

**Exempting Spousal Transfers and
Other Proposed Amendments to the
INHERITANCE AND ESTATE TAX ACT**

**PROBATE, ESTATES
AND FIDUCIARIES CODE
Proposed Amendments and Comments**

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
February 1988

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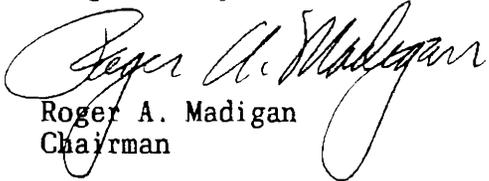
February 1988

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

This report summarizes amendments to the Probate, Estates and Fiduciaries Code and the Inheritance and Estate Tax Act recommended by the Task Force and Advisory Committee on Decedents' Estates Laws. Explanatory materials and official comments are included to facilitate review of the legislation introduced by members of the task force.

For more than 40 years, members of the task force and advisory committee have endeavored to ensure that Pennsylvania's probate laws remain among the most modern and efficient in the nation.

Respectfully submitted,



Roger A. Madigan
Chairman

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I. Introduction

This is the eighth report of the Joint State Government Commission Task Force and Advisory Committee on Decedents' Estates Laws since the June 30, 1972 codification of the Probate, Estates and Fiduciaries Code as Title 20 of the Pennsylvania Consolidated Statutes. The task force and advisory committee recommend legislation which would make substantive and technical amendments to both Title 20 and the Inheritance and Estate Tax Act codified in 1982 as Chapter 17 of Title 72 of the Pennsylvania Consolidated Statutes.

INHERITANCE AND ESTATE TAX ACT

This recommended legislation would:

- Exempt inter-spousal transfers from inheritance taxation (§§ 1708(b), 1711(m), 1716(a) and 1730(1) and (2)).
- Provide for the taxation of employment benefits except for inter-spousal transfers (§§ 1709 and 1711(r)).
- Provide a credit for estate taxes paid to other states by estates of resident decedents and impose an estate tax on the estates of nonresident decedents (§ 1717).
- Increase from \$3,000 to \$10,000 the exemption for inter vivos transfers made within one year of the death of the transferor (§ 1707).
- Clarify certain provisions to ensure an internal consistency and to codify present practice (§§ 1707(c) and 1711(p)).

PROBATE, ESTATES AND FIDUCIARIES CODE

This recommended legislation would:

- Streamline provisions relating to advertisement of accounts (§ 745), the attestation of certain applications and documents (§ 911), notice to absentees (§ 5704), the annexation of certain accounts (§ 7188) and separation of trusts (§ 7191).
- Broaden the class of property deemed disclaimed when a spouse takes an elective share (§ 2204).
- Make it possible to avoid automatic modification of wills (§ 2507) and conveyances (§ 6111.1) in the cases of subsequent marriage or divorce.
- Provide an additional rule of interpretation for wills (§ 2514) and conveyances (§ 6114) with respect to an affiliate of a corporate fiduciary.
- Confirm existing Pennsylvania law that a gift to any unfunded trust is valid (§ 2515).
- Permit a parent to appoint by will a guardian of the person of an adult incompetent child (§ 2519).
- Specify the manner in which contracts concerning succession may be established (Chapter 27).
- Permit the oath of a subscribing witness to be taken before a notary public (§ 3154).
- Extend to personal representatives the authority to make certain temporary investments (§§ 3316 and 7315.1).
- Allow fiduciaries to hold securities in book-entry form regardless of whether the securities are United States government securities (§ 3321).
- Enact the Uniform Transfers to Minors Act to replace the Pennsylvania Uniform Gifts to Minors Act (Chapter 53).
- Clarify the court's jurisdiction to appoint temporary guardians (§ 5513).
- Authorize the court to further modify the estate plan of an incompetent (§ 5536).
- Ensure validity of durable powers of attorney (§ 5604).

-- Provide that as a matter of law divorce revokes any revocable beneficiary designation made in favor of the former spouse (§ 6111.2).

This proposed legislation represents the most recent product of the dedicated work of the task force and advisory committee. On November 28, 1985, the task force, chaired by Senator Stewart J. Greenleaf, and the advisory committee, chaired by George J. Hauptfuhrer Jr., marked the fortieth anniversary of the first meeting. On December 3, 1985, the Senate adopted Resolution No. 112 commemorating this occasion and commending the task force and advisory committee for their accomplishment.

