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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1429 Session of  
2013

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INTRODUCED BY M. K. KELLER, GRELL, AUMENT, BLOOM, CALTAGIRONE,  
CLYMER, CUTLER, DENLINGER, EVERETT, FLECK, GODSHALL, HESS,  
KNOWLES, LONGIETTI, MATZIE, METCALFE, MILLARD, R. MILLER,  
PICKETT, ROCK, SAYLOR, TURZAI, WATSON, GILLESPIE, GIBBONS,  
CARROLL, KORTZ, HARHAI, SCAVELLO, PYLE, CAUSER, TAYLOR, RAPP,  
MAHER, GINGRICH, HICKERNELL, MILNE, C. HARRIS, MACKENZIE,  
REESE, MARSHALL, P. DALEY, STEVENSON, BENNINGHOFF, READSHAW  
AND WHITE, JUNE 3, 2013

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SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
JUNE 10, 2014

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AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in powers of attorney,  
3 further providing for general provisions and for special  
4 rules for gifts; providing for agent's duties and for  
5 principles of law and equity; further providing for form of  
6 power of attorney, for implementation of power of attorney  
7 and for liability; providing for liability for refusal to  
8 accept power of attorney and for activities through  
9 employees; and further providing for validity.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 5601(b), (c), (d), (e), (e.1), (e.2) and  
13 (f) of Title 20 of the Pennsylvania Consolidated Statutes are  
14 amended to read:

15 § 5601. General provisions.

16 \* \* \*

17 (b) Execution.--

1       (1) A power of attorney shall be dated, and it shall be  
2       signed [and dated] by the principal by signature or mark, or  
3       by another individual on behalf of and at the direction of  
4       the principal IF THE PRINCIPAL IS UNABLE TO SIGN BUT <--  
5       SPECIFICALLY DIRECTS ANOTHER INDIVIDUAL TO SIGN THE POWER OF  
6       ATTORNEY.

7       (2) If the power of attorney is executed by mark or by  
8       another individual, then it shall be witnessed by two  
9       individuals, each of whom is 18 years of age or older. A  
10      witness shall not be the individual who signed the power of  
11      attorney on behalf of and at the direction of the principal.

12      (3) For a power of attorney executed on or after the  
13      effective date of this paragraph, the signature or mark of  
14      the principal, or the signature or mark of another individual  
15      signing a power of attorney on behalf of AND AT THE DIRECTION <--  
16      OF the principal, shall be:

17           (i) Acknowledged before a notary public or other  
18           individual authorized by law to take acknowledgments. THE <--  
19           NOTARY PUBLIC OR OTHER INDIVIDUAL AUTHORIZED BY LAW TO  
20           TAKE ACKNOWLEDGMENTS SHALL NOT BE THE AGENT DESIGNATED IN  
21           THE POWER OF ATTORNEY.

22           (ii) Witnessed by two individuals, each of whom is  
23           at least 18 years of age 18 YEARS OF AGE OR OLDER. A <--  
24           witness shall not be the individual who signed the power  
25           of attorney on behalf of and at the direction of the  
26           principal-, THE AGENT DESIGNATED IN THE POWER OF ATTORNEY <--  
27           OR THE NOTARY PUBLIC OR OTHER PERSON AUTHORIZED BY LAW TO  
28           TAKE ACKNOWLEDGMENTS BEFORE WHOM THE POWER OF ATTORNEY IS  
29           ACKNOWLEDGED.

30      (c) Notice.--All powers of attorney shall include the

1 following notice in capital letters at the beginning of the  
2 power of attorney. The notice shall be signed by the principal.  
3 In the absence of a signed notice, upon a challenge to the  
4 authority of an agent to exercise a power under the power of  
5 attorney, the agent shall have the burden of demonstrating that  
6 the exercise of this authority is proper.

7 NOTICE

8 The purpose of this power of attorney is to give the  
9 person you designate (your "agent") broad powers to handle  
10 your property, which may include powers to sell or otherwise  
11 dispose of any real or personal property without advance  
12 notice to you or approval by you.

13 This power of attorney does not impose a duty on your  
14 agent to exercise granted powers, but when powers are  
15 exercised, your agent must use due care to act for your  
16 benefit and in accordance with this power of attorney.

17 Your agent may exercise the powers given here throughout  
18 your lifetime, even after you become incapacitated, unless  
19 you expressly limit the duration of these powers or you  
20 revoke these powers or a court acting on your behalf  
21 terminates your agent's authority.

22 Your agent must [keep your funds separate from your  
23 agent's funds.] act in accordance with your reasonable  
24 expectations to the extent actually known by your agent and,  
25 otherwise, in your best interest, act in good faith and act  
26 only within the scope of authority granted by you in the  
27 power of attorney.

28 The law permits you, if you choose, to grant broad  
29 authority to an agent under power of attorney, including the  
30 ability to give away all of your property while you are alive

1 or to substantially change how your property is distributed  
2 at your death. Before signing this document, you should seek  
3 the advice of an attorney at law to make sure you understand  
4 it.

5 A court can take away the powers of your agent if it  
6 finds your agent is not acting properly.

7 The powers and duties of an agent under a power of  
8 attorney are explained more fully in 20 Pa.C.S. Ch. 56.

9 If there is anything about this form that you do not  
10 understand, you should ask a lawyer of your own choosing to  
11 explain it to you.

