

Proposed Amendments

**Probate, Estates and
Fiduciaries Code**

Phase II



General Assembly
of the
Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania

1973

PROPOSED AMENDMENTS
TO THE
PROBATE, ESTATES AND FIDUCIARIES CODE
Phase II

General Assembly of the
Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
May 1973

In memory of
GUY W. DAVIS, ESQUIRE
and
JUDGE MARK E. LEFEVER

who for many years guided the endeavor
to codify the Commonwealth's decedents' estates laws
with uncommon energy, wisdom and devotion

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

JOINT STATE GOVERNMENT COMMISSION

1973-1974

OFFICERS

Fred J. Shupnik, Chairman

Stanley G. Stroup, Vice Chairman

K. Leroy Irvis, Treasurer

EXECUTIVE COMMITTEE

SENATE MEMBERS

Martin L. Murray
President Pro Tempore

Thomas F. Lamb
Majority Leader

Richard C. Frame
Minority Leader

Henry C. Messinger
Majority Whip

Stanley G. Stroup
Minority Whip

Stanley M. Noszka
Chairman, Majority Caucus

Wilmot E. Fleming
Chairman, Minority Caucus

HOUSE MEMBERS

Kenneth B. Lee
Speaker

Robert J. Butera
Majority Leader

Herbert Fineman
Minority Leader

Matthew J. Ryan
Majority Whip

K. Leroy Irvis
Minority Whip

Donald W. Fox
Chairman, Majority Caucus

James F. Prendergast
Chairman, Minority Caucus

Member Ex Officio

Fred J. Shupnik, Commission Chairman

Donald C. Steele, Research Director

Vincent W. Raba, Associate Director

William H. Nast, Jr, Counsel

DECEDENTS' ESTATES LAWS

TASK FORCE

Senate Members

Richard C. Frame, Chairman	Louis G. Hill
Joseph S. Ammerman	Jeanette F. Reibman
Clarence D. Bell	Robert A. Royner

House Members

Louis Sherman, Vice Chairman*	James J. Manderino
Frank M. Allen*	Samuel W. Morris
R. Harry Bittle	William R. Shane
Robert F. Burkardt	Warren H. Spencer
Charles N. Caputo	Charles D. Stone*
H. Joseph Hepford	William H. Yohn, Jr.**

ADVISORY COMMITTEE

Honorable Mark E. Lefever, Chairman***
William H. Eckert, Esquire, Vice Chairman
M. Paul Smith, Esquire, Secretary and Chairman
of Drafting Committee
Richard L. Grossman, Esquire, Research Consultant

Honorable Anthony R. Appel	William McC. Houston, Esquire
Thomas A. Beckley, Esquire	Frederick F. Jones, Esquire
Honorable Hugh C. Boyle	Honorable William W. Litke
Honorable W. Walter Braham	Ralph D. McKee, Esquire
Philip A. Bregy, Esquire	Honorable Edwin H. Satterthwaite
Norman H. Brown, Esquire	James G. Schmidt, Esquire
Paul E. Clouser, Esquire	J. Pennington Straus, Esquire
Reuben E. Cohen, Esquire	Honorable Lee F. Swope
William J. Copeland, Esquire	Honorable Alfred L. Taxis
Robert F. Duguay	Paul C. Wagner, Esquire
Roland Fleer, Esquire	Honorable J. Colvin Wright
Honorable Ethan A. Gearhart	Vincent X. Yakowicz, Esquire
J. Frederick Gehr, Esquire	Adolph L. Zeman, Esquire
George J. Hauptfuhrer, Jr., Esquire	

* No longer a member of the General Assembly.
** Replaced Robert J. Butera, February 1973.
*** Deceased.

