Probate, Estates and Fiduciaries Code

Proposed Amendments and Comments – 1975

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
November 1975

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CONTENTS

INTRODUCTION 1

PROPOSED AMENDMENTS AND COMMENTS

I. Omnibus Bill 5

II. Authorizing Financial Institutions to Pay Certain Decedents' Accounts to Family Members 12

III. Judicially Supervised Planning of Incompetents' Estates 13

IV. Adding Adapted Provisions from the Uniform Probate Code Relating to Multiple-Party Bank Accounts 13

V. Substituting an Adapted Version of the Uniform Probate Code's Augmented Estate for Existing Provisions Relating to Spouse's Election to Take Against the Will 16

VI. Incorporating an Adapted Version of the Uniform Disclaimer of Property Interests Act 19

INTRODUCTION

During the past decade a nationwide clamor has arisen over the deficiencies of antiquated probate and estates laws. The public outcry reflects widespread frustration with what are described as excessive delays, restrictions, complexities and expenses associated with estate administration. The justifiable criticisms raised, however, cannot be directed at Pennsylvania law. Beginning in 1947, the General Assembly has enacted legislation providing the Commonwealth with modern, efficient and simplified probate and estates practices.

In fact, since the late 1940s Pennsylvania law has included concepts and procedures providing for flexible estate administration that are featured in the Uniform Probate Code.[1] Cognizant of responsible national criticisms, the National Conference of Commissioners on Uniform State Laws promulgated the model code in 1969.

> To the Pennsylvania lawyer there is very little in the Uniform Probate Code that will seem new or radical. Taken as a whole, the Code is perhaps the greatest compliment that could be produced for the draftsmen of the Pennsylvania statutory system of probate and estate administration as originally created in the Five Sisters Acts of 1917, and as more recently amended and restated in the series of legislative acts which comprise what is our present Pennsylvania code. . . . Once [the Pennsylvania lawyer] got over the unfamiliar stylistic approach of the new Code in which it differs from the draftsmanship of Pennsylvania statutes, he would find that what is set forth in the Uniform Probate Code is substantially Pennsylvania law.[2]

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1. Wellman, "The New Uniform Probate Code," 56 A.B.A.J. 636-638 (1970).

2. Straus, "The Uniform Probate Code Approved: A Bold and Progressive Reform," 41 Pa.B.A.Q. 71-73 (1969).

Responsible for Pennsylvania's achievement in this field of law is the dedicated and innovative work of the Joint State Government Commission Task Force and Advisory Committee on Decedents' Estates Laws. A blue-ribbon panel composed of scholars, practitioners and jurists, the advisory committee has been active in the review and recommendation of legislation continuously since its organization in 1945.[3] Currently, the task force is chaired by Senator Richard C. Frame and the advisory committee by William H. Eckert, Esquire.

In 1970, the task force and advisory committee, after considered review of the Uniform Probate Code, determined to codify Pennsylvania's decedents' estates laws as part of the Pennsylvania Consolidated Statutes rather than substitute in toto the unfamiliar style, nomenclature, practices and procedures of the Uniform Probate Code. It was decided in some instances that the Uniform Probate Code's provisions were less efficient and progressive than established Pennsylvania practices and in other instances that selected subjects and practices in the Uniform Probate Code should be adapted and incorporated into the Pennsylvania framework. The initial phase of this work was completed with the signing into law of a codification of existing statutes as the Probate, Estates and Fiduciaries Code, Act No. 164 of June 30, 1972.

To further modernize the law and make a number of technical changes, amendments to the Probate, Estates and Fiduciaries Code proposed by the

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3. For the history of the Task Force and Advisory Committee on Decedents' Estates Laws, see Pennsylvania Joint State Government Commission, Proposed Probate, Estates and Fiduciaries Code, Harrisburg, 1972.

task force and advisory committee were introduced in the 1973-1974 Session of the General Assembly by Senators Richard C. Frame and Jeanette F. Reibman (Senate Bills 775 through 783) and by Senators Frame, Reibman, Thomas F. Lamb and Stanley G. Stroup (Senate Bills 1647 and 1648). A review of Senate Bills 775 through 783 and the official comments of the advisory committee were submitted in the Joint State Government Commission report, Proposed Amendments to the Probate, Estates and Fiduciaries Code, Phase II, of May 1973.