12 I have read or had explained to me this notice and I  
13 understand its contents.

14 .....  
15 (Principal) (Date)

16 (d) Acknowledgment executed by agent.--An agent shall have  
17 no authority to act as agent under the power of attorney unless  
18 the agent has first executed and affixed to the power of  
19 attorney an acknowledgment in substantially the following form:

20 I, \_\_\_\_\_, have read the attached power of  
21 attorney and am the person identified as the agent for  
22 the principal. I hereby acknowledge that [in the absence  
23 of a specific provision to the contrary in the power of  
24 attorney or in 20 Pa.C.S.] when I act as agent:

25 I shall [exercise the powers for the benefit of the  
26 principal] act in accordance with the principal's  
27 reasonable expectations to the extent actually known by  
28 me and, otherwise, in the principal's best interest, act  
29 in good faith and act only within the scope of authority  
30 granted to me by the principal in the power of attorney.

1 [I shall keep the assets of the principal separate  
2 from my assets.

3 I shall exercise reasonable caution and prudence.

4 I shall keep a full and accurate record of all  
5 actions, receipts and disbursements on behalf of the  
6 principal.]

7 .....

8 (Agent) (Date)

9 [(e) Fiduciary relationship.--An agent acting under a power  
10 of attorney has a fiduciary relationship with the principal. In  
11 the absence of a specific provision to the contrary in the power  
12 of attorney, the fiduciary relationship includes the duty to:

13 (1) Exercise the powers for the benefit of the  
14 principal.

15 (2) Keep separate the assets of the principal from those  
16 of an agent.

17 (3) Exercise reasonable caution and prudence.

18 (4) Keep a full and accurate record of all actions,  
19 receipts and disbursements on behalf of the principal.]

20 (e.1) Limitation on applicability in commercial  
21 transaction.--

22 [(1) Subsections (c), (d) and (e) do not apply to a  
23 power or a power of attorney contained in an instrument used  
24 in a commercial transaction which simply authorizes an agency  
25 relationship. This paragraph includes the following:

26 (i) A power given to or for the benefit of a  
27 creditor in connection with a loan or other credit  
28 transaction.

29 (ii) A power exclusively granted to facilitate  
30 transfer of stock, bonds and other assets.

1 (iii) A power contained in the governing document  
2 for a corporation, partnership or limited liability  
3 company or other legal entity by which a director,  
4 partner or member authorizes others to do other things on  
5 behalf of the entity.

6 (iv) A warrant of attorney conferring authority to  
7 confess judgment.

8 (v) A power given to a dealer as defined by the act  
9 of December 22, 1983 (P.L.306, No.84), known as the Board  
10 of Vehicles Act, when using the power in conjunction with  
11 a sale, purchase or transfer of a vehicle as authorized  
12 by 75 Pa.C.S. § 1119 (relating to application for  
13 certificate of title by agent).]

14 (1.1) Subsections (b)(3)(ii), (c) and (d) do not apply  
15 to:

16 (i) A power contained in an instrument used in a  
17 commercial transaction which authorizes an agency  
18 relationship.

19 (ii) A power to the extent it is coupled with an  
20 interest in the subject of the power, including a power  
21 given to or for the benefit of a creditor in connection  
22 with a loan or other credit transaction.

23 (iii) A power exclusively granted to facilitate  
24 transfer of stock, bonds and other assets.

25 (iv) A power contained in the governing document for  
26 a corporation, partnership or limited liability company  
27 or other legal entity by which a director, partner or  
28 member authorizes others to do other things on behalf of  
29 the entity or a proxy or other delegation to exercise  
30 voting rights or management rights with respect to a

1           legal entity.

2           (v) A warrant of attorney conferring authority to  
3           confess judgment.

4           (vi) A power given to a dealer as defined by the act  
5           of December 22, 1983 (P.L.306, No.84), known as the Board  
6           of Vehicles Act, when using the power in conjunction with  
7           a sale, purchase or transfer of a vehicle as authorized  
8           by 75 Pa.C.S. § 1119 (relating to application for  
9           certificate of title by agent).

10           (vii) A power created on a form prescribed by a  
11           Commonwealth agency, political subdivision or an  
12           authority or instrumentality of the Commonwealth or a  
13           political subdivision.

14           (2) Powers and powers of attorney exempted by this  
15           subsection need not be dated.

16           (e.2) Limitation on applicability in health care [power] and  
17           mental health care powers of attorney.--Subsections (b) (3) (i),  
18           (c) and (d) and section 5601.3 (relating to agent's duties) do  
19           not apply to a power of attorney which exclusively provides for  
20           health care decision making or mental health care decision  
21           making.

22           (f) [Definition.--As used in this chapter, the term "agent"  
23           means a person designated by a principal in a power of attorney  
24           to act on behalf of that principal.] Definitions.--The following  
25           words and phrases when used in this chapter shall have the  
26           meanings given to them in this subsection unless the context  
27           clearly indicates otherwise:

28           "Agent." A person designated by a principal in a power of  
29           attorney to act on behalf of that principal.

30           "Good faith." Honesty in fact.

1 Section 2. Section 5601.2 of Title 20 is repealed:

2 [§ 5601.2. Special rules for gifts.

3 (a) General rule.--A principal may empower an agent to make  
4 a gift in a power of attorney only as provided in this section.

5 (b) Limited gifts.--A principal may authorize an agent to  
6 make a limited gift as defined under section 5603(a)(2)  
7 (relating to implementation of power of attorney) by the  
8 inclusion of:

9 (1) the language quoted in section 5602(a)(1) (relating  
10 to form of power of attorney); or

11 (2) other language showing a similar intent on the part  
12 of the principal to empower the agent to make a limited gift.

13 (c) Unlimited gifts.--A principal may authorize an agent to  
14 make any other gift only by specifically providing for and  
15 defining the agent's authority in the power of attorney.

