



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA, DEMOCRATIC CHAIRMAN

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JANUARY 2006

SENATE LEGISLATION ESTABLISHES UNIFORM TRUST CODE

■ *Senate Bill 660* *Printer's No. 1423*

The proposed legislation contains recommendations made by the Joint State Government Commission Advisory Committee on Decedents Estates Laws to codify the Uniform Trust Code and abolishes the rule against perpetuities. The following summarizes the most notable aspects of the Pennsylvania Uniform Trust Act contained in the legislation.

First, the bill encourages a trustee to communicate with the trust's beneficiaries. A trustee must respond to a beneficiary's reasonable request for information unless the trust is a revocable trust and the settlor is alive. The contents of the notice are prescribed in the statute. A settlor may not negate the notice requirements. A two-year transitional rule will allow Pennsylvania trustees enough time to prepare for the new notice requirements.

The legislation recognizes the use of revocable trusts as a will substitute. The legislation applies the same rules in force for wills to revocable trusts including capacity to execute a revocable trust; a similar period of time to contest a revocable trust; requiring notice of the trust relationship to the settlor's spouse, children and beneficiaries akin to Pennsylvania Orphans' Court Rules; apply to revocable trusts the same rules of construction that apply to testamentary trusts; and set forth a road map for clearance of creditors' claims against the revocable trust and the settlor's estate.

Concepts of virtual representation are broadened, refined and detailed. A person may represent his minor and unborn descendants unless there is a conflict of interest between the ancestor and descendant with respect to the matter at issue. These rules apply to releases, settlements and other transactions outside a judicial context as well as to matters before the court.

A settlor may select the law that will govern the meaning and effect of the trust instrument unless that law contravenes one of the mandatory rules set forth in the Pennsylvania Uniform Trust Act, such as the rules requiring the trustee to communicate with the beneficiaries.

Changes of situs and venue permit a trustee to change the situs of a trust to another state or county

after notifying the trust's primary beneficiaries of the proposed transfer and obtaining their consent. The notice must include certain salient, practical aspects of the transfer. The right of the court to direct a change in situs is preserved. Under the Pennsylvania Uniform Trust Act, a change in venue follows automatically from a change in situs.

The Pennsylvania Uniform Trust Act codifies the effect of a spendthrift provision. Such a provision is valid as against any creditor except (1) a beneficiary's child who has a judgment or court order for support or maintenance to the extent of the beneficiary's interests in the trust's income and principal; (2) another person who has such a judgment or court order, to the extent of the beneficiary's interest in the trust's income;



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The Judiciary Review

Report from the
Senate Judiciary Committee

SENATOR JAY COSTA, Democratic Chairman

■ Judiciary Committee To Consider Issue of Wrongful Conviction

The Senate Judiciary Committee will review the issue of wrongful conviction in the Commonwealth of Pennsylvania. In 2002, the General Assembly enacted Act 109 that supplied the procedures for the presentation and consideration of exculpatory DNA evidence in post-conviction proceedings under Chapter 95 of Title 42. Since that time, eight individuals have been found to be wrongfully convicted and freed from incarceration. Nationally, more than 170 individuals have been exonerated through the use of post-conviction DNA analysis.

A recent expose in the Pittsburgh Post-Gazette highlighted efforts of groups such as the Innocence Project at the Cardozo School of Law and locally, Dean Rago, professor at the Duquesne School of Law. The series included several initiatives that should be taken to address current wrongful convictions and measures that should be implemented to prevent such cases in the future. Several of these initiatives have already been introduced in the General Assembly and will be the focus of public hearings in the Senate Judiciary Committee over the next several weeks.

On Jan. 30, the committee conducted a public hearing on legislation introduced by Sen. Stewart Greenleaf and Sen. Jay Costa that establishes an Innocence Commission. The commission is composed of 30 members recommended by the Chief Justice, Governor and members of the General Assembly. The commission will review cases where a person was found to be wrongly convicted and subsequently exonerated. As part of its review, the commission will identify common causes of wrongful conviction and identify potential solutions including legislative, procedural or rule changes.

(3) a judgment creditor who has provided services for the protection of the beneficiary's interest in the trust and (4) a governmental claim as provided by state or Federal law.

Trusts created on or after the effective date of the act are presumed to be amendable and revocable. Under the Pennsylvania Uniform Trust Act, trusts must be in writing; oral trusts will no longer be recognized. Judicial authority to remove a trustee for fault is clarified. Additional changes are intended to codify existing Pennsylvania law relating to the compensation of a trustee imposes a limited codification of laches doctrine.

Following the Uniform Trust Code, the Pennsylvania Uniform Trust Act sets forth a series of mandatory rules that may not be countermanded in the trust instrument. These include the notice requirements, the duty to inform and report, the requirements for creation of a trust and the authority of the court in various trust matters.

House of Representatives—Judiciary Committee

The Senate Judiciary Committee Reports

■ House Bill 477 Printer's No. 1076

The legislation establishes a new cause of action that permits an individual to sue any organization or person who engages in terrorism or provides material support for such activity. The term terrorism is defined as committing a "violent offense", with the intent to (1) intimidate or coerce a civilian population; (2) influence the policy of a government by intimidation or coercion; or affect the conduct of a government. The damages could include damages for emotional distress, loss of consortium and life's pleasure along with punitive damages, attorney's fees and costs and any other relief the court may deem proper.

Act 2 of 2006

■ Senate Bill 895 Printer's No. 1417

The legislation amends the Crimes Code making it unlawful for any person to taunt or torture an animal owned and used by a metropolitan transportation authority such as SEPTA or Port Authority of Allegheny County. Any person convicted of such an offense would be ordered to pay restitution for injury to the police animal including veterinary bills or replacement of the animal.

Act 96 of 2005

■ House Bill 1686 Printer's No. 3174

The bill provides for the transportation of a paintball gun or a paintball marker in a motor vehicle. An individual may not carry a paintball gun or a paintball marker in a motor vehicle on a highway unless the paintball gun or marker is empty of encapsulated gelatin paintballs; the propellant source on the paintball gun or marker is disconnected, disabled or turned off; the paintballs are stored in a separate container; and the paintball gun or paintball marker is in a secure wrapper, has a barrel blocking device installed, or is not readily accessible from the passenger compartment of the vehicle.

Act 85 of 2005

■ House Bill 1400 Printer's No. 1688

The legislation amends the Crimes Code to include, as an offense, conduct in which the offender intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire. Further, the legislation provides that the classification of certain offenses under §3126 would be increased from a second-degree misdemeanor to a first-degree misdemeanor.

Act 76 of 2005.