Five of these bills became law--the acts of 1973, November 2, No. 104, restoring the age of a minor to 21 for purposes of the Pennsylvania Uniform Gifts to Minors Act; 1974, June 27, No. 130, increasing the family exemption; 1974, December 10, No. 293, an omnibus measure effecting over 30 amendments, most of which were of a corrective or technical nature; 1974, December 10, No. 294, adding Chapter 43, "Temporary Fiduciaries"; and 1974, December 10, No. 295, redefining incompetent and providing for powers of attorney to survive subsequent incompetency. The latter three acts contain provisions suggested by or adapted from the Uniform Probate Code.

Currently before the General Assembly are six bills which incorporate provisions of all but one of the bills not enacted in the 1973-1974 Session as well as a number of new proposals. These were introduced in the Senate on October 16, 1975 by Senators Frame, Reibman, Joseph S. Ammerman, Henry G. Hager, Louis G. Hill and Michael A. O'Pake, as Senate Bills 1142 through 1147, amending Title 20, Decedents, Estates and Fiduciaries, of the Pennsylvania Consolidated Statutes.

The format utilized for the amendments introduced in the 1973-1974 Session has been retained in the new legislation:

-- Senate Bill 1144, Printer's No. 1367, an omnibus bill affecting over 20 sections of the Probate, Estates and Fiduciaries Code, including both technical and "noncontroversial" substantive changes in Pennsylvania law.

-- Senate Bill 1146, Printer's No. 1369, authorizing financial institutions to pay certain decedents' accounts to family members.

-- Senate Bill 1147, Printer's No. 1370, providing for judicially supervised planning of incompetents' estates.

-- Senate Bill 1143, Printer's No. 1366, adding adapted provisions from the Uniform Probate Code relating to multiple-party bank accounts.

-- Senate Bill 1142, Printer's No. 1365, substituting an adapted version of the Uniform Probate Code's augmented estate for existing provisions relating to spouse's election to take against the will.

-- Senate Bill 1145, Printer's No. 1368, incorporating an adapted version of the Uniform Disclaimer of Property Interests Act.

A brief review of each of the six bills is presented below together with the official comments of the advisory committee.

The enactment of this legislation further improving and updating the Probate, Estates and Fiduciaries Code will not mark the conclusion of the efforts in this field of law. To insure that Pennsylvania retains the most modern probate law in the nation, the Joint State Government Commission Task Force and Advisory Committee on Decedents' Estates Laws are continuously reviewing Pennsylvania law and practices and keeping abreast of the evolvement of the Uniform Probate Code.

Suggestions concerning modification of the Probate, Estates and Fiduciaries Code will be considered by the advisory committee and should be addressed to William H. Nast, Jr., Counsel, Room 450, Main Capitol Building, Harrisburg, 17120.

I. OMNIBUS BILL
(Senate Bill 1144, Printer's No. 1367)

The Omnibus Bill affects 29 existing sections of Title 20 of the Pennsylvania Consolidated Statutes and adds three new sections (§§2109.1, 5163.1 and 7188). Amendments to eight of the sections constitute corrective or editorial changes not intended to change existing law in any manner (§§102, 2501, 2512, 2513, 2514 (1.1), 3101, 3357 and 8111). The official comments of the Advisory Committee on Decedents' Estates Laws are included below with explanatory information where appropriate.

Section 102. Definitions.

This is an editorial change.

Comment: Nuncupative wills were abolished in Pennsylvania by the Act of 1974, December 10, No. 293.

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

This amendment was contained in 1973 Senate Bill 776, which passed the Senate (48-0) but was not acted upon by the Judiciary Committee in the House of Representatives.

Comment: The addition of new paragraph (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); Goodhart v. Gordon, 52 D. & C. 2d 531 (Phila., 1971) (suit against the surviving tenant by the entireties to enforce an agreement embodied in a joint will).

Section 908. Appeals.

Comment: The shortening of the appeal period in subsection (a) will reduce the period of uncertainty in the administration of an estate without defeating substantive rights of those who wish to contest the will or other action of the register. Also, it will tend to require action to be taken while essential witnesses are most likely to be available.

The automatic filing of an appeal bond in all cases is deemed an unnecessary expense, especially since the executor has the control or the right to the control of the assets of the estate and the appellant usually has no assets in his control. In instances where a bond will serve a purpose, it may be obtained by application to the court.

Section 2104. Rules of [descent] succession.

In Section 2104, as well as in Section 2108, the word "descent" is removed as an editorial matter. Similar editorial changes may be found in Sections 2101.1 through 2105 in 1975 Senate Bill 1142, see infra, page 16.

Section 2104 (10). Requirement that heir survive decedent for five days.

