

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 621

Printer's No.: 597

Sponsor: Senator Greenleaf

Prepared by: Gregg Warner

Synopsis: This bill makes omnibus amendments to the Probate, Estates and Fiduciaries Code (Probate Code), Title 20 of the Pennsylvania Consolidated Statutes, including the consolidation of the Charitable Instruments Act of 1971 into the Probate Code.

Summary: The bill makes several changes to the Probate Code. They include:

- Codify the Charitable Instruments Act of 1971 as new Chapter 79.
- Make additional changes to the Uniform Trust Act.
- Add Chapter 76 regarding powers of appointment.
- Clarify provisions relating to when and how an estate may form a business entity.
- Establish a new statutory framework regarding the release of powers and interests and the disclaimer of powers.
- Clarify when a person submits to the jurisdiction of the orphans' court.
- Provide a method for determining title to a decedent's interest in real estate.

Charitable Instruments Act

Chapter 79 is added to the Probate Code governing the operation of a charitable organization defined as a trust such as a private foundation or a pooled income fund. A conforming amendment is made to section 8113 to change the reference from the 1971 act to Chapter 79.

Uniform Trust Act

Several amendments are made to the Uniform Trust Act, Chapter 77 of the Probate Code, relating to judicial proceedings involving a trust matter, division of trusts with court approval, resignation of a trustee, and the duty to inform and report allowing a current beneficiary to nominate a person to receive required notices on his behalf.

Powers of Appointment

Chapter 76 is added to the Probate Code governing the exercise of powers of appointment -- a power conferred on a donee to select one or more recipients of the donor's estate or income. A broad power of appointment is one that a donee may exercise in favor of one or more persons selected by the donee including the donee himself or the donee's estate. A limited power of appointment includes a power to appoint to the donee's creditors or the creditors of the donee's estate. The current provision relating to powers of appointment, section 2514(13) is repealed because the substance of the provision is codified into section 7602 relating to the exercise of powers of appointment.

Other amendments

Sections 3314, relating to the continuation of a business, and 3315, relating to the incorporation of an estate's business, are amended to include the recognition of certain business entities other than a corporation, such as a partnership or a limited liability company. The court's order under section 3314 may provide for the compensation of the personal representative actively managing the business.

Section 6103 is repealed and section 6103.1 is added to update and clarify the language relating to the release of an interest in property that had been accepted.

Section 3163 is added to make clear that a person granted letters testamentary or letters of administration shall be deemed to submit to the jurisdiction of the orphans' court of the county in which the register granted the letters.

Section 3546, relating to the determination of title to a decedent's interest in real property, is amended to allow a nonprofit corporation organized for community development purposes to petition the court to establish title to the decedent's real estate. The section is restructured for clarity.

Repeal

1971 Act 23, known as the Charitable Instruments Act of 1971, is repealed. The provisions of Act 23 are consolidated into the Probate Code as Chapter 79. The new chapter shall be known and may be cited as the Charitable Instruments Act.

Effective date

The amendment, repeal or addition of the following provisions take effect in 60 days: sections 3314, 3315, 3546, 6103, 6103.1, 7710.1(c), 7722, 7740.7(b), 7765(a), (a.1), (b) and (c), 7780.3(k.1) and 7792. The remainder of the act takes effect immediately.

Background: In June 2010 the Joint State Government Commission issued a report entitled, "The Probate, Estates and Fiduciaries Code: Proposed Amendments to Title 20 of the Pennsylvania Consolidated Statutes." The Advisory Committee on Decedents' Estates Laws periodically recommends updates to the Probate, Estates and Fiduciaries Code based on court cases and changes in federal law.

The Joint State Government Commission's Advisory Committee on Decedents' Estates Laws is a standing group of attorneys and judges from across the Commonwealth who assist the General Assembly by recommending improvements to the Probate, Estates and Fiduciaries Code and related statutes. The advisory committee has been in existence since 1945 and is credited with drafting most of the laws relating to trusts and estates. After reaching consensus on its legislative recommendations, the advisory committee presents its recommendations to the Task Force on Decedents' Estates Laws, which is a bicameral and bipartisan panel of legislators.

The Joint State Government Commission report contains the advisory committee's official comments explaining each amendment. The comments may be used in determining legislative intent.