The following table lists all of the amendatory acts to the Probate, Estates and Fiduciaries Code since its consolidation into Title 20 of the Pennsylvania Consolidated Statutes in 1972. Fourteen of these acts were proposed by the task force and advisory committee. The most recent of these is Act No. 182 of 1984.

In 1981, the task force and advisory committee proposed legislation, enacted as Act No. 255 of 1982, to revise and consolidate Pennsylvania's inheritance tax law into Chapter 17 of Title 72 of the Pennsylvania Consolidated Statutes (Inheritance and Estate Tax Act). The 1981 biennial report provides the official comments to Chapter 17. Since the codification, the task force and advisory committee have continued to review inheritance tax law issues. A subcommittee was appointed to review and develop recommendations with regard to a variety of issues involving the Inheritance and Estate Tax Act. The subcommittee consists of:

ACTS AMENDING THE
 PROBATE, ESTATES AND FIDUCIARIES CODE
 (1972, P.L. 508, No. 164, effective July 1, 1972)
 THROUGH 1987

Citation	Subject
1972, P.L. 1461, No. 331	Change of age of majority
1973, P.L. 62, No. 25	Bank holding companies
1973, P.L. 322, No. 104	Change of age of majority*
1974, P.L. 282, No. 84	Increase monetary limit, § 3101
1974, P.L. 383, No. 130	Increase monetary limit, § 3121*
1974, P.L. 720, No. 242	Deposit of securities; book-entry securities
1974, P.L. 816, No. 271	Editorial change in title designation
1974, P.L. 867, No. 293	Omnibus*
1974, P.L. 896, No. 294	Temporary fiduciaries*
1974, P.L. 899, No. 295	Powers of attorney*
1975, P.L. 598, No. 168	Increase monetary limit, § 3101
1976, P.L. 434, No. 105	Self-proved wills**
1976, P.L. 547, No. 134	Multiple-party bank accounts*
1976, P.L. 551, No. 135	Omnibus*
1976, P.L. 562, No. 136	Disclaimers*
1976, P.L. 836, No. 144	Estate plan for incompetent*
1978, P.L. 42, No. 23	Spouse's election*
1978, P.L. 77, No. 37	Omnibus*
1978, P.L. 202, No. 53	Judiciary Act Repealer Act
1978, P.L. 909, No. 173	Equal Rights Amendment
1978, P.L. 1269, No. 303	Illegitimates
1979, P.L. 255, No. 86	Conforming amendment
1980, P.L. 565, No. 118	Omnibus*
1980, P.L. 693, No. 142	Repealed § 773
1982, P.L. 45, No. 26	Omnibus*
1982, P.L. 682, No. 194	Anatomical gifts
1984, P.L. 103, No. 21	Forfeiture of parent's share
1984, P.L. 929, No. 182	Omnibus*
1986, P.L. 1449, No. 141	Anatomical gifts

*Drafted by the advisory committee and approved and introduced by the Task Force on Decedents' Estates Laws.

**Drafted by the advisory committee without official action of the advisory committee or task force.

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The advisory committee's recommended amendments to the Inheritance and Estate Tax Act are contained in Part II of this report.

II. Inheritance And Estate Tax Act Proposed Amendments And Explanatory Material

BACKGROUND

On April 28, 1986, Senate task force members (Senators Greenleaf, Kelley, Shumaker, Williams, Shaffer and Reibman) and Senators Frank A. Salvatore and Edward W. Helfrick introduced Senate Bill 1512, Pr.'s No. 2098, which incorporated recommendations of the task force and advisory committee to amend the Inheritance and Estate Tax Act to exempt inter-spousal transfers from inheritance taxation. 1986 SB 1512 was referred to the Senate Finance Committee where no action was taken. On January 19, 1988, Senate task force members and Senators Helfrick, Frank A. Pecora and Anthony B. Andrezeski introduced Senate Bill 1230, Pr.'s No. 1714 which is substantively identical to 1986 SB 1512.

PROPOSED AMENDMENTS AND EXPLANATORY MATERIAL

This section provides explanatory material for the proposed legislation amending the Inheritance and Estate Tax Act.