CONTENTS

	Page
Phase II--Introduction	1
I. The Omnibus Bill	5
II. Expanding Nonmandatory Exercise of Jurisdiction through Orphans' Court Division	11
III. Repealing 30-Day Restriction on Religious and Charitable Gifts	12
IV. Increasing Family Exemption	12
V. Conforming Statute of Limitation for Debts Owed Estate of Decedent	13
VI. Providing for Replacement of Fiduciary Temporarily Incapable or Unwilling to Act	13
VII. Restoring Age of Minor for Purposes of Pennsylvania Uniform Gifts to Minors Act to 21	14
VIII. Redefining Incompetent, Providing for Court to Establish Estate Plan for Incompetent and Providing for Powers of Attorney to Survive Subsequent Incompetency	15
IX. Including Growth as Investment Criterion	16

PHASE II
INTRODUCTION

Phase I of the assignment of the Joint State Government Commission to codify Pennsylvania's decedents' estates laws was concluded by the enactment of the codification recommended in the Commission's report to the General Assembly in January 1972. The Probate, Estates and Fiduciaries Code--Act No. 164 of June 30, 1972--took effect on July 1, 1972.

The Code, which comprises Title 20 of the Consolidated Pennsylvania Statutes, is especially notable in that it is the first official comprehensive codification of substantive Pennsylvania law into the consolidated law, as contemplated by the Act of November 25, 1970, No. 230.

Pending the enactment of the Code, the task force and advisory committee--under the able leadership of Judge Mark E. Lefever (since deceased)--began Phase II of their assignment by continuing to review possible improvements and additions to existing law suggested during prior considerations and by studying certain innovative aspects of the Uniform Probate Code. The task force and advisory committee also noted various typographical and editorial inaccuracies in Title 20 which resulted from the complexities associated with the expedient action of the General Assembly in enactment of the Code.

This work culminated in the drafting of proposed amendments to Title 20 to correct inadvertent errors in incorporating former statutes into the Code and to make substantive changes which

had been reserved for action following passage of the Code.

These amendments may be categorized as follows:

- (1) Reinstatement of language inadvertently omitted or altered in the existing law together with certain editorial corrections necessitated by the change in format of the statutory language.
- (2) Substantive modifications in the law which do not reflect significant changes in existing procedures and substance.
- (3) Substantive modifications which do reflect significant changes in Pennsylvania law.

The first two of these categories of proposed amendments have been incorporated into an omnibus bill which was introduced by Senator Richard C. Frame, chairman of the task force, and Senator Jeanette F. Reibman, a member of the task force, on May 9, 1973, as Senate Bill No. 775, Printer's No. 845. Because this proposed bill is lengthy and contains only corrective, editorial and noncontroversial matters, it has not been set forth in this report. However, a discussion of each change in existing law in Senate Bill No. 775, together with official comments of the advisory committee, is presented at pages 5-10.

Proposals in the third category above were drafted as eight separate amendments, each reflecting a proposal in a different subject area of the Code. These proposals were likewise introduced on May 9 by Senators Frame and Reibman as Senate Bills Nos.

776 through 783, Printer's Nos. 846 through 853. A summary of the eight amendments and official comments may be found at pages 11-16.

The task force and advisory committee are currently continuing their efforts, particularly in the following important areas of Pennsylvania decedents' estates law:

--Complete restatement and revision of the law of the "elective share of surviving spouse," as suggested by the Uniform Probate Code, Sections 2-201 to 2-207.

--Formulation of statutory law relating to multiple-party bank accounts as suggested by the Uniform Probate Code, Sections 6-101 to 6-113, in light of the difficulties in reconciling current case law.

--Thorough reconsideration of Pennsylvania law in light of the Uniform Probate Code's provisions relating, for example, to advancements, definitional treatment of illegitimates, adopted children, "self-proved wills," risk distributions without judicial accounts, ancillary administration and protection of persons under disability.

As can readily be seen from the above, the influence of the Uniform Probate Code will continue to require the constant attention of the task force and advisory committee to ensure that Pennsylvanians benefit from the national proposals insofar as they improve or complement the Commonwealth's law.