16 (d) Nature of gifts.--In the absence of a specific provision  
17 to the contrary in the power of attorney:

18 (1) A power to make a limited gift shall be construed to  
19 empower the agent to make a gift to each donee either  
20 outright or in trust.

21 (2) In the case of any gift to a minor, that gift may be  
22 made in trust or in accordance with Chapter 53 (relating to  
23 Pennsylvania Uniform Transfers to Minors Act) or section 5155  
24 (relating to order of court).

25 (3) In the case of any gift made in trust, the agent may  
26 execute a deed of trust for such purpose, designating one or  
27 more persons, including the agent, as original or successor  
28 trustees, or may make an addition to an existing trust.

29 (4) In making any gift, the agent need not treat the  
30 donees equally or proportionately and may entirely exclude

1 one or more permissible donees.

2 (5) The pattern followed on the occasion of any gift  
3 need not be followed on the occasion of any other gift.

4 (e) Equity.--An agent and the donee of a gift shall be  
5 liable as equity and justice may require to the extent that, as  
6 determined by the court, a gift made by the agent is  
7 inconsistent with prudent estate planning or financial  
8 management for the principal or with the known or probable  
9 intent of the principal with respect to disposition of the  
10 estate.

11 (f) Third party.--No transfer agent, depository or other  
12 third party acting in good faith shall have any responsibility  
13 to see to the proper discharge of the agent's duty.]

14 Section 3. Title 20 is amended by adding sections to read:  
15 § 5601.3. Agent's duties.

16 (a) General rule.--Notwithstanding any provision in the  
17 power of attorney, an agent that has accepted appointment shall:

18 (1) Act in accordance with the principal's reasonable  
19 expectations to the extent actually known by the agent and,  
20 otherwise, in the principal's best interest.

21 (2) Act in good faith.

22 (3) Act only within the scope of authority granted in  
23 the power of attorney.

24 (b) Other duties.--Except as otherwise provided in the power  
25 of attorney, an agent that has accepted appointment shall:

26 (1) Act loyally for the principal's benefit.

27 ~~(1.1) Keep the agent's funds separate from the~~ <--  
28 ~~principal's funds after the date of execution of the power of~~  
29 ~~attorney, unless the funds were not kept separate as of the~~  
30 ~~date of the execution of the power of attorney.~~

1           (1.1) KEEP THE AGENT'S FUNDS SEPARATE FROM THE  
2           PRINCIPAL'S FUNDS UNLESS:

3           (I) THE FUNDS WERE NOT KEPT SEPARATE AS OF THE DATE  
4           OF THE EXECUTION OF THE POWER OF ATTORNEY; OR

5           (II) THE PRINCIPAL COMMINGLES THE FUNDS AFTER THE  
6           DATE OF THE EXECUTION OF THE POWER OF ATTORNEY AND THE  
7           AGENT IS THE PRINCIPAL'S SPOUSE.

8           (2) Act so as not to create a conflict of interest that  
9           impairs the agent's ability to act impartially in the  
10          principal's best interest.

11          (3) Act with the care, competence and diligence  
12          ordinarily exercised by agents in similar circumstances.

13          (4) Keep a record of all receipts, disbursements and  
14          transactions made on behalf of the principal.

15          (5) Cooperate with a person who has authority to make  
16          health care decisions for the principal to carry out the  
17          principal's reasonable expectations to the extent actually  
18          known by the agent and, otherwise, act in the principal's  
19          best interest.

20          (6) Attempt to preserve the principal's estate plan, to  
21          the extent actually known by the agent, if preserving the  
22          plan is consistent with the principal's best interest based  
23          on all relevant factors, including:

24                (i) The value and nature of the principal's  
25                property.

26                (ii) The principal's foreseeable obligations and  
27                need for maintenance.

28                (iii) Minimization of taxes, including income,  
29                estate, inheritance, generation-skipping transfer and  
30                gift taxes.

1           (iv) Eligibility for a benefit, program or  
2           assistance under a statute or regulation.

3           (c) Nonliability of agent.--

4           (1) An agent that acts in good faith shall not be liable  
5           to a beneficiary of the principal's estate plan for failure  
6           to preserve the plan.

7           (2) An agent that acts with care, competence and  
8           diligence for the best interest of the principal shall not be  
9           liable solely because the agent also benefits from the act or  
10           has an individual or conflicting interest in relation to the  
11           property or affairs of the principal.

12           (3) If an agent is selected by the principal because of  
13           special skills or expertise possessed by the agent or in  
14           reliance on the agent's representation that the agent has  
15           special skills or expertise, the special skills or expertise  
16           must be considered in determining whether the agent has acted  
17           with care, competence and diligence under the circumstances.

18           (4) Absent a breach of duty to the principal, an agent  
19           shall not be liable if the value of the principal's property  
20           declines.

21           (5) An agent that exercises authority to delegate to  
22           another person the authority granted by the principal or that  
23           engages another person on behalf of the principal shall not  
24           be liable for an act, error of judgment or default of that  
25           person if the agent exercises care, competence and diligence  
26           in selecting and monitoring the person.

27           (d) Disclosure of receipts, disbursements or transactions.--

28           (1) Except as otherwise provided in the power of  
29           attorney, an agent shall not be required to disclose  
30           receipts, disbursements or transactions conducted on behalf

1 of the principal unless ordered by a court or requested by  
2 the principal, a guardian, conservator, another fiduciary  
3 acting for the principal, governmental agency having  
4 authority to protect the welfare of the principal or, upon  
5 the death of the principal, the personal representative or  
6 successor in interest of the principal's estate.