Comment: Paragraph (10) is derived from Section 2-104 of the Uniform Probate Code. It accomplishes the result typically provided for in a will in the case of a common accident situation, in which several members of the same family are injured and die within a few days of each other.

Section 2106. Forfeiture.

Comment: This implements the "Equal Rights Amendment," Pa. Const. Art. I, Section 28. Also see Kaper v. Kaper, 227 Pa. Superior Ct. 377 (1974); Wiegand v. Wiegand, 226 Pa. Superior Ct. 278 (1973).

Section 2108. Adopted person.

Comment: This amendment concerning inheritance rights provides a limited exception to the general rule that an adopted person shall not be considered the issue of his natural parents. The exception recognizes that family relationships frequently continue for grandparents and others where an adoption may have occurred after the death or divorce of a parent.

Sections 2109, 2112, 2113 and 2114.

These sections are repealed. Section 2109 is replaced by Section 2109.1; the others were considered to be redundant or unnecessary.

Section 2109.1. Advancements.

Comment: This section is believed to be in accord with the intention of most donors when making gifts to their kin. In exceptional cases the contrary intent should be reduced to writing as prescribed by this section. This reverses the past law of Pennsylvania. It is in accord with Section 2-110 of the Uniform Probate Code.

Section 2501. Who may make a will.

Comment: This stylistic change reflects the amendments of 1972, December 6, P. L. 1461, and 1974, December 10, No. 293, which reduced the age for making a will to eighteen.

Section 2507. Modification by circumstances.

Comment: Paragraph (1) of Section 2507 relating to voiding of charitable bequests made within 30 days of death was held unconstitutional in Cavill Estate, 329, A. 2d 503 (1974).

Section 2509. Forfeiture of right of election.

Comment: See comment to Section 2106.

Section 2512. Failure to make an election.

Comment: This editorial change reflects the amendment to Section 2511 by the Act of 1974, December 10, No. 293.

Section 2513. Grantee or lienholder.

Comment: See comment, Section 2512.

Section 2514. Rules of interpretation.

Section 2514 (1.1). Construction that will passes all property.

Comment: New paragraph (1.1) condenses the provisions of former paragraphs (1) and (2). It is similar to Section 2-604 of the Uniform Probate Code.

Section 2514 (7). Adopted children.

Comment: This amendment to paragraph (7) extends the concept of Tafel Estate, 449 Pa. 442 (1972), with regard to persons adopted after their minority where there was a preexisting "parent-child" relationship during minority. Also see comment, Section 2108.

Section 2514 (12.1). Property subject to a security interest.

Comment: Paragraph (12.1) expands the coverage of original paragraph (12) to include real and personal property subject to any security interest; this is consistent with Section 2-609 of the Uniform Probate Code.

Section 2514 (16.1). Nonademption; incompetency.

Comment: Paragraph (16.1) is derived from Section 2-608 (a) of the Uniform Probate Code.

Section 2514 (17). Change in securities.

Comment: Paragraph (17) is derived from Section 2-607 of the Uniform Probate Code.

Section 2514 (18). Nonademption; balance.

Comment: Paragraph (18) is derived from Section 2-608(b) of the Uniform Probate Code.

Section 2514 (19). Employee benefits.

Comment: Paragraph (19) is suggested by Revenue Ruling 73-404, I.R.B. 1973-40, 6, which recognizes that payments received under a qualified employee's noncontributory profit-sharing plan by a trustee who is prohibited by State law or the governing instrument from using the payments for the benefit of the decedent's estate are not includable in gross estate under Section 2039 (c) of the Internal Revenue Code. Although confirmatory of existing law, the addition of a formal rule of interpretation is desirable as a ready answer to questions that may arise as a result of publication of the revenue ruling. Also see Section 6114 (7) of the Probate, Estates and Fiduciaries Code.

Section 2520. Personal estate of nonresident.

This section is repealed.

Comment: Since this section is controlled by principles of conflict of laws, it serves no real purpose.

Section 3101. [Payment of wages, salary, vacation benefits to family] Payments to family.

Comment: This section is broadened to include all employee benefits.

Section 3174. When not required.

Section 3174 (a). Corporate personal representative.

Comment: The amendment to subsection (a) facilitates the qualification of Pennsylvania corporate fiduciaries in other states and avoids an implication that the reciprocity provision in Section 106 of the Banking Code (7 P.S. 106) was repealed by the reenactment of Section 3174 (a) as part of the Probate, Estates and Fiduciaries Code.

Section 3174 (b). Resident [executor] personal representative.