As Phase II is now concluded, the extensive efforts of Guy W. Davis, Esquire, the counsel to the advisory committee and counsel

and director of the Joint State Government Commission from April 1947 to his death in February 1968, are recalled most vividly. Those who knew Guy Davis also know of his inobtrusive but all-pervasive influence on Pennsylvania statutory law in general--on decedents' estates laws in particular--and of his devotion to the General Assembly.

Unlike Guy Davis, who never saw the official consolidation of Pennsylvania law which he expedited and encouraged throughout his distinguished career, Judge Mark E. Lefever before his untimely death in December 1972 did see the consolidation of the dedicated work of the committee which he chaired with dignity and humor.

I. THE OMNIBUS BILL
(Senate Bill No. 775, Printer's No. 845)

The omnibus bill affects over thirty sections of existing law, adds a new chapter (Chapter 83, Inalienable Property) and seven new sections (Sections 779, 925, 2504.1, 5103, 5155, 5533.1 and 6119) and repeals over eighty-five obsolete and duplicious acts. The changes proposed in the omnibus bill are corrective in nature (the amendments to Sections 711, 908, 2510, 3101(a), 3351, 5303(a)(2), 5305(g), 5533.1 and 6103(b)) and as such are not intended to change existing law in any manner. The effective-date clause of the bill (Section 20) makes clear that these corrections should be construed as retroactive to July 1, 1972, the effective date of the Code. Other amendments likewise intend no change in existing law but rather are solely of an editorial nature necessitated by the integration of separate statutes into a comprehensive codification. These editorial amendments can be found in Sections 721, 922, 2106, 2501, 2504, 2504.1, 3102, 3122, 3353, 3356, 5153(1), 5154, 5155, 5505(3), 5515, 5521, 6111(d), 6119, the entire Chapter 83 and Section 8604(d). The editorial changes include the rewriting of sections and, in the case of the Revised Price Act, the repeal of Chapter 82 and its complete revision as Chapter 83.

Even though at first glance the amendments to the foregoing sections or the additions of the new chapter and sections would appear to effect changes in the law, a closer analysis of their provisions will show that no change from current law and practice is intended.

Since the foregoing changes of a corrective or an editorial nature do not change existing law, no official comments have been prepared by the advisory committee to accompany them.

However, some changes in existing law are accomplished by provisions in the omnibus bill. These changes, contained in Senate Bill No. 775, are summarized below together with the official comments of the advisory committee where appropriate.

Section 779. Nonsuits.

This new section authorizes the entry of nonsuits by the orphans' court division when appropriate.

Comment: This section reverses the results of Jervis Will, 443 Pa. 226 (1971) in which the court refused a nonsuit because of the lack of legislative authority; the use of nonsuits when appropriate will avoid unnecessary delay in proceedings brought in the orphans' court division.

Section 925. Affidavits of death.

This new section authorizes the filing by a relative of the decedent of an affidavit of death to create a permanent public record.

Comment: This section provides for a record which is helpful for genealogical purposes, especially in tracing the title of real estate which has passed by intestacy.

Sections 2503, 3132(3), 3133(a) and 3134. Nuncupative wills.

The amendments to these sections abolish nuncupative wills which were strictly limited.

Comment: Section 2503: The authority to dispose of personalty in the amount of \$500 or less by a nuncupative will is seldom if ever exercised; further, in view of the severe limitations on its use, the in-

creased literacy of the population and the common knowledge that wills must be reduced to writing, this limited authority is now repealed.

Section 2504. Repealed.

Section 2504.1. Validity of execution.

Comment: This section replaces Section 2504, subsection (a) of which unnecessarily duplicated Section 3132, and subsection (b) of which is revised to broaden and clarify its intent in light of Sections 2-505 and 2-506 of the Uniform Probate Code.

Section 3101(b). Payments to family; deposit account.

This new subsection authorizes payment of bank accounts up to \$1,000 to a family member without requiring that a personal representative be appointed.

Comment: Since family payments of wages, salaries and employee benefits appear to have successfully expedited small estates without known abuses, it was determined to extend this discretionary authority to banks and savings institutions to pay accounts up to \$1,000 to family members to facilitate the closing of very small estates with minimal administration expense and delay.