7 (2) Within 30 days of the request, the agent shall  
8 either comply with the request or provide a writing or other  
9 record substantiating the reason additional time is needed,  
10 in which case the agent shall comply with the request within  
11 an additional 30 days.

12 § 5601.4. Authority that requires specific and general grant of  
13 authority.

14 (a) General rule.--An agent under a power of attorney may do  
15 the following on behalf of the principal or with the principal's  
16 property only if the power of attorney expressly grants the  
17 agent the authority and exercise of the authority is not  
18 otherwise prohibited by another agreement or instrument to which  
19 the authority or property is subject:

20 (1) Create, amend, revoke or terminate an inter vivos  
21 trust other than as permitted under section 5602(a)(2), (3)  
22 and (7) (relating to form of power of attorney).

23 (2) Make a gift.

24 (3) Create or change rights of survivorship.

25 (4) Create or change a beneficiary designation.

26 (5) Delegate authority granted under the power of  
27 attorney.

28 (6) Waive the principal's right to be a beneficiary of a  
29 joint and survivor annuity, including a survivor benefit  
30 under a retirement plan.

1           (7) Exercise fiduciary powers that the principal has  
2           authority to delegate.

3           (8) Disclaim property, including a power of appointment.

4           (b) Limitation.--Notwithstanding a grant of authority to do  
5           an act described in subsection (a), unless the power of attorney  
6           otherwise provides, an agent that is not an ancestor, spouse or  
7           descendant of the principal may not exercise authority under a  
8           power of attorney to create in the agent, or in an individual to  
9           whom the agent owes a legal obligation of support, an interest  
10           in the principal's property, whether by gift, right of  
11           survivorship, beneficiary designation, disclaimer or otherwise.

12           (c) Scope of authority.--Subject to subsections (a), (b),  
13           (d), and (e), if a power of attorney grants to an agent  
14           authority to do all acts that a principal is authorized to  
15           perform, the agent has the general authority described in ALL OF <--  
16           THE POWERS WHICH MAY BE INCORPORATED BY REFERENCE PURSUANT TO  
17           section 5602(a).

18           (d) Gifts.--Unless the power of attorney otherwise provides,  
19           a grant of authority to make a gift is subject to section  
20           5603(a.1) (relating to implementation of power of attorney).

21           (e) Similar or overlapping subjects.--Subject to subsections  
22           (a), (b) and (d), if the subjects over which authority is  
23           granted in a power of attorney are similar or overlap, the  
24           broadest authority controls.

25           (f) Property.--Authority granted in a power of attorney is  
26           exercisable with respect to property that the principal has when  
27           the power of attorney is executed or acquires later, whether or  
28           not the property is located in this State and whether or not the  
29           authority is exercised or the power of attorney is executed in  
30           this State.

1 (g) Legal effect of agent's actions.--An act performed by an  
2 agent pursuant to a power of attorney has the same effect and  
3 inures to the benefit of and binds the principal and the  
4 principal's successors in interest as if the principal had  
5 performed the act.

6 ~~Section 4. Section 5602(a)(5) and (17) of Title 20 are~~ <--  
7 ~~amended to read:~~

8 SECTION 4. SECTIONS 5602(A)(5) AND (17) AND (C) AND 5603(A), <--  
9 (E), (K)(4), (P), (Q) AND (V) OF TITLE 20 ARE AMENDED AND THE  
10 SECTIONS ARE AMENDED BY ADDING SUBSECTIONS TO READ:

11 § 5602. Form of power of attorney.

12 (a) Specification of powers.--A principal may, by inclusion  
13 of the language quoted in any of the following paragraphs or by  
14 inclusion of other language showing a similar intent on the part  
15 of the principal, empower an agent to do any or all of the  
16 following, each of which is defined in section 5603 (relating to  
17 implementation of power of attorney):

18 \* \* \*

19 [(5) "To disclaim any interest in property."]

20 \* \* \*

21 (17) "To engage in insurance and annuity transactions."

22 \* \* \*

23 (A.1) MODIFICATION OF AUTHORITY.--A PRINCIPAL MAY MODIFY THE <--  
24 AUTHORITY OF AN AGENT THAT IS INCORPORATED BY REFERENCE AS  
25 DESCRIBED IN SUBSECTION (A).

26 \* \* \*

27 (C) FILING AND RECORDING OF POWER OF ATTORNEY.--AN  
28 ORIGINALLY EXECUTED [COPY OF THE] POWER OF ATTORNEY MAY BE FILED  
29 WITH THE CLERK OF THE ORPHANS' COURT DIVISION OF THE COURT OF  
30 COMMON PLEAS IN THE COUNTY IN WHICH THE PRINCIPAL RESIDES, AND

1 IF IT IS ACKNOWLEDGED, IT MAY BE RECORDED IN THE OFFICE FOR THE  
2 RECORDING OF DEEDS OF THE COUNTY OF THE PRINCIPAL'S RESIDENCE  
3 AND OF EACH COUNTY IN WHICH REAL PROPERTY TO BE AFFECTED BY AN  
4 EXERCISE OF THE POWER IS LOCATED. A POWER OF ATTORNEY EXECUTED  
5 IN ELECTRONIC FORM MAY BE RECORDED IN THE SAME MANNER AS A  
6 DOCUMENT SUBJECT TO THE ACT OF JULY 5, 2012 (P.L.935, NO.100),  
7 KNOWN AS THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT. THE  
8 CLERK OF THE ORPHANS' COURT DIVISION OR ANY OFFICE FOR THE  
9 RECORDING OF DEEDS WITH WHOM THE POWER HAS BEEN FILED, MAY, UPON  
10 REQUEST, ISSUE CERTIFIED COPIES OF THE POWER OF ATTORNEY. EACH  
11 SUCH CERTIFIED COPY SHALL HAVE THE SAME VALIDITY AND THE SAME  
12 FORCE AND EFFECT AS IF IT WERE THE ORIGINAL, AND IT MAY BE FILED  
13 OF RECORD IN ANY OTHER OFFICE OF THIS COMMONWEALTH (INCLUDING,  
14 WITHOUT LIMITATION, THE CLERK OF THE ORPHANS' COURT DIVISION OR  
15 THE OFFICE FOR THE RECORDING OF DEEDS) AS IF IT WERE THE  
16 ORIGINAL.