Comment: Subsection (b) is broadened to include the case where the will names an original and a successor personal representative but no vacancy arises until after the originally named individual has qualified.

Section 3174 (b.1). Nonresident co-personal representative.

Comment: Since all the assets will remain in the custody and control of the resident personal representative, new subsection (b.1) makes the bond requirement discretionary with the court.

Section 3174 (c). Nonresident [executor] personal representative.

Comment: This amendment conforms subsection (c) to the changes in subsection (b) of Section 3174.

Section 3357. Title of purchaser.

Comment: Subsection (a) is amended to conform its language to Section 3385 and to clarify that the "unless" clause applies to both subclauses (i) and (ii).

Section 3376. Limitations against debt due estate.

The substance of this amendment was contained in 1973 Senate Bill 779. As amended (Printer's No. 1552) it passed the Senate (46-0) but was not acted upon by the Judiciary Committee in the House of Representatives. It has been recast to clarify its intent.

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.

Section 3532. At risk of personal representative.

Comment: New subsection (c) authorizes filing a record of informal administration in order to provide a ready record for interested parties. Also see Section 7183 (13).

Section 3703. General rules.

Comment: This amendment to subsection (a) reverses the result in Neamand Estate, 456 Pa. 22 (1974).

Section 5163.1. Distribution to personal representative.

Comment: This new section eliminates the expense of filing an account by a guardian as to property turned over by him to the personal representative of the ward. It is in accord with Section 5533.1.

Section 5701. Proof of death.

Comment: New subsection (e) confirms the right of a court having jurisdiction of an estate or trust to make a finding of death of an absentee regardless of his domicile or residence.

Section 6102. Termination of trusts.

Comment: This amendment to subsection (a) increases the limitation for termination of trusts to $50,000 to reflect in part the effects of inflation since the original enactment in 1947.

Section 6114. Rules of interpretation.

Section 6114 (4). Adopted children.

Comment: See comments, Sections 2108 and 2514 (7).

Section 6114 (7). Employee benefits.

Comment: See comment, Section 2514 (19).

Section 6118. Invalidity of certain gifts.

This section is repealed since its substance was held unconstitutional in Cavill Estate. See comment, Section 2507 (1).

Section 7183. Notice, audits, reviews and distribution.

The inclusion of paragraph (13) is necessary to incorporate the provisions relating to estates contained in Section 3532 (c).

Comment: See comment, Section 3532 (c).

Section 7188. Annexation of account of distributed estate or trust.

Comment: Trustees may receive assets from other fiduciaries as a "pour-over" under the will of the settlor who created the trust or as an addition from the estate or trust of another decedent or donor. It has been suggested that when no account has been filed for the precedent estate or trust, the receiving fiduciary may assume liability for the administration of the paying fiduciary. This section will provide the receiving fiduciary with a method of presenting the account of the precedent estate or trust to the beneficiaries of his trust and obtaining the same protection he would have received if an account had been filed for the precedent estate or trust. It will also provide a method for obtaining simultaneous approval of an executor's account and the division into marital and residuary shares of a trust to which the probate estate is added without necessity for a separate account of each fund. No attempt is made to deal with the rights of creditors of the precedent estate since they would not be a concern to the receiving fiduciary: Section 3532 gives protection to the executor of a "pour-over" will against unknown creditors; if there are known creditors, the filing of an account of the precedent estate would probably be indicated.

Section 8111. Expenses; trust estates.

Comment: This change in subsection (d) is required to avoid an inconsistency with subsections (b) and (c) of Section 3703.

II. AUTHORIZING FINANCIAL INSTITUTIONS TO PAY CERTAIN DECEDENTS' ACCOUNTS TO FAMILY MEMBERS
(Senate Bill 1146, Printer's No. 1369)

This bill incorporates into Section 3101 (a) the provisions also found in the Omnibus Bill, see Section 3101, page 9, supra. The provisions of subsection (b) were contained in 1973 Senate Bill 775 as introduced (Printer's No. 845), deleted during consideration in the Senate (Printer's No. 1460), restored with modifications by the Judiciary Committee in the House of Representatives (Printer's No. 1949) and further amended on the floor of the House (Printer's No. 2309). In view of these developments, the Senate-House conference committee elected to withdraw Section 3101 (b) from Senate Bill 775, since it contained mainly technical and editorial matters. The task force and advisory committee have recommended its resubmission as a separate bill for further consideration by the 1975-1976 Session of the General Assembly.