INHERITANCE AND ESTATE TAX ACT

A. Proposal to exempt spousal transfers.

This proposal implements the policy of exempting inter-spousal transfers from inheritance tax and the concomitant policy of taxing employment benefits. Founded on the premise that inter-spousal transfers are not the occasion for the imposition of a wealth transfer tax, this policy substantially harmonizes Pennsylvania's treatment of taxation of inter-spousal transfers with that of the Federal government and the vast majority of other states and frees married couples from basing property ownership decisions on avoiding inheritance tax.

Under the Economic Recovery Tax Act of 1981, the Federal government exempted inter-spousal transfers from the Federal estate tax through the unlimited marital deduction. By providing a policy consonant with that at the Federal level, Pennsylvanians will be able to plan their estates under Federal and State law which provides substantially similar tax consequences.

Except for its long-standing exemption of entireties property, Pennsylvania is one of only a few states which have not adopted some form of inter-spousal exemption. The other states have implemented this policy by a complete or partial statutory exemption or reliance solely on a slack tax. See table 1. The slack tax obtains for the state the amount allowed as a credit for state death taxes under section 2011 of the Internal Revenue Code and consequently effectively

Table 1
SUMMARY OF STATE DEATH AND GIFT TAXES
DECEMBER 1987

	Inheritance and slack	Estate and slack	Slack only*	Gift
Alabama			X	
Alaska			X	
Arizona			X	
Arkansas			X	
California			X	
Colorado			X	
Connecticut	X**1			
Delaware	X**			X
District of Columbia			X	
Florida			X	
Georgia			X	
Hawaii			X	
Idaho	X*			
Illinois			X	
Indiana	X*			
Iowa	X**2			
Kansas	X*			
Kentucky	X*			
Louisiana	X**3			X ³
Maine			X	
Maryland	X**			
Massachusetts		X		
Michigan	X**			
Minnesota			X	
Mississippi		X		
Missouri			X	
Montana	X*			
Nebraska	X*			
Nevada			X	
New Hampshire	X*			
New Jersey	X*			
New Mexico			X	
New York		X*		X*
North Carolina	X*			X*
North Dakota			X	
Ohio		X**		
Oklahoma		X*		
Oregon			X	
Pennsylvania	X			
Rhode Island		X**4		
South Carolina		X ⁵		X**5
South Dakota	X*			
Tennessee	X**			X**
Texas			X	
Utah			X	
Vermont			X	
Virginia			X	
Washington			X	
West Virginia			X	
Wisconsin	X*6			X*6
Wyoming			X	

*Transfers to spouses are exempt.

**Transfers to spouses are partially exempt.

¹Connecticut: effective 7/1/88, estate passing to surviving spouse is exempt.

²Iowa: effective 1/1/88, tax on transfers to surviving spouses will be phased out.

³Louisiana: effective 1/1/92, transfers and gifts to surviving spouse are exempt.

⁴Rhode Island: effective 1/1/91, estate tax will be phased out. SLACK ONLY.

⁵South Carolina: effective 7/1/91, estate and gift tax will be repealed. SLACK ONLY.

⁶Wisconsin: effective 1/1/92, inheritance and gift tax will be phased out. SLACK ONLY.

SOURCE: Data compiled from the updates contained in The Topical Law Reports, State Tax Guide published by Commerce Clearing House.

exempts inter-spousal transfers through the Federal unlimited marital deduction.

The task force and advisory committee recommended in 1986 SB 1512 to maintain a revenue neutral position by taxing employment benefits that are not now taxed. According to a 1985 Department of Revenue fiscal analysis, a reduction in the rate of tax on inter-spousal transfers from 6 percent to zero would have resulted in a \$20 to \$30 million loss in revenue. The same department study projected that the taxation of employment benefits except for inter-spousal transfers would have resulted in a \$30 to \$40 million revenue gain. Combined with the revenue impact of the amendments described under Sections B and C of this part, the cumulative effect of the total package was approximately revenue neutral.

According to a September 1987 department fiscal analysis, a reduction in the rate of tax on inter-spousal transfers from 6 percent to zero would result in a \$37.6 million loss in revenue in fiscal year 1989-90 (the first fiscal year of the proposed exemption). The same department study projects that the taxation of employment benefits except for inter-spousal transfers would result in a \$26.7 million revenue gain.

In reaching its decision to recommend that employment benefits be subject to inheritance tax, the task force and advisory committee sought not only to provide a revenue source but to provide residents with more certainty, flexibility and security with regard to estate planning and to reduce administrative time and cost.