17 (D) COPY OF POWER OF ATTORNEY.--EXCEPT FOR THE PURPOSE OF  
18 FILING OR RECORDING UNDER SUBSECTION (C), A PHOTOCOPY OR  
19 ELECTRONICALLY TRANSMITTED COPY OF AN ORIGINALLY EXECUTED POWER  
20 OF ATTORNEY HAS THE SAME EFFECT AS THE ORIGINAL.

21 ~~Section 5. Section 5603(a), (e), (p) and (q) (K) (4), (P), <--~~  
22 ~~(Q) AND (V) of Title 20 are amended and the section is amended~~  
23 ~~by adding a subsection to read:~~

24 § 5603. Implementation of power of attorney.

25 [(a) Power to make limited gifts.--

26 (2) A power "to make limited gifts" shall mean that the  
27 agent may make only gifts for or on behalf of the principal  
28 which are limited as follows:

29 (i) The class of permissible donees under this  
30 paragraph shall consist solely of the principal's spouse,

1 issue and a spouse of the principal's issue (including  
2 the agent if a member of any such class), or any of them.

3 (ii) During each calendar year, the gifts made to  
4 any permissible donee, pursuant to such power, shall have  
5 an aggregate value not in excess of, and shall be made in  
6 such manner as to qualify in their entirety for, the  
7 annual exclusion from the Federal gift tax permitted  
8 under section 2503(b) of the Internal Revenue Code of  
9 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the  
10 principal and, if applicable, the principal's spouse.

11 (iv) In addition to the gifts authorized by  
12 subparagraphs (i) and (ii), a gift made pursuant to such  
13 power may be for the tuition or medical care of any  
14 permissible donee to the extent that the gift is excluded  
15 from the Federal gift tax under section 2503(e) of the  
16 Internal Revenue Code of 1986 as a qualified transfer.

17 (v) The agent may consent, pursuant to section  
18 2513(a) of the Internal Revenue Code of 1986, to the  
19 splitting of gifts made by the principal's spouse to the  
20 principal's issue or a spouse of the principal's issue in  
21 any amount and to the splitting of gifts made by the  
22 principal's spouse to any other person in amounts not  
23 exceeding the aggregate annual gift tax exclusions for  
24 both spouses under section 2503(b) of the Internal  
25 Revenue Code of 1986.]

26 (a.1) Power to make limited gifts.--

27 (1) Unless the power of attorney otherwise provides, the  
28 power to make limited gifts or other language in a power of  
29 attorney granting general authority with respect to gifts  
30 authorizes the agent only to:

1           (i) Make outright to or for the benefit of a person,  
2           a gift of any of the principal's property, including by  
3           the exercise of a presently exercisable general power of  
4           appointment held by the principal:

5                   (A) in an amount per donee not to exceed the  
6                   annual dollar limits of the Federal gift tax  
7                   exclusion under section 2503(b) of the Internal  
8                   Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
9                   2503(b)), without regard to whether the Federal gift  
10                   tax exclusion applies to the gift; or

11                   (B) if the principal's spouse agrees to consent  
12                   to a split gift pursuant to section 2513 of the  
13                   Internal Revenue Code of 1986 (26 U.S.C. § 2513), in  
14                   an amount per donee not to exceed twice the annual  
15                   Federal gift tax exclusion limit.

16           (ii) Consent, pursuant to section 2513 of the  
17           Internal Revenue Code of 1986, to the splitting of a gift  
18           made by the principal's spouse in an amount per donee not  
19           to exceed the aggregate annual gift tax exclusions for  
20           both spouses.

21           (2) An agent may make a gift of the principal's property  
22           only as the agent determines is consistent with the  
23           principal's objectives if actually known by the agent and, if  
24           unknown, as the agent determines is consistent with the  
25           principal's best interest based on all relevant factors,  
26           including:

27                   (i) The value and nature of the principal's  
28                   property.

29                   (ii) The principal's foreseeable obligations and  
30                   need for maintenance.

1           (iii) Minimization of taxes, including income,  
2           estate, inheritance, generation-skipping transfer and  
3           gift taxes.

4           (iv) Eligibility for a benefit, program or  
5           assistance under a statute or regulation.

6           (v) The principal's personal history of making or  
7           joining in making gifts.

8           (3) As used in this subsection, the phrase "a gift for  
9           the benefit of a person" includes a gift to a trust, an  
10           account under Chapter 53 (relating to Pennsylvania Uniform  
11           Transfers to Minors Act) and a tuition savings account or  
12           prepaid tuition plan as defined under section 529 of the  
13           Internal Revenue Code of 1986 (26 U.S.C. § 529).