Comment: Subsection (a) is broadened to include all employee benefits. Subsection (b) has been added to give a measure of protection to financial institutions in doing what is their present practice and to encourage them in facilitating administration of small estates at the least expense. The subsection is permissive only. It is anticipated that it will be employed only in instances where the rights of the parties are evident. In many instances it will make funds not exceeding the family exemption more readily available to the decedent's family for their immediate needs--including funeral arrangements.

III. JUDICIALLY SUPERVISED PLANNING OF INCOMPETENTS' ESTATES
(Senate Bill 1147, Printer's No. 1370)

The addition of subsection (b) to Section 5536 (Distributions of income and principal during incompetency) was included in 1973 Senate Bill 775 but was deleted by the Senate Judiciary Committee (Printer's No. 1460). The task force and advisory committee are resubmitting the amendment in a separate bill for consideration by the 1975-1976 Session of the General Assembly.

Comment: New subsection (b) 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. See Groff Estate, 38 D. & C. 2d 556, 16 Fiduc. Rep. 1 (Montg., 1965); also see Fiduc. Rev., Feb. 1966, p. 1.

IV. ADDING ADAPTED PROVISIONS FROM THE UNIFORM PROBATE CODE RELATING TO MULTIPLE-PARTY BANK ACCOUNTS
(Senate Bill 1143, Printer's No. 1366)

This bill adds new Chapter 63 (Multiple-Party Accounts) to the Probate, Estates and Fiduciaries Code to address what Justice Thomas W. Pomeroy, Jr., in 1972 referred to as "a familiar and recurring human drama" involving the ownership of multiple-party accounts in financial institutions. Twenty years ago the "confusing and unsettled state of the law concerning the creation of concurrent bank interests in Pennsylvania" was noted; the more recent history is discussed in the Fiduciary Review, January 1973. The proposed chapter is derived from Sections 6-101 through 6-113 of the Uniform Probate Code. The provisions of the bill were contained in 1974 Senate Bill 1647 which was introduced to expose the proposal for critical review.

Section 6301. Definitions.

Comment: This section derives from Section 6-101 of the Uniform Probate Code. The Commissioners' comment to that section states, in part, that:

> This and the sections which follow are designed to reduce certain questions concerning many forms of joint accounts and the so-called Totten trust account. . . .
>
> As may be seen from examination of the sections that follow, "net contribution" . . . has no application to the financial institution-depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple-party account.
>
> Various signature requirements may be involved in order to meet the withdrawal requirements of the account. A "request" involves compliance with these requirements. A "party" is one to whom an account is presently payable without regard for whose signature may be required for a "request."

Section 6302. Applicability of chapter.

Comment: This section clarifies the intent of this chapter to concern itself only with property rights between the parties arising out of multiple-party accounts and does not intend to affect the law relating to the relationship between a depositor and a financial institution. Although the chapter is based upon Article VI of the Uniform Probate Code, Sections 6-107 through 6-113 have been omitted from consideration. Comparable provisions can be found in the Banking Code, Savings Association Code, Commercial Code and other existing statutes.

Section 6303. Ownership during lifetime.

Comment: This section derives from Section 6-103 of the Uniform Probate Code. The Commissioners' comment to that section states, in part, that:

> This section reflects the assumption that a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, he usually intends no present change of beneficial ownership. The assumption may be disproved by proof that a gift was intended. Read with Section [6301] which defines "net contributions," the section permits parties to certain kinds of multiple-party accounts to be as definite, or as indefinite, as they wish in

respect to the matter of how beneficial ownership should be apportioned between them. It is important to note that the section is limited to describe ownership of an account while original parties are alive. Section [6304] prescribes what happens to beneficial ownership on the death of a party. This section does not undertake to describe the situation between parties if one withdraws more than he is then entitled to as against the other party. . . . Presumably, overwithdrawal leaves the party making the excessive withdrawal liable to the beneficial owner as a debtor or trustee. . . .

The [section] contains no provision dealing with division of the account when the parties fail to prove net contributions. The omission is deliberate. [Probably], a court would divide the account equally among the parties to the extent that net contributions cannot be proven; but a statutory section explicitly embodying the rule might undesirably narrow the possibility of proof of partial contributions and might suggest that gift tax consequences applicable to creation of a joint tenancy should attach to a joint account. The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals; the right of survivorship which attaches unless negated by the form of the account really is a right to the values theretofore owned by another which the survivor receives for the first time at the death of the owner. That is to say, the account operates as a valid disposition at death rather than as a present joint tenancy.

Section 6304. Right of survivorship.