Presently, under section 1711(r), employment benefits are exempt from inheritance taxation to the extent that the decedent before his death did not have certain possessory rights or to the extent that they are exempt from Federal law. The Federal exemption has been repealed except for certain benefits in pay status at the time of repeal. Consequently the Federal exemption language in present law is largely an anachronism.

With respect to the general exemption language, the department reports that much administrative time and effort is involved in determining on a case by case basis whether plans are taxable. Taxpayers are confronted with the same inordinately laborious studies with, more often than not, uncertain results.

In October 1986, the department promulgated regulations regarding the taxation of employment benefit plans (61 Pa. Code § 93.131). It is maintained that the effect of these regulations is far-reaching and inconsistent with not only the department's position prior to the regulations but with case law. See Feinstein Estate, 18 Fid. Rep. 567 (Phila., 1968), Rothermel Estate, 24 Fid. Rep. 558 (Berks, 1974) and Rankin Estate, 487 Pa. 70, 408 A.2d 1358 (1979). This confusion illustrates the inordinate complexity of present law.

Under the proposed amendments, all employment benefits would be taxable with the exception of those made payable to a spouse. The latter has always been a common mode of payment, and undoubtedly will

become more prevalent by reason of the thrust of the Federal Retirement Equity Act of 1984.¹

As a final observation, since 1984 Pennsylvania has become the nation's foremost inheritance tax collector. While other states have amended their laws to reflect the changes in Federal tax law, Pennsylvania's collections over the last five years have increased by 41 percent. See table 2.

- B. Credit for estate taxes paid by the estate of a resident decedent to other states and imposition of an estate tax on nonresident decedents.

The amendment to section 1717 addresses the situation where a decedent owns property in more than one state and consequently owes death taxes in both states. This section is amended to:

- (1) provide a Pennsylvania resident with a credit for any slack tax (the tax designed to obtain for the state the amount allowed as a credit for state death taxes under section 2011 of the Internal Revenue Code) paid to other states; and
- (2) impose a slack tax on nonresidents equal to the portion of the credit attributable to Pennsylvania property to the extent this amount exceeds the Pennsylvania inheritance tax.

¹The task force and advisory committee considered, as an alternative to the taxation of employment benefits, the taxation of life insurance proceeds. According to a 1985 department fiscal analysis, the taxation of life insurance proceeds except for inter-spousal transfers would result in a \$40 to \$50 million gain. In rejecting this alternative, the task force and advisory committee viewed as paramount the policy of protecting young families. Since oft-times life insurance is used by young family heads with inadequate accumulated savings as protection for their families until rights vest in an employment benefit plan, the taxation of life insurance proceeds would run counter to that policy.

Table 2

STATE COLLECTION OF
DEATH AND GIFT TAXESTop Ten For Fiscal Years 1981-1985
By Amounts (000s) and Ranking

Rank	1981	1982	1983	1984	1985
1	CA \$522,502	CA \$461,665	CA \$489,276 slack only 1/1/83	PA \$282,237	PA \$277,588
2	PA 196,298	PA 218,419	NY 283,854	NY 259,140 spousal exemp. 9/30/83	NY 241,061
3	NY 143,210	IL 158,245	PA 250,618	NJ 171,363	NJ 194,425 spousal exemp. 1/1/85
4	IL 142,223	NY 145,976	NJ 147,861	MA 127,138	MA 153,602
5	NJ 123,280	NJ 126,763	IL 138,544 slack only 12/31/82	CA 115,669	TX 150,507
6	TX 96,360	TX 107,849 slack only 9/1/81	MA 111,850	CT 109,391	CT 123,127 spousal exemp. 7/1/88
7	MA 82,020	MA 99,355	TX 92,137	IL 105,016	CA 103,453
8	FL 70,619	IA 79,842 spousal exemp. 1/1/88	FL 79,335	TX 97,544	FL 101,307
9	CT 67,350	CT 79,206	OH 78,625	FL 78,729	WI 80,440 slack only 1/1/92
10	IA 54,970	FL 76,474	CT 75,169	WI 71,994	NC 76,642 spousal exemp. 8/1/85

SOURCE: U.S. Bureau of the Census, State Government Tax Collections in (Year), series GF-(Year), no. 1, table 9; "Year" equals 1981, 1982, 1983, 1984 and 1985.

