

Statement of Robert L. Freedman

Regarding House Bill 2267

I am a practicing attorney with 30 years experience. I specialize in the field of estates and trusts, which sometimes overlaps with domestic relations. I am a partner with Dechert Price & Rhoads in Philadelphia, a Fellow of the American College of Trust and Estate Counsel, a member of the American Law Institute and an Adjunct Professor at the University of Pennsylvania Law School.

I am a member of the Advisory Committee on Decedents' Estates of the Joint State Government Commission. I want to emphasize, however, that I am speaking today purely in my private role as a practicing attorney. I am not speaking on behalf of the Advisory Committee.

I support House Bill 2267.

I have long felt that the law should not sanction a minor child being robbed of parental financial support by the accident of a parent's death.

For centuries our law has not allowed a married person's death to deprive the surviving spouse of a share of the deceased spouse's estate. I see no reason why the principle that a duty of support is not terminated by death should not be extended to minor children.

At common law the death of a parent ended that parent's duty to support minor children.

Today the states are divided. Many follow the common law; many more do not. See Deborah Kehoe, Student Note, *The American Journal of Trial Advocacy*, Vol. 7, number 2, Spring 1984, p. 353.

The Uniform Marriage and Divorce Act, which was adopted by the Commissioners on Uniform State Laws in 1971, provides in section 316(c) that provisions for the support of an unemancipated child are not terminated by the death of a parent.

Accordingly, the idea behind House Bill 2267 is well within the mainstream of American law, and is the more progressive view.

From a practical point of view, there will be many cases where the parent's only asset is earning capacity, so that after the parent's death there will not be any source of funds to support the child. Nevertheless, this is not a reason to oppose the Bill, because there will be cases in which the parent does leave an estate and, equally importantly, parties will change their behavior after the Bill is enacted. The enactment of the Bill will affect negotiations between divorcing parents, by making it harder for the wealthier spouse to justify an agreement under which child support payments stop at the parent's death. In my view the most important reason to enact House Bill 2267 is to change private behavior. Enactment will tilt divorcing couples toward agreeing to provide post-death support.

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I would suggest a few changes to the Bill to clarify certain points.

I think minor children's claims for support should be given preference over general debts of the deceased parent. So I suggest amending section 3392 of the Probate, Estates and Fiduciaries Code, which directs which debts have priority if the estate is insufficient to satisfy all debts.

The Bill amends Chapter 37 of the Domestic Relations Code. That Chapter largely concerns alimony to a spouse. I suggest the Bill instead amend Subchapter B of Chapter 43 of the Domestic Relations Code, which more directly concerns child support.

I suggest using the language of the Uniform Marriage and Divorce Act, which provides in section 316(c):

“Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.”

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