Comment: The effect of (a) of this section, when read with the definition of "joint account" in Section 6301 (4), is to make an account, payable to one or more of two or more parties, a survivorship arrangement unless "clear and convincing evidence of a different contention" is offered.

The underlying assumption is that most persons who use joint accounts want the survivor or survivors to have all balances remaining at death. But use of a form negating survivorship would make (c) of this section applicable. Thus, a safe nonsurvivorship account form is provided. Consequently, the presumption stated by this section should become increasingly defensible.

Subsection (b) continues existing case law that an account opened by "A" in his name as "trustee for B" usually is intended by "A" to be an informal will of any balance remaining on deposit at his death. The section is framed so that accounts with more than one "trustee," or more than one "beneficiary," can be accommodated.

Section 6303 (b) would apply to such an account during the lifetimes of "all parties." "Party" is defined by Section 6301 so as to exclude a beneficiary who is not described by the account as having a present right of withdrawal.

In the case of a trust account for two or more beneficiaries, the section prescribes a presumption that all beneficiaries who survive the last "trustee" to die own equal and undivided interests in the account. No further survivorship between surviving beneficiaries of a trust account is presumed because these persons probably have had no control over the form of the account prior to the death of the trustee. The situation concerning further survivorship between two or more surviving parties to a joint account is different.

Section 6305. Form of account.

Comment: This section is derived from Section 6-105 of the Uniform Probate Code.

Section 6306. Accounts and transfers nontestamentary.

Comment: This section is derived from Section 6-106 of the Uniform Probate Code. The Commissioners' comment to that section states, in part, that:

> The purpose of classifying the transactions contemplated by [this chapter] as nontestamentary is to bolster the explicit statement that their validity as effective modes of transfers at death is not to be determined by the requirements for wills. The section is consistent with [existing law].

V. SUBSTITUTING AN ADAPTED VERSION OF THE UNIFORM PROBATE CODE'S AUGMENTED ESTATE FOR EXISTING PROVISIONS RELATING TO SPOUSE'S ELECTION TO TAKE AGAINST THE WILL
(Senate Bill 1142, Printer's No. 1365)

This bill adds new Chapter 22, Elective Share of Surviving Spouse, and amends various sections of Chapters 21 and 61 to conform those provisions to Chapter 22. It was introduced in essentially the same form as 1974 Senate Bill 1648 for the purpose of exposing its proposals for critical review.

Section 2101.1. Intestate estate.

Comment: This section sets forth the general law.

Section 2102.1. Share of the spouse.

Comment: This is based on Section 2-102 of the Uniform Probate Code except that the spouse's allowance has been retained at $20,000 instead of $50,000. Also, clause (5), which is not a part of the Uniform Probate Code, is retained from existing law to take care of the situation where there is a partial intestacy.

Section 2103. Shares of others than surviving spouse.

Comment: These amendments are for clarification purposes.

Section 2104. Rules of descent.

Comment: These amendments are for clarification purposes.

Section 2105. Spouse's rights.

Comment: These amendments emphasize that the share of the estate under this code is in lieu of common law dower or curtesy. A specific statement that a surviving spouse would take no share in real property aliened by the deceased spouse without joinder by the survivor is unnecessary since the right to such a share had no common law basis other than dower or curtesy and no statutory basis other than the provisions formerly appearing in Section 2105 and its predecessors which are deleted by the amendments.

Section 2201. Definition of conveyance.

Comment: See "Conveyance," Section 6101.

Section 2202. Right of election; nonresident decedent.

Comment: This section is partially derived from subsection (b) of Section 2-201 of the Uniform Probate Code. Also see Dueltgen v. Nuernberg, 123 Pitts. L. J. 7 (1975).

Section 2203. Right of election; resident decedent.

Comment: This section specifies generally the property included under and the property excluded from a surviving spouse's election rights.

Section 2204. Disclaimers, releases and charges against elective share.

Comment: This section specifies the effect of an election by a spouse to take the elective share. Subsection (c) provides a limited exception for property owned outright or in fee simple absolute by the spouse immediately after the decedent's death.

Section 2205. Transfers for value excluded.

Comment: This section excludes certain conveyances and contracts made by the decedent from Sections 2203 and 2204.

Section 2206. Right of election personal to surviving spouse.

Comment: This section, derived from Section 2-203 of the Uniform Probate Code, is consistent with Pennsylvania case law. See Harris Estate, 351 Pa. 368 (1974); cf. Peden Estate, 409 Pa. 194 (1962).

Section 2207. Waiver of right to elect.