Present Pennsylvania law provides that if the decedent was a resident of Pennsylvania, then the Commonwealth collects all the slack tax. In ascertaining the amount of slack tax to be collected, Pennsylvania gives credit for inheritance taxes paid to the Commonwealth and other states but not for slack taxes paid to other states. In the case of nonresidents, Pennsylvania does not impose any slack tax. This statutory scheme places Pennsylvania residents owning real property in another state at time of death in a position to be taxed twice since many states impose a slack tax on nonresidents. The need for this amendment is more compelling when viewed in light of the growing number of states (24 and the District of Columbia as of December 1987) which rely solely on a slack tax.

C. Other amendments

Section 1707(c)(3) and (7). Transfers subject to tax.

The amendment to paragraph (3) increases from \$3,000 to \$10,000 the exemption for gifts within one year of death. This amendment makes Pennsylvania law consistent with the annual gift tax exclusion under Federal law.

The amendment to paragraph (7) clarifies an ambiguity in the last sentence of the paragraph relating to relinquishments of a power to alter, amend or revoke. By a literal reading, such a relinquishment would always be taxable regardless of when it occurred except for relinquishments of the value prescribed in section 1707(c)(3) in the year before the death of the decedent. This

amendment eliminates any incongruity between the concepts contained in paragraphs (3) and (7).

Section 1711(p). Transfers not subject to tax.

The amendment to subsection (p) is of a clarifying nature to conform with existing practice.

III. Proposed Amendments And Comments Probate, Estates And Fiduciaries Code

BACKGROUND

On October 17, 1985, Senate Bill 1162, Pr.'s No. 1466 (omnibus bill) was introduced by the Senate members of the task force. Senate Bill 1162 incorporated the recommendations made by the task force and advisory committee in the 1985 biennial report. Senate Bill 1162 was considered by the Senate Judiciary Committee on December 10, 1985 and amended by deleting the provisions relating to multiple-party bank account forms. Senate Bill 1162, as amended (Pr.'s No. 1688), was unanimously approved by the Senate on January 29, 1986. In the House of Representatives, the bill was referred to the Judiciary Committee on February 3, 1986 where it remained at the close of the 1985-86 session.

On April 28, 1986, the Senate members of the task force introduced Senate Bill 1511, Pr.'s No. 2097, which incorporated a task force and advisory committee recommendation made subsequent to the transmittal of the 1985 biennial report. Senate Bill 1511 amended section 3154 (affidavit and oath) to permit the oath of a subscribing witness to a will to be taken before a notary public. Senate Bill 1511 was unanimously approved by the Senate on June 2, 1986 and was

referred to the House Judiciary Committee on June 5, 1986 where no action was taken.

The provisions of 1985 SB 1162, Pr.'s No. 1688, and 1986 SB 1511, Pr.'s No. 2097, were consolidated into a new omnibus bill and introduced on January 27, 1987 as Senate Bill 186, Pr.'s No. 192, and referred to the Senate Judiciary Committee on that date. Subsequent to the introduction of SB 186, the amendment to section 3154 was incorporated in House Bill 524, Pr.'s No. 2396.

At their recent meeting, the task force approved several additional recommendations of the advisory committee which would amend sections 2204(a), 2515, 2519(a), 3321(e), 5513, 5604(b), 5704 and 7191 and add a new section 6111.2. The task force agreed that these proposed amendments should be incorporated into the omnibus bill, SB 186.

PROPOSED AMENDMENTS AND COMMENTS

This section provides explanatory material for the proposed legislation amending the Probate, Estates and Fiduciaries Code. The official comments of the advisory committee are included and may be utilized in determining the intent of the General Assembly: 1 Pa.C.S. § 1939; Martin Estate, 365 Pa. 280, 74 A.2d 120 (1950).

PROBATE, ESTATES AND FIDUCIARIES CODE

Section 745. ADVERTISEMENT OF ACCOUNTS

This section is amended so that accounts are advertised by the clerk of the orphans' court division two times instead of four.

Section 911. ATTESTATION OF CERTAIN APPLICATIONS AND DOCUMENTS

This section is added to provide that documents submitted to the register of wills, except a probate petition, may be attested to by an affidavit or, in the alternative, by a verified statement under penalty of law.

