327.1. Application to co-personal representatives.

3 A will may assign different duties and different standards of
4 care to different personal representatives and may limit the
5 liability of a personal representative who follows a direction
6 or veto of another personal representative to whom the will
7 gives exclusive authority over the subject of the direction or
8 veto.

9 Section 4. Sections 6111.1 and 7710.2 of Title 20 are
10 amended to read:

11 § 6111.1. Modification by divorce or pending divorce.

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

19 (1) is divorced from such spouse [after making the
20 conveyance]; or

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

26 (b) Applicability.--This section does not apply to trusts
27 under Chapter 77 (relating to trusts).

28 § 7710.2. [Rules of construction - UTC 112.

29 The rules of construction that apply in this Commonwealth to
30 the provisions of testamentary trusts also apply as appropriate

1 to the provisions of inter vivos trusts.] Rules of construction
2 and interpretation.

3 Unless the terms of the trust contain contrary rules of
4 construction or interpretation, the rules in section 2514
5 (relating to rules of interpretation) and other judicial rules
6 of interpretation that apply to wills and testamentary trusts
7 shall be applied in interpreting the terms of all inter vivos
8 trusts, as appropriate. Whenever a provision in section 2514
9 refers to a "will," "estate," "testator" or similar term
10 relevant primarily to wills and estates or a taker under a will
11 or estate, the term shall be modified to mean "terms of the
12 trust," "trust," "settlor," "trust beneficiary" or a similar
13 term to reflect the application of the principles of those
14 provisions to an inter vivos trust.

15 Section 5. Title 20 is amended by adding sections to read:
16 § 7710.3. Modification by circumstances.

17 (a) Circumstances.--Revocable trusts shall be modified upon
18 the occurrence of any of the following circumstances, among
19 others:

20 (1) Divorce or pending divorce.--Any provision in a
21 settlor's revocable trust in favor of or relating to the
22 settlor's spouse shall become ineffective for all purposes,
23 unless it appears from the revocable trust that the provision
24 was intended to survive a divorce, if the settlor after
25 making the revocable trust:

26 (i) is divorced from such spouse; or

27 (ii) dies domiciled in this Commonwealth during the
28 course of divorce proceedings, no decree of divorce has
29 been entered pursuant to 23 Pa.C.S. § 3323 (relating to
30 decree of court) and grounds have been established as

1 provided in 23 Pa.C.S. § 3323(g).

2 (2) Marriage.--

3 (i) If the settlor marries after the later of making
4 or amending a revocable trust, the settlor's surviving
5 spouse shall receive the share of the assets held in the
6 revocable trust under subparagraph (ii) unless:

7 (A) the revocable trust shall give the surviving
8 spouse a greater share;

9 (B) it appears from the revocable trust that the
10 trust was made or amended in contemplation of
11 marriage to the surviving spouse; or

12 (C) the settlor dies with a will that was made
13 or amended on or after the date of the settlor's
14 marriage to the surviving spouse.

15 (ii) The share to which the surviving spouse is
16 entitled under this paragraph is the share to which the
17 surviving spouse would have been entitled had the settlor
18 died intestate and owning the assets held in the
19 revocable trust, but if the settlor is survived by one or
20 more children who are not children of the surviving
21 spouse, or by issue of that child or children, the share
22 shall be calculated based on, and paid only from, the
23 portion, if any, of the trust estate not passing to that
24 child or issue.

25 (3) Birth or adoption.--If the settlor fails to provide
26 in the settlor's revocable trust for the settlor's child born
27 or adopted after the later of making or amending a revocable
28 trust, the child shall receive out of the assets held in the
29 revocable trust not passing to a surviving spouse, the share
30 as the child would have received if the settlor died

1 unmarried and intestate owning only that portion of the
2 assets held in the revocable trust not passing to a surviving
3 spouse, unless:

4 (i) it appears from the revocable trust that the
5 failure was intentional; or

6 (ii) the settlor dies with a will that was made or
7 amended on or after the date that the omitted child was
8 born or adopted.

9 (b) Slaying.--The provisions of Chapter 88 (relating to
10 slayers) apply to all trusts.

11 (c) Good faith distribution.--No fiduciary without knowledge
12 and when acting in good faith solely in a fiduciary capacity
13 shall be held liable to an aggrieved surviving spouse, intestate
14 heir or beneficiary for making a distribution under this section
15 or under the governing instrument as a result of a will or
16 codicil admitted to probate subsequent to six months after the
17 testator's death.

18 § 7710.4. Penalty clause for contest.

19 A term of a trust purporting to penalize a beneficiary for
20 contesting the trust or instituting other proceedings relating
21 to the trust is enforceable unless the court finds that there
22 was probable cause for contesting the trust or instituting the
23 proceedings.

24 Section 6. This act shall apply as follows:

25 (1) The following shall apply to estates of decedents
26 and to settlors dying on or after the effective date of this
27 act:

28 (i) The amendment of 20 Pa.C.S. §§ 2507(3) and (4)
29 and 6111.1.

30 (ii) The addition of 20 Pa.C.S. §§ 2102(6) and

1 7710.3(a) and (c).

2 (2) The addition of 20 Pa.C.S. § 7710.3(b) shall apply
3 to all trusts and settlors regardless of whether:

4 (i) the trust was made before, on or after the
5 effective date of this act; or

6 (ii) the settlor died before, on or after the
7 effective date of this act.

8 (3) The amendment of 20 Pa.C.S. § 7710.2 shall apply to
9 trusts made before, on or after the effective date of this
10 act.

11 Section 7. This act shall take effect in 90 days.