Comment: This section is derived from Section 2-204 of the Uniform Probate Code. The descriptive language of that section relating to the effect of a waiver was omitted because it might effect substantial changes in existing Pennsylvania law.

Section 2208. Forfeiture of right of election; desertion; nonsupport; slaying.

Comment: This section incorporates into Chapter 22 the forfeiture provisions of Section 2106.

Section 2209. Surviving spouse as witness.

Comment: Also see Section 2106 (d).

Section 2210. Procedure for election; time limit.

Comment: This section incorporates the procedure for both taking and not taking the elective share. The six-month period continues existing law: Section 2511 (repealed herein) as amended 1974, December 10, No. 293.

Section 2211. Determination of effect of election; enforcement.

Comment: This section provides the power of the court of the decedent's domicile to implement the election in accordance with specified rules. Enforcement procedures are also set forth. Subsection (f) establishes the rights of transferees and lienholders for value.

Section 6101. Definitions.

Comment: Reference to Section 6111 is deleted in light of its repeal.

Section 6111. Conveyances to defeat marital rights.

This section is repealed.

Section 6111.1. Modification by divorce.

Comment: See Section 2507 (2).

VI. INCORPORATING AN ADAPTED VERSION OF THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT
(Senate Bill 1145, Printer's No. 1368)

This bill adds new Chapter 62 (Disclaimers), to the Probate, Estates and Fiduciaries Code. Section 6103 is amended to conform its provisions with Chapter 62.

Comment: Section 6103 of the Probate, Estates and Fiduciaries Code, codified Section 3 of the Estates Act of 1947 as amended, which was in turn derived from the Act of 1943, May 28, P. L. 797, as amended by the Act of 1945, June 1, P. L. 1337. The early legislation was enacted primarily to obtain and preserve tax advantages accruing from a change in the federal tax laws by the Revenue Act of 1942. As originally conceived, the legislation permitted disclaimers and releases of powers of appointment, but the provisions were broadened to include disclaimers and releases of interests, even though in retrospect the problems associated with the latter are quite different.

Further, Section 6103 as codified did not properly distinguish between a disclaimer, i.e., renunciation or refusal to accept, and a release after acceptance, which is really a form of conveyance and has little or no significance in modern law.

Section 6103 as codified was also deficient in a number of areas that are important in the law of disclaimers, e.g., right to disclaim an intestate's share and express provisions for what happens to the disclaimed interest.

A disclaimer under new Chapter 62 will not necessarily be effective for federal estate tax purposes and it is specifically provided in Section 6207 that it does not affect additional requirements under the Inheritance and Estate Tax Act of 1961, June 15, P. L. 373; 72 P.S. 2485-101 et seq. On the other hand, a disclaimer can never be effective for tax purposes if it is ineffective under State property law. One purpose of Chapter 62 is to liberalize the property law requirements for disclaimer so that legitimate attempts to avoid taxes on unwanted gifts will not be frustrated by property law provisions that are stricter than those required for tax purposes. See comment, Section 6206 (a).

In 1973 the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Disclaimer of Property Interests Act, which was utilized as the model for this Chapter 62. Also see the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act and Uniform Disclaimer of Transfers under Nontestamentary Instruments Act.

Section 6103. Release or disclaimer of powers or interests.

Comment: This section is limited in its applicability by Chapter 62.

Section 6201. Right to disclaim.

Comment: This section is based on Sections 1 and 3 of the Uniform Disclaimer of Property Interests Act, with some rearrangement and stylistic changes. The reference to incapacitated or protected persons in the Uniform Act has been omitted because this subject is treated separately in Section 6202.

The only significant change from the Uniform Act is that the last sentence of Section 1 of the Uniform Act, providing that "the right to disclaim does not survive the death of the person having it," has been omitted. See comment to Section 6202.

Section 6202. Disclaimers by fiduciaries.

Comment: The provision for disclaimers by guardians for minors and incompetents conforms with the Uniform Disclaimer of Property Interests Act; the section also permits a disclaimer by the personal representative of a deceased person. See McCredy Estate, 42 D. & C. 2d 519, 17 Fid. Rep. 405 (Phila., 1967) where the court permitted a disclaimer by the executor of the life tenant who

died a month after the testator with the result that the remainder to charity was accelerated and substantial federal estate tax was saved. The section includes appropriate safeguards to protect those interested in the estate.

Section 6203. Interests subject to disclaimer.

Comment: There is no comparable section in the Uniform Disclaimer of Property Interests Act. The express reference to the right of a possible appointee under an unexercised power permits a beneficiary to give up the right to have a discretionary power exercised in his favor, even though it is not clear whether such a right is an interest in property or a mere expectancy.