Sections 3102, 3531 and 5101. Small estates.

The maximum amount of the estates of a decedent (Sections 3102 and 3531) and a minor (Section 5101) which can be settled by petition rather than by an accounting is increased from \$5,000 to \$10,000. With the incorporation of the provisions of Section 5101 into the authority provided for incompetents' estates by Section 5505(1), the maximum amount is also increased to \$10,000 for incompetents' estates. The last prior increase was from \$2,500 by the Act of May 5, 1970, No. 108.

Section 3356. Purchase by personal representative.

Comment: The last sentence has been broadened to clarify the mechanics of executing the required instrument when the purchasing fiduciary has a co-fiduciary.

Section 5103. Sequestered deposit.

Comment: This provision authorizes "blocked accounts" for minors' estates, such as those awarded in tort cases where the amount though over \$5,000 (or \$10,000, Section 5101 as proposed for amendment) is not sufficient to warrant the expense of a full guardianship with investment duties. Trust companies have been reluctant to handle these accounts where the amounts are within federally insured savings account limits. This section should reduce unnecessary administration expenses since available accounts--when "blocked" by court order--will suffice to protect the minor's interest.

Section 5154. Title of purchaser.

Comment: In addition to clarifying that the purchaser's title is free of any right of the minor's spouse, the additional words conform this section to former Section 446 of the Incompetents' Estates Act, which with this addition is incorporated in Section 5521(26).

Section 5155. Order of court.

Comment: This section replaces Section 5153(1). Section 3353, incorporated by reference in Section 5153(1), does not include the substance of clauses (3) and (4) of this section. New section 5155 has the added advantage of including these essential provisions as they are incorporated in Section 5521(23) for incompetents' estates.

Section 5305(g). Corporate custodian's nominee.

Comment: This subsection is amended to authorize a corporate custodian to register securities in the name of its nominee, a practice consistent with other provisions of the Code; for example, Section 3321(a).

Section 5511(a), (c). Incompetency proceedings, examination by court-appointed physician.

Comment: The amendments to these subsections grant a greater degree of judicial control of proceedings brought in the interests of an alleged incompetent. See, In re Tose, 21 Fid. Rep. 562 (1972).

Section 7319(b). Settlor's impractical restrictions of investment powers.

Comment: This subsection was revised to liberalize the power of the court to relieve a fiduciary from investment restrictions which have become impractical.

Chapter 82. Repealed.

Chapter 83. Inalienable Property.

Since the lengthy and complex provisions of the Revised Price Act of 1917, June 7, P. L. 388, as amended, could not be thoroughly reviewed and restated in appropriate language prior to the 1972 codification, it was determined to set forth that ancient act at length as Chapter 82 of the Code without change, subject to such a thorough review. Proposed Chapter 83 now rewrites the substance of that act and chapter to remove matters now more properly covered in other provisions of the Code and to clarify the substance of those provisions not elsewhere covered.

Section 8301. Powers of court to authorize sale, etc. of real property.

Comment: The Revised Price Act of 1917, June 7, P. L. 388, was a revision of the Act of April 18, 1853, P. L. 503, commonly called the Price Act from the name of its draftsman. These acts had been enacted to make real property freely alienable and productive to its owners. Many of the title problems covered by Section 2 of the Revised Price Act (incorporated into the Code as Section 8202) were duplicated in other sections of the

Code or in other existing statutes; Section 8301 is now limited to those cases which are not covered elsewhere. The general language "authorizing the sale, mortgage, lease or exchange of real property" used in other sections of the Code relating to authorization of sale by personal representatives, trustees and guardians, is sufficient to cover the authority formerly provided in Section 1 of the Revised Price Act (former Section 8201 of the Code).

Section 8304. Procedure.

Comment: The procedure formerly set forth in detail in various sections of the Revised Price Act is now included in this section and is similar to the provisions covering the procedure for the sale, etc., of real property found in other sections of the Code.

II.