Section 2204. DISCLAIMERS, RELEASES AND CHARGES AGAINST ELECTIVE SHARE

Comment: The amendments to paragraphs (8) and (9) of subsection (a) recognize that there is no compelling policy consideration which requires different treatment for intangible and tangible personal property. Many times a significant portion of an estate is the tangible personal property collected during the marriage as an investment and held jointly. These amendments rectify the inequity of permitting the electing spouse to attain ownership of the tangible property by operation of law and to also take the elective share of the decedent's remaining property.

Section 2507. MODIFICATION BY CIRCUMSTANCE

Section 6111.1. MODIFICATION BY DIVORCE

The amendments to these sections make it possible to avoid automatic modification of wills that are made in contemplation of a marriage or divorce and of inter vivos conveyances that are made in contemplation of a divorce.

Section 2507.

Comment: The amendments to paragraphs (2) and (3) give a testator who contemplates a particular marriage or divorce the same freedom to adjust his will to this event before it occurs as he has always had to do so afterwards. The spouse's right of election against the will is not affected and would be the same regardless of whether the will was executed before or after the marriage.

Section 6111.1.

Comment: This parallels the change made in § 2507(2).

Section 2514. RULES OF INTERPRETATION

Section 6114. RULES OF INTERPRETATION

Section 2514 provides rules for interpreting wills and section 6114 provides rules for interpreting conveyances. Many wills contain clauses authorizing or perhaps restricting investments in the securities or common trust funds of a corporate fiduciary or making special provisions with respect to voting securities of the corporate fiduciary. Paragraph (20) is added to section 2514 to construe these provisions to apply to the securities and common trust funds of any affiliate of the corporate fiduciary. Trust agreements are covered by the same provision added as paragraph (8) of section 6114.

Section 2515. DEVISE OR BEQUEST TO TRUST

This amendment is of a clarifying nature in order to confirm existing law.

Comment: The words "life insurance" and the reference to ownership rights in the policies are deleted so that this provision will apply to any unfunded trust. This amendment is designed to confirm existing Pennsylvania law that a gift to an unfunded trust is valid. Specifically, it is intended to avoid the necessity of the recital of the receipt of a nominal sum and the concomitant accounting problems thereby raised.

Section 2519. TESTAMENTARY GUARDIAN

Comment: This amendment to subsection (a) expands the power of a parent to include appointing a guardian of the person of an adult incompetent child.

The phrase "or adopting parent" is deleted since an adopting parent is included within the phrase "sole surviving parent." The term "by will" is added and the term "testamentary" is deleted in order to provide internal consistency between subsections (a) and (b). See Pagel, Minor, 8 Fid. Rep. 338 (Phila., 1958).

Chapter 27. CONTRACTUAL ARRANGEMENTS RELATING TO SUCCESSION

This chapter is added to enumerate the ways in which contracts concerning succession may be established.

Comment: Section 2701 is taken from section 2-701 of the Uniform Probate Code with certain changes intended to eliminate possible ambiguities. The official comment of the National Conference of Commissioners on Uniform State Laws to that section is as follows:

It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

This section requires that either the will must set forth the material provisions of the contract, or the will must make express reference to the contract and extrinsic evidence proving the terms of the contract, or there must be a separate writing signed by the decedent evidencing the contract. Oral testimony regarding the contract is permitted if the will makes reference to the contract, but this provision of the statute is not intended to affect normal rules regarding admissibility of evidence.

Section 3154. AFFIDAVIT AND OATH

This amendment permits the oath of a subscribing witness to be taken before a notary public without requiring that the witness appear before the Register of Wills.

Comment: The change from "may" to "shall" in subsection (a) is not intended to change the law. The new subsection (b) is based upon section 3132.1 relating to self-proved wills and applies only to subscribing witnesses. A nonsubscribing witness must appear before the register or other official described in subsection (a)(2).

Section 3316. INVESTMENT OF FUNDS

Section 7315.1. RETENTION OF CASH; TEMPORARY INVESTMENTS

Section 3316 is amended to extend to personal representatives the provisions of section 7315.1(b).

Section 3316 is amended to allow personal representatives to make the temporary investments authorized for fiduciaries in section 7315.1(b). Personal representatives are excluded from the definition of "fiduciary" in section 7301, therefore the authority of section 7315.1(b), which permits "sweeping" of otherwise uninvested cash balances and other modern forms of temporary investments, does not extend to personal representatives. Since estates often hold substantial amounts of uninvested cash for limited periods of time, application of the temporary investment provisions of section 7315.1(b) is appropriate. A technical amendment is made to section 7315.1(b) to implement this amendment.