Section 6204. Filing, delivery and recording.

Comment: The provisions of this section for filing, delivery and recording of a disclaimer follow the provisions of Section 2 of the Uniform Disclaimer of Property Interests Act subject to certain stylistic changes and rearrangement of the provisions. The only substantive departure from the Uniform Act in this regard is the provision governing delivery and filing in the power of appointment situation. The Uniform Act requirement that the disclaimer be filed only with the court having jurisdiction over the estate of the donee of the power seemed inappropriate under current Pennsylvania practice. It is provided that the filing be both in the court having jurisdiction over the donee's estate and in the court having jurisdiction over the donor's estate.

The Uniform Act requirement in Section 2 of a six-month limitation for disclaimers has been omitted. See comment to Section 6206.

Section 6205. Effect of disclaimer.

Comment: Except for a new qualification in subsection (b), this section is similar to the provisions of Section 4 of the Uniform Disclaimer of Property Interests Act. The added language emphasizes that the fact that the disclaimant actually survived shall be recognized in determining whether other parties take equally or by representation.

Section 6206. Bar to disclaimer.

Section 6206 (a). Acceptance.

Comment: The first and last sentences of subsection (a), providing that a disclaimer may be made at any time before acceptance and that the mere lapse of time, even with knowledge of the gift, does not raise a presumption of acceptance, represents an important departure from the Uniform Disclaimer of Property Interests Act. Its Section 2 provides that a disclaimer must be made within six months of the death of the decedent or the effective date of an inter vivos transfer--or six months after vesting, in the case of future interests. This six-month limitation greatly reduces its usefulness because it will invalidate many disclaimers that would have been good at common law and would have been effective for federal estate tax purposes. For example, Internal Revenue Regulation Section 20.2055-2 (c) provides that a disclaimer resulting in an increased benefit to a charity is effective to generate a larger charitable deduction for estate tax purposes if made within the time for filing the estate tax return "or any extension thereof." Thus, even if the six-month period were extended to nine months, it would be shorter than what would be allowed for federal purposes in any case where an extension is granted. Since this act cannot affect federal taxes and expressly preserves additional requirements for disclaimers with respect to inheritance tax (see Section 6207), no time limit is provided; a disclaimer should be allowed at any time before acceptance which may be expressed or implied as set forth in the balance of this subsection.

The elimination of a time limit also eliminates the question of how a time limit applies to a future interest. The Uniform Act starts the clock running when a future interest becomes indefeasibly vested--or, in the case of an inter vivos instrument where the beneficiary has no knowledge of the interest, when the beneficiary first learns of the interest. In view of the plethora of disputes concerning when interests become vested and the difficult factual questions that can arise where the beneficiary claims he had no "knowledge" of the interest, this provision of the Uniform Act could cause litigation.

The acts from which an acceptance may be inferred derive from Section 5 of the Uniform Act with the addition of clause (4) to govern a situation such as where a beneficiary borrows money on the representation that he is the beneficiary of an estate.

Section 2606 (b). Partial acceptance within six months.

Comment: The elimination of a mandatory time limit for disclaimer raises a question in cases where, for example, a life tenant accepts a distribution of income shortly after testator's death and later wants to disclaim the balance of his life interest.

Although the subject of partial acceptance is not expressly covered by the Uniform Disclaimer of Property Interests Act, it seems implicit from the scheme of the Uniform Act that a partial acceptance within the six-month period would not preclude a disclaimer of the balance of the life estate. Subsection (b) conforms to the Uniform Act in this limited area of partial acceptance within the six-month period.

Section 6206 (c). Partial acceptance after six months.

Comment: Since this chapter has no mandatory time limit for disclaimer, a strict attitude is adopted toward partial acceptance after the grace period of six months has elapsed. This subsection provides that any acceptance of a part of a single gift after that period results in the acceptance of the whole gift.

However, if there are two different types of gifts to the same beneficiary in an instrument it is possible, even at common law, to disclaim one and accept the other. Since it is impossible to anticipate all questions in this regard, the latter part of this subsection provides some guidelines in typical cases.

Section 6207. Other statutes.

Comment: This section is based on Section 6 of the Uniform Disclaimer of Property Interests Act but is expanded to provide specifically that additional requirements for inheritance tax purposes are not affected. Section 406 of the Inheritance and Estate Tax Act of 1961 provides that, to be effective for inheritance tax purposes, a disclaimer must be made within three months after the grant of letters or within one year after the death of the decedent, whichever first occurs.