14           \* \* \*

15           [(e) Power to disclaim any interest in property.--A power  
16 "to disclaim any interest in property" shall mean that the agent  
17 may release or disclaim any interest in property on behalf of  
18 the principal in accordance with Chapter 62 (relating to  
19 disclaimers) or section 6103 (relating to release or disclaimer  
20 of powers or interests), provided that any disclaimer under  
21 Chapter 62 shall be in accordance with the provisions of section  
22 6202 (relating to disclaimers by fiduciaries or agents) in the  
23 case of a principal who shall have been adjudicated an  
24 incapacitated person at the time of the execution of the  
25 disclaimer.]

26           \* \* \*

27           (K) POWER TO ENGAGE IN STOCK, BOND AND OTHER SECURITIES  
28 TRANSACTIONS.--A POWER TO "ENGAGE IN STOCK, BOND AND OTHER  
29 SECURITIES TRANSACTIONS" SHALL MEAN THAT THE AGENT MAY:

<--

30           \* \* \*

1 (4) JOIN IN ANY MERGER, REORGANIZATION, CONSOLIDATION,  
2 DISSOLUTION, LIQUIDATION, VOTING-TRUST PLAN OR OTHER  
3 CONCERTED ACTION OF SECURITY HOLDERS AND MAKE PAYMENTS IN  
4 CONNECTION THEREWITH.

5 \* \* \*

6 (p) Power to engage in insurance and annuity transactions.--  
7 A power to "engage in insurance and annuity transactions" shall  
8 mean that the agent may:

9 (1) Purchase, continue, renew, convert or terminate any  
10 type of insurance (including, but not limited to, life,  
11 accident, health, disability or liability insurance) or  
12 annuity and pay premiums and collect benefits and proceeds  
13 under insurance policies and annuity contracts.

14 (2) Exercise nonforfeiture provisions under insurance  
15 policies and annuity contracts.

16 (3) In general, exercise all powers with respect to  
17 insurance and annuities that the principal could if present;  
18 [however, the agent cannot designate himself beneficiary of a  
19 life insurance policy unless the agent is the spouse, child,  
20 grandchild, parent, brother or sister of the principal. An  
21 agent and a beneficiary of a life insurance policy shall be  
22 liable as equity and justice may require to the extent that,  
23 as determined by the court, a beneficiary designation made by  
24 the agent is inconsistent with the known or probable intent  
25 of the principal] provided, however, that the agent shall  
26 have no power to create or change a beneficiary designation  
27 unless authorized in accordance with section 5601.4 (relating  
28 to authority that requires specific and general grant of  
29 authority).

30 (q) Power to engage in retirement plan transactions.--A

1 power to "engage in retirement plan transactions" shall mean  
2 that the agent may contribute to, withdraw from and deposit  
3 funds in any type of retirement plan (including, but not limited  
4 to, any tax qualified or nonqualified pension, profit sharing,  
5 stock bonus, employee savings and retirement plan, deferred  
6 compensation plan or individual retirement account), select and  
7 change payment options for the principal, make roll-over  
8 contributions from any retirement plan to other retirement plans  
9 and, in general, exercise all powers with respect to retirement  
10 plans that the principal could if present[. However, the agent  
11 cannot designate himself beneficiary of a retirement plan unless  
12 the agent is the spouse, child, grandchild, parent, brother or  
13 sister of the principal. An agent and a beneficiary of a  
14 retirement plan shall be liable as equity and justice may  
15 require to the extent that, as determined by the court, a  
16 beneficiary designation made by the agent is inconsistent with  
17 the known or probable intent of the principal] provided,  
18 however, that the agent shall have no power to create or change  
19 a beneficiary designation unless authorized in accordance with  
20 section 5601.4.

21 \* \* \*

22 (V) POWERS GENERALLY.--

<--

23 (1) ALL POWERS DESCRIBED IN THIS SECTION SHALL BE  
24 EXERCISABLE WITH RESPECT TO ANY MATTER IN WHICH THE PRINCIPAL  
25 IS IN ANY WAY INTERESTED AT THE GIVING OF THE POWER OF  
26 ATTORNEY OR THEREAFTER AND WHETHER ARISING IN THIS  
27 COMMONWEALTH OR ELSEWHERE.

28 (2) A PRINCIPAL MAY, IN A POWER OF ATTORNEY, MODIFY ANY  
29 POWER DESCRIBED IN THIS SECTION.

30 Section 6 5. Section 5608 of Title 20 is amended to read:

<--

1 § 5608. [Liability] Acceptance of and reliance upon power of  
2 attorney.

3 [(a) Third party liability.--Any person who is given  
4 instructions by an agent in accordance with the terms of a power  
5 of attorney shall comply with the instructions. Any person who  
6 without reasonable cause fails to comply with those instructions  
7 shall be subject to civil liability for any damages resulting  
8 from noncompliance. Reasonable cause under this subsection shall  
9 include, but not be limited to, a good faith report having been  
10 made by the third party to the local protective services agency  
11 regarding abuse, neglect, exploitation or abandonment pursuant  
12 to section 302 of the act of November 6, 1987 (P.L.381, No.79),  
13 known as the Older Adults Protective Services Act.

14 (b) Third party immunity.--Any person who acts in good faith  
15 reliance on a power of attorney shall incur no liability as a  
16 result of acting in accordance with the instructions of the  
17 agent.]

18 (c) Genuineness.--A person who in good faith accepts a power  
19 of attorney without actual knowledge that a signature or mark of  
20 any of the following are not genuine may, without liability,  
21 rely upon the genuineness of the signature or mark of:

22 (1) The principal.

23 (2) A person who signed the power of attorney on behalf  
24 of the principal and at the direction of the principal.

25 (3) A witness.

26 (4) A notary public or other person authorized by law to  
27 take acknowledgments.