EXPANDING NONMANDATORY EXERCISE OF
JURISDICTION THROUGH THE ORPHANS' COURT DIVISION
(Senate Bill No. 776, Printer's No. 846)

Section 712. Nonmandatory exercise of jurisdiction
through orphans' court division.

Senate Bill No. 776 would amend Section 712 to read, in
part, as follows:

[Except as provided in section 713 of this code
(relating to special provisions for Philadelphia
County) the] The jurisdiction of the court of com-
mon pleas over the following may be exercised
through [the] either its orphans' court division
or other appropriate division:

* * *

(3) Other matters. The disposition of any case
where there are substantial questions concerning
matters enumerated in section 711 of this code (re-
lating to mandatory exercise of jurisdiction) and
also matters not enumerated in that section.

Comment: The change in the introductory language
is a stylistic clarification. The addition of
subsection (3) is intended to avoid multiple
actions in different divisions in a case involving
two or more questions, one of which would ordinarily
be decided by the orphans' court division and the
other by the trial or family division. Cf. Righter
v. Righter, 442 Pa. 428 (1971) (construction of an
ambiguous deed and rights of electing spouse against
the grantee); Goodheart v. Gordon, 52 D. & C. 2d 531
(Phila. 1971) (suit against the surviving tenant by
the entires to enforce an agreement embodied in
a mutual will).

III.

REPEALING 30-DAY RESTRICTION ON
RELIGIOUS AND CHARITABLE GIFTS
(Senate Bill No. 777, Printer's No. 847)

Sections 2507(1) and 6119. Thirty-day restriction on religious and charitable gifts.

This proposes to repeal the provisions of existing law which invalidate certain gifts made for religious or charitable purposes within thirty days of death by will (Section 2507(1)) or inter vivos to take effect at death (Section 6119). The repeal of these provisions will remove Pennsylvania from a minority of less than a dozen jurisdictions which impose restrictions on such gifts. The so-called "Mortmain" statutes have been deemed unnecessary in most jurisdictions which rely upon general law relating to the lack of testamentary capacity and undue influence to correct abuses. It was noted that the drafters of the Uniform Probate Code chose not to include any statutory restriction on such gifts.

IV.

INCREASING THE FAMILY EXEMPTION
(Senate Bill No. 778, Printer's No. 848)

Section 3121. Increasing the family exemption.

This proposed amendment would increase the family exemption from \$1,500 to \$2,000. The last prior increase was from \$1,000 by the Act of May 5, 1970, No. 108.

V.

CONFORMING STATUTE OF LIMITATION
FOR DEBTS OWED ESTATE OF DECEDENT
(Senate Bill No. 779, Printer's No. 849)

Section 3376. Limitations against debt due estate.

Comment: This amendment, suggested by Section 3-109 of the Uniform Probate Code, extends the statute of limitation on a debt owed the estate of a decedent to one year to conform to the period to which statutes of limitation are extended on claims against the estate under Section 3383 of this Code.

VI.

PROVIDING FOR REPLACEMENT OF FIDUCIARY TEMPORARILY
INCAPABLE OR UNWILLING TO ACT
(Senate Bill No. 780, Printer's No. 850)

Chapter 43. Temporary Fiduciaries.

A review of Subchapter A of Chapter 84, which provided for the appointment of a fiduciary to serve temporarily when the original fiduciary was in military service, indicated a need to clarify the language and suggested the advisability of expanding the use of the concept which had derived from the Act of March 20, 1942 (Ex.Sess. P. L. 13) to include other situations where the original fiduciary is temporarily incapable or unwilling to act.

Comment: Section 4301: This chapter rewrites former Subchapter A, Fiduciaries in Military Service, expanded to provide for a procedure for replacement of a fiduciary where the original fiduciary is temporarily incapable or unwilling to act because of absence from the country, conflict of interest or other similar reason.

VII.

RESTORING AGE OF MINOR FOR PURPOSES OF
PENNSYLVANIA UNIFORM GIFTS TO MINORS ACT TO 21
(Senate Bill No. 781, Printer's No. 851)

Chapter 53. Pennsylvania Uniform Gifts to Minors Act.