Section 3321. NOMINEE REGISTRATION; CORPORATE FIDUCIARY AS
ATTORNEY-IN-FACT; DEPOSIT OF SECURITIES IN A CLEARING
CORPORATION; BOOK-ENTRY SECURITIES

Comment: The amendment to subsection (e) is in response to the recent practice of issuers of securities, especially issuers of commercial paper, who are beginning to issue securities in book-entry form. It broadens the scope of coverage of the subsection to permit fiduciaries to hold securities in book-entry form irrespective of whether the securities are United States government securities.

Chapter 37. APPORTIONMENT OF DEATH TAXES

The amendments to this chapter are all of a technical or editorial nature.

Chapter 53. PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT

This chapter, which incorporates the Uniform Transfers to Minors Act, is added and replaces the Pennsylvania Uniform Gifts to Minors Act repealed by this proposed legislation. The uniformity of the act is retained except for a change to reflect Pennsylvania terminology ("guardian" instead of "conservator") and stylistic changes mandated by the Pennsylvania Consolidated Statutes editorial policy. As provided in 1 Pa.C.S. § 1927 (construction of uniform laws), "[s]tatutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Since the provisions of the uniform act are incorporated without substantive change, the comments of the National Conference of Commissioners on Uniform State Laws will be instructive in the application of this chapter.

In order to facilitate the convenient use of the Commissioners' comments the following cross reference table is provided:

UTMA	20 Pa.C.S. (unless otherwise indicated)
*§ 1	§ 5302
2	5303
3	5304
4	5305
5	5306
6	5307
7	5308
8	5309
9	5310
10	5311
11	5312
12	5313
13	5314
14	5315
15	5316
16	5317
17	5318
18	5319
19	5320
20	5321
21	14(a) of proposed legislation
22	14(b) and (c) of proposed legislation
23	See: 1 Pa.C.S. § 1927 (construction of uniform laws)
24	5301
25	See: 1 Pa.C.S. § 1925 (constitutional construction of statutes)
26	16 of proposed legislation
27	8 of proposed legislation

*The following definitions from the uniform act have not been incorporated since they are specifically provided for in either 1 Pa.C.S. § 1991 (definitions) or 20 Pa.C.S. § 102 (definitions) and therefore apply to Chapter 53:

Adult	1 Pa.C.S. § 1991
Conservator (guardian)	20 Pa.C.S. § 102
Court	20 Pa.C.S. § 102
Person	1 Pa.C.S. § 1991
Personal representative	20 Pa.C.S. § 102
State	1 Pa.C.S. § 1991

Section 5513. TEMPORARY GUARDIAN

Comment: This amendment is to clarify that the court has jurisdiction to appoint a temporary guardian of the person for an incompetent nonresident who at the time is physically located in Pennsylvania.

Section 5536. DISTRIBUTION OF INCOME AND PRINCIPAL DURING INCOMPETENCY

Subsection (b)(8) is amended to authorize the court to exercise all rights and privileges under certain contracts which provide for payments to an incompetent or others after the incompetent's death. Subsection (b)(11) is added to authorize the court to modify the estate plan of an incompetent to reflect changes in applicable tax laws.

Section 5603. IMPLEMENTATION OF POWER OF ATTORNEY

The amendment to subsection (a)(3) is a technical amendment to change the reference of the Pennsylvania Uniform Gifts to Minors Act to the Pennsylvania Uniform Transfers to Minors Act.

Section 5604. DURABLE POWERS OF ATTORNEY

Comment: The amendment to subsection (b) is of a clarifying nature. It ensures the validity of the power of attorney during any lengthy period of disability or incapacity of the principal.

Section 5704. NOTICE TO ABSENTEE

Comment: This amendment provides the court with the discretion to require a shorter advertisement period. It is designed to avoid the situation prevalent in many small estates where the cost of advertising is prohibitive.

Section 6111.2. EFFECT OF DIVORCE ON DESIGNATION OF BENEFICIARIES

This section is added to provide that a divorce would serve to revoke any revocable beneficiary designation that had been made in favor of the former spouse of the person who had made the designation.