28 (d) Immunity.--A person who in good faith accepts a power of  
29 attorney without actual knowledge of any of the following may,  
30 without liability, rely upon the power of attorney as if the

1 power of attorney and agent's authority were genuine, valid and  
2 still in effect and the agent had not exceeded and had properly  
3 exercised the authority that:

4 (1) The power of attorney is void, invalid or  
5 terminated.

6 (2) The purported agent's authority is void, invalid or  
7 terminated.

8 (3) The agent is exceeding or improperly exercising the  
9 agent's authority.

10 (e) Request for information.--A person who is asked to  
11 accept a power of attorney may request and, without liability,  
12 rely upon without further investigation:

13 (1) An agent's certification under penalty of perjury of  
14 any factual matter concerning the principal, agent or power  
15 of attorney or an affidavit under section 5606 (relating to  
16 proof of continuance of powers of attorney by affidavit).

17 (2) An English translation of the power of attorney, if  
18 the power of attorney contains, in whole or in part, language  
19 other than English.

20 (3) An opinion of counsel relating to whether the agent  
21 is acting within the scope of the authority granted by the  
22 power of attorney, if the person making the request provides  
23 in a writing or other record the reason for the request.

24 (f) Additional request for information.--A person who has  
25 accepted a power of attorney, whether or not the person has a  
26 certification or opinion of counsel under subsection (e) or an  
27 affidavit under section 5606, and has acted upon it by allowing  
28 the agent to exercise authority granted under the power of  
29 attorney, shall not be precluded from requesting at later times  
30 a certification or opinion of counsel under this subsection,

1 subsection (e) or an affidavit under section 5606 with regard to  
2 any further exercise of authority by the agent under the power  
3 of attorney.

4 (g) English translation.--An English translation or an  
5 opinion of counsel requested under this section shall be at the  
6 principal's expense, unless the request is made more than seven  
7 business days after the power of attorney is presented for <--  
8 acceptance. OR ANY REVISION OR ADDITION TO A POWER OF ATTORNEY: <--

9 (1) IS PRESENTED FOR ACCEPTANCE; OR

10 (2) AFTER BEING PREVIOUSLY ACCEPTED BY A PERSON, IS  
11 PRESENTED TO EXERCISE A POWER NOT PREVIOUSLY EXERCISED BY THE  
12 AGENT IN A TRANSACTION WITH THAT PERSON.

13 (h) Limitations.--Except as otherwise provided by law,  
14 nothing in this section shall in itself:

15 (1) validate a forged instrument conveying an interest  
16 in real property;

17 (2) provide that the recording of a forged instrument  
18 gives constructive notice of a conveyance of an interest in  
19 real property; or

20 (3) limit the liability of an insurer, indemnitor or  
21 guarantor of contractual obligations to indemnify, hold  
22 harmless or defend a person who accepts or relies upon a  
23 power of attorney.

24 Section 7 6. Title 20 is amended by adding sections to read: <--  
25 § 5608.1. Liability for refusal to accept power of attorney.

26 (a) Acceptance required.--Except as provided under  
27 subsections (b) and (d):

28 (1) A person shall either:

29 (i) accept a power of attorney; or

30 (ii) request one of the following:

1           (A) an affidavit under section 5606 (relating to  
2           proof of continuance of powers of attorney by  
3           affidavit); or

4           (B) a certification, translation or an opinion  
5           of counsel under section 5608(e) (relating to  
6           acceptance of and reliance upon power of attorney);  
7           not later than seven business days after presentation of  
8           the power of attorney for acceptance.

9           (2) If a person requests a certification, a translation,  
10          an affidavit under section 5606 or an opinion of counsel  
11          under section 5608(e), the person shall accept the power of  
12          attorney not later than five business days after receipt of  
13          the certification, translation, affidavit or opinion of  
14          counsel or, unless the information provided by the  
15          certification, translation, affidavit or opinion of counsel  
16          provides a substantial basis for making a further request  
17          under section 5606 or 5608(e).

18          (3) A person may not require an additional or different  
19          form of power of attorney for authority granted in the power  
20          of attorney presented.

21          (b) Acceptance not required.--A person may not be required  
22          to accept a power of attorney if any of the following applies:

23           (1) The person is not otherwise required to engage in a  
24           transaction with the principal in the same circumstances.

25           (2) Engaging in a transaction with the agent or the  
26           principal in the same circumstances would be inconsistent  
27           with any provisions of this chapter, including:

28           (i) the failure of the power of attorney to be  
29           executed in the manner required under section 5601(b)  
30           (relating to general provisions); and

1           (ii) circumstances in which an agent has no  
2           authority to act because of the absence of an  
3           acknowledgment as provided under section 5601(d), except  
4           as provided under section 5601(e.1) or (e.2).

5           (3) Engaging in a transaction with the agent in the same  
6           circumstances would be inconsistent with any other law or  
7           regulation.

8           (4) The person has actual knowledge of the termination  
9           of the agent's authority or of the power of attorney before  
10           exercise of the power.

11           (5) A request for a certification, a translation, an  
12           affidavit under section 5606 or an opinion of counsel under  
13           section 5608(e) is refused, including a certification, an  
14           affidavit or an opinion of counsel requested to demonstrate  
15           that the exercise of authority pursuant to a power of  
16           attorney is proper without the notice provided for under  
17           section 5601(c), except as provided under section 5601(e.1)  
18           or (e.2).

19           (6) The person in good faith believes that the power of  
20           attorney is not valid or the agent does not have the  
21           authority to perform the act requested, whether or not a  
22           certification, a translation, an affidavit under section 5606  
23           or opinion of counsel under section 5608(e) has been  
24           requested or provided.