This proposes to reinstate twenty-one as the age when a gift to a minor terminates under the provisions of the Code as amended by the Act of December 6, 1972, No. 331, which took effect on February 6, 1973. The necessity for the reinstatement stands on a footing different from the recent policy of the Commonwealth to recognize eighteen as the legal age of majority for the purpose of conferring legal capacity. The Pennsylvania Uniform Gifts to Minors Act, Chapter 53 of the Code, provides a convenient method for making gifts to young people. Under the Internal Revenue Code, Section 2503(c), twenty-one is statutorily fixed as the age when gifts to minors must be distributable in order to qualify for the \$3,000 annual exclusion allowed for gift tax purposes. It is believed that the retention of age eighteen, by reducing the effective period of tax benefit by three years, will cause the device to fall into disuse. While a trust can be created to obtain the tax benefits to age twenty-one, this will increase the administrative costs and reduce the tax advantage by not making available the minor's dependency exemption.

Finally, this chapter as presently amended destroys the national uniformity of the act, a benefit of which is its national application. Only Pennsylvania, Kentucky, Georgia, Michigan and New Mexico have to date reduced the age of termination to eighteen.

The effective date of the reinstatement to age twenty-one preserves uniformity except as to custodianships actually terminated between that date and February 6, 1973, the effective date of the amendatory act of 1972.

VIII.

REDEFINING INCOMPETENT, PROVIDING FOR COURT TO
ESTABLISH ESTATE PLAN FOR INCOMPETENT AND PROVIDING FOR
POWERS OF ATTORNEY TO SURVIVE SUBSEQUENT INCOMPETENCY
(Senate Bill No. 782, Printer's No. 852)

Section 5501. Meaning of Incompetent.

The definition of an "incompetent" over whom the court can exercise jurisdiction is broadened by removing the restrictive "mental" qualification to the test of "infirmities of old age," and adding new clause (2) to include as an incompetent one "who lacks sufficient capacity to make or communicate responsible decisions concerning his person."

Comment: This section is amended to enlarge the meaning of incompetency, thereby reducing the supposed stigma attached to the designation and also to include those who are mentally sound but nevertheless lack capacity to take care of their person, regardless of the reason.

Section 5536(b). Distributions of income and principal during incompetency; estate plan.

Comment: This new subsection is consistent with existing case law and derives from--but is broader in scope than--Sections 5-408(3) and 5-425 of the Uniform Probate Code.

Chapter 56. Powers of Attorney.

Section 5601. When power of attorney not affected by disability.

This section creates statutorily the so-called "block-buster" power of attorney.

Comment: This section enables a person to appoint an attorney-in-fact whose authority will continue notwithstanding the subsequent incompetency of the principal. It closely follows Section 5-501 of the Uniform Probate Code.

Section 5602. Other powers of attorney not revoked until notice of death or disability.

This section reverses the common law rule that death or disability revokes the authority of the attorney.

Comment: This section is based on Section 5-502 of the Uniform Probate Code which adopts the civil law rule that powers of attorney are not revoked on death or disability until the attorney-in-fact has actual knowledge of the death or disability. It is consistent with Section 609 of the Banking Code of 1965, 7 P.S. 609, which protects a banking institution in relying on a power of attorney in absence of knowledge of death or incompetency.

IX.

INCLUDING GROWTH AS INVESTMENT CRITERION
(Senate Bill No. 783, Printer's No. 853)

Section 7302(b). Authorized investments; in general.

Comment: The growth in equity value of investments has now become recognized as a factor to be taken into account, especially in view of current inflationary trends and low yields produced by some otherwise attractive investments. Sufficient other present statutory criteria insure that the growth factor does not become a justification for speculative investments. An investor who failed to take into account the probable growth of capital might not be acting prudently in today's market.

Section 7310(a) Stocks: growth as a criterion for investment.

Comment: See Comment to Section 7302(b), as amended.