Comment: This section is new. It is conceptually patterned after sections 2507(2) (modification by circumstances; divorce; wills) and 6111.1 (modification by divorce; conveyances) (see comment to section 2507). It differs from those provisions in permitting a document other than a beneficiary designation, will or trust to express an intention that the spouse's interest survives the divorce because a property settlement agreement often specifies life insurance rights.

Section 7188. ANNEXATION OF ACCOUNT OF DISTRIBUTED ESTATE OR TRUST

This section is amended to authorize double piggybacking of accounts.

Comment: This change will permit a trustee who has received funds from an estate which in turn has received funds from a terminated inter vivos trust or from an agency to annex the account of the inter vivos trustee or agent as well as the executor's account. A parallel amendment to section 3501.2 seems unnecessary since it is unlikely that an estate would be the ultimate recipient of a similar double pour-over.

Section 7191. SEPARATE TRUSTS

Comment: This amendment gives the court greater discretion in separating trusts by removing the requirement that all beneficiaries consent to the separation. The consent requirement is often impossible to meet since remaindermen may be unascertainable. This amendment is intended to aid in the qualification of trusts as qualified shareholders for Subchapter S corporation purposes as well as for generation skipping tax purposes.

IV. Other Task Force Approved Legislation

Two other task force approved legislative proposals are pending in the General Assembly: Senate Bill 187, Pr.'s No. 193, and Senate Bill 188, Pr.'s No. 194.

SENATE BILL 187

Senate Bill 187 amends the Inheritance and Estate Tax Act by making technical amendments to clarify the definitions of "children" and "lineal descendants" and to provide that requests for refunds be made to the Department of Revenue. House Bill 378, Pr.'s No. 411, which is identical to SB 187, is presently pending in the House of Representatives.

Section 1702. DEFINITIONS

The amendments to the definitions of "children" and "lineal descendants" are intended to clarify who pays the lower inheritance tax rate--6 percent instead of 15 percent.

Comment: The broad definitions of "children" and "lineal descendants" include persons who have been adopted out of a decedent's family. This is in accord with Carlson Estate, 479 Pa. 421, 388 A.2d 726 (1978). It is not necessary to repeat the continuing family relationship test of 20 Pa.C.S. §§ 2108, 2514(7) and 6114(4) since such persons will not receive a share of the decedent's estate unless they meet the test and therefore qualify as

intestate heirs or are named in a will or other governing instrument which is not likely to occur unless there is, in fact, some continuing relationship with the natural family. The word "stepdescendants" in the definition of "lineal descendants" is intended to include stepchildren and stepchildren of lineal descendants.

Section 1781. REFUND OF TAX

The amendment to this section resolves an inconsistency in the law. Section 1108(b) of the Fiscal Code, which applies to all State taxes, was amended by Act No. 78 of 1982 to provide that requests for refunds be made by taxpayers to the Department of Revenue. However, section 1781 provides that application for refunds be made to the Board of Finance and Revenue. This inconsistency causes administrative problems and unnecessary delays in processing refunds.

SENATE BILL 188

Senate Bill 188 amends the Divorce Code by providing for the substitution of the personal representative for a deceased party in a divorce proceeding and providing for more certainty of title for a bona fide purchaser for value. The substance of SB 188 was incorporated into Senate Bill 409 which became 1988 Act No. 13 on February 12, 1988. Under 1988 Act No. 13, the application of section 403(d) is limited to marital property.

Section 401. DECREE OF COURT

Comment: The amendment to subsection (b.1) ensures that the marital estate of a person who dies after the divorce but prior to equitable distribution in

a bifurcated divorce proceeding is resolved by the judge having jurisdiction over the divorce rather than by the judge of the orphans' court.

Section 403. INJUNCTION AGAINST DISPOSITION OF PROPERTY PENDING
SUIT AND DECREE RENDERING FRAUDULENT TRANSFERS
NULL AND VOID

Comment: The amendment to subsection (d) removes the uncertainty of the title of a bona fide purchaser for value caused by mere pendency of a matrimonial action, particularly where notice is presumed by virtue of the existence of the action. This amendment relieves a bona fide purchaser for value of the inconvenience and expense of requiring that a spouse be joined in a real estate conveyance where the spouse is not a title owner of the property in order to avoid any possible consequence under the Divorce Code.