25           (7) The person makes a report to the local protective  
26           services agency under section 302 of the act of November 6,  
27           1987 (P.L.381, No.79), known as the Older Adults Protective  
28           Services Act, stating a good faith belief that the principal  
29           may be subject to physical or financial abuse, neglect,  
30           exploitation or abandonment by the agent or someone acting

1 for or with the agent.

2 (8) The person has actual knowledge that another person  
3 has made a report to the local protective services agency  
4 under section 302 of the Older Adults Protective Services  
5 Act, stating a good faith belief that the principal may be  
6 subject to physical or financial abuse, neglect, exploitation  
7 or abandonment by the agent or someone acting for or with the  
8 agent.

9 (c) Violation.--A person who refuses, in violation of this  
10 section, to accept a power of attorney shall be subject to:

11 (1) Civil liability for pecuniary harm to the economic  
12 interests of the principal proximately caused by the person's  
13 refusal to comply with the instructions of the agent  
14 designated in the power of attorney.

15 (2) A court order mandating acceptance of the power of  
16 attorney.

17 (d) Nonapplicability.--The requirements and penalties of  
18 this section shall not apply to:

19 (1) a power of attorney subject to the laws of another  
20 state or jurisdiction; or

21 (2) a power of attorney prescribed by a government or  
22 governmental subdivision, agency or instrumentality for a  
23 governmental purpose.

24 § 5608.2. Activities through employees.

25 For the purposes of sections 5608 (relating to acceptance of  
26 and reliance upon power of attorney) and 5608.1 (relating to  
27 liability for refusal to accept power of attorney), the  
28 following shall apply:

29 (1) A person who conducts activities through employees  
30 shall be considered to be without actual knowledge of a fact

1 relating to a power of attorney, a principal or an agent, if  
2 the employee conducting the transaction involving the power  
3 of attorney is without knowledge of the fact.

4 (2) An employee has knowledge of a fact if the employee  
5 has actual knowledge of the fact or acts with conscious  
6 disregard or willful ignorance regarding the existence of the  
7 fact.

8 Section ~~8~~ 7. Section 5611 of Title 20 is amended to read: <--

9 § 5611. Validity.

10 A power of attorney executed in [another state or  
11 jurisdiction and in conformity with the laws of that state or  
12 jurisdiction shall be considered valid in this Commonwealth,  
13 except to the extent that the power of attorney executed in  
14 another state or jurisdiction would allow an agent to make a  
15 decision inconsistent with the laws of this Commonwealth.] or  
16 under the laws of another state or jurisdiction shall be valid  
17 in this Commonwealth if, when the power of attorney was  
18 executed, the execution complied with:

19 (1) the law of the jurisdiction indicated in the power  
20 of attorney and, in the absence of an indication of  
21 jurisdiction, the law of the jurisdiction in which the power  
22 of attorney was executed; or

23 (2) the requirements for a military power of attorney  
24 under 10 U.S.C. § 1044(b) (relating to legal assistance).

25 Section ~~9~~ 8. Title 20 is amended by adding a section read: <--

26 § 5612. Principles of law and equity.

27 Unless displaced by a provision of this chapter, the  
28 principles of law and equity supplement this chapter.

29 Section ~~10~~ 9. The following shall apply: <--

30 (1) Except as provided by this section, the provisions

1 of this act apply to powers of attorney created before, on or  
2 after the respective effective dates of such provisions, but  
3 do not apply to the acts or omissions of agents, or third  
4 parties presented with instructions by agents, that occur  
5 before such respective effective dates.

6 (2) Except as provided by this section, the provisions  
7 of this act apply to judicial proceedings concerning a power  
8 of attorney commenced before, on or after the respective  
9 effective dates of such provisions, unless the court finds  
10 that application of a provision of this act would  
11 substantially interfere with the effective conduct of the  
12 judicial proceeding or prejudice the rights of a party, in  
13 which case that provision does not apply and the superseded  
14 law applies.

15 (3) The amendment, addition or repeal of 20 Pa.C.S. §§  
16 5601(b), (c), (d) and (e.2), 5601.2, 5601.4, 5602(a)(5) and  
17 (17) and 5603 apply only to powers of attorney created on or  
18 after the effective dates of those provisions.

19 (4) The amendment of 20 Pa.C.S. §§ 5601(f) and 5608  
20 shall apply retroactively to acts performed after December  
21 15, 1992, and to judicial proceedings commenced prior to the  
22 effective dates of those provisions.

23 (5) In interpreting and applying the amendment or  
24 addition of 20 Pa.C.S. §§ 5601(f), 5608, 5608.1, 5608.2 and  
25 5611, a court shall give due consideration of the intent of  
26 the General Assembly to reverse the interpretation of 20  
27 Pa.C.S. § 5608 as set forth in *Teresa M. Vine v. Commonwealth*  
28 of Pennsylvania, State Employees' Retirement Board, 9 A.3d  
29 1150 (Pa. 2010).

30 Section ~~11~~ 10. This act shall take effect as follows:

<--

1           (1) The amendment or addition of 20 Pa.C.S. §§ 5601(f),  
2           5608, 5608.1, 5608.2, 5611 and 5612 shall take effect  
3           immediately.

4           (2) This section shall take effect immediately.

5           (3) The remainder of this act shall take effect ~~on the~~ <--  
6           ~~first July 1 or January 1 which occurs five months or more~~  
7           ~~after the date of enactment of this act.~~ JANUARY 1, 2015. <--