

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 620 Session of 2013

INTRODUCED BY GREENLEAF, ALLOWAY, SCHWANK, FONTANA, MENSCH AND HUGHES, MARCH 6, 2013

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MARCH 12, 2013

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.--

18 (1) A power of attorney shall be dated, and it shall be
19 signed [and dated] by the principal by signature or mark, or
20 by another individual on behalf of and at the direction of
21 the principal.

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

6 (3) For a power of attorney executed on or after the
7 effective date of this paragraph, the signature or mark of
8 the principal, or the signature or mark of another individual
9 signing a power of attorney on behalf of the principal, shall
10 be:

11 (i) Acknowledged before a notary public or other
12 individual authorized by law to take acknowledgments.

13 (ii) Witnessed by two individuals, each of whom is
14 at least 18 years of age. A witness shall not be the
15 individual who signed the power of attorney on behalf of
16 and at the direction of the principal.

17 (c) Notice.--All powers of attorney shall include the
18 following notice in capital letters at the beginning of the
19 power of attorney. The notice shall be signed by the principal.
20 In the absence of a signed notice, upon a challenge to the
21 authority of an agent to exercise a power under the power of
22 attorney, the agent shall have the burden of demonstrating that
23 the exercise of this authority is proper.

24 NOTICE

25 The purpose of this power of attorney is to give the
26 person you designate (your "agent") broad powers to handle
27 your property, which may include powers to sell or otherwise
28 dispose of any real or personal property without advance
29 notice to you or approval by you.

30 This power of attorney does not impose a duty on your

1 agent to exercise granted powers, but when powers are
2 exercised, your agent must use due care to act for your
3 benefit and in accordance with this power of attorney.

4 Your agent may exercise the powers given here throughout
5 your lifetime, even after you become incapacitated, unless
6 you expressly limit the duration of these powers or you
7 revoke these powers or a court acting on your behalf
8 terminates your agent's authority.

9 Your agent must [keep your funds separate from your
10 agent's funds] act in accordance with your reasonable
11 expectations to the extent actually known by your agent and,
12 otherwise, in your best interest, act in good faith and act
13 only within the scope of authority granted by you in the
14 power of attorney.

15 The law permits you, if you choose, to grant broad
16 authority to an agent under power of attorney, including the
17 ability to give away all of your property while you are alive
18 or to substantially change how your property is distributed
19 at your death. Before signing this document, you should seek
20 the advice of an attorney at law to make sure you understand
21 it.

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

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

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

29 I have read or had explained to me this notice and I
30 understand its contents.

1

2

3 (Principal) (Date)

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

8 I, ,have read the attached power of
9 attorney and am the person identified as the agent for
10 the principal. I hereby acknowledge that [in the absence
11 of a specific provision to the contrary in the power of
12 attorney or in 20 Pa.C.S.] when I act as agent:

13 I shall [exercise the powers for the benefit of the
14 principal] act in accordance with the principal's
15 reasonable expectations to the extent actually known by
16 me and, otherwise, in the principal's best interest, act
17 in good faith and act only within the scope of authority
18 granted to me by the principal in the power of attorney.

19 [I shall keep the assets of the principal separate
20 from my assets.

21 I shall exercise reasonable caution and prudence.

22 I shall keep a full and accurate record of all
23 actions, receipts and disbursements on behalf of the
24 principal.]

25

26

27 (Agent) (Date)

28 [(e) Fiduciary relationship.--An agent acting under a power
29 of attorney has a fiduciary relationship with the principal. In
30 the absence of a specific provision to the contrary in the power

1 of attorney, the fiduciary relationship includes the duty to:

2 (1) Exercise the powers for the benefit of the
3 principal.

4 (2) Keep separate the assets of the principal from those
5 of an agent.

6 (3) Exercise reasonable caution and prudence.

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

9 (e.1) Limitation on applicability in commercial
10 transaction.--

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

15 (i) A power given to or for the benefit of a
16 creditor in connection with a loan or other credit
17 transaction.

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

20 (iii) A power contained in the governing document
21 for a corporation, partnership or limited liability
22 company or other legal entity by which a director,
23 partner or member authorizes others to do other things on
24 behalf of the entity.

25 (iv) A warrant of attorney conferring authority to
26 confess judgment.

27 (v) A power given to a dealer as defined by the act
28 of December 22, 1983 (P.L.306, No.84), known as the Board
29 of Vehicles Act, when using the power in conjunction with
30 a sale, purchase or transfer of a vehicle as authorized

1 by 75 Pa.C.S. § 1119 (relating to application for
2 certificate of title by agent).]

3 (1.1) Subsections (b) (3) (ii), (c), ~~(d) and (e)~~ AND (D) <--

4 do not apply to:

5 (i) A power contained in an instrument used in a
6 commercial transaction which authorizes an agency
7 relationship.

8 (ii) A power to the extent it is coupled with an
9 interest in the subject of the power, including a power
10 given to or for the benefit of a creditor in connection
11 with a loan or other credit transaction.

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

14 (iv) A power contained in the governing document for
15 a corporation, partnership or limited liability company
16 or other legal entity by which a director, partner or
17 member authorizes others to do other things on behalf of
18 the entity or a proxy or other delegation to exercise
19 voting rights or management rights with respect to a
20 legal entity.

21 (v) A warrant of attorney conferring authority to
22 confess judgment.

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

29 (vii) A power created on a form prescribed by a
30 Commonwealth agency, political subdivision or an

1 authority or instrumentality of the Commonwealth or a
2 political subdivision.

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

5 (e.2) Limitation on applicability in health care [power] and
6 mental health care powers of attorney.--Subsections (b) (3) (i),
7 (c) and (d) and section 5601.3 (relating to agent's duties) do
8 not apply to a power of attorney which exclusively provides for
9 health care decision making or mental health care decision
10 making.

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

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

19 "Good faith." Honesty in fact.

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

21 [§ 5601.2. Special rules for gifts.

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

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

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

30 (2) other language showing a similar intent on the part

1 of the principal to empower the agent to make a limited gift.

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

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

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

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

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

18 (4) In making any gift, the agent need not treat the
19 donees equally or proportionately and may entirely exclude
20 one or more permissible donees.

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

23 (e) Equity.--An agent and the donee of a gift shall be
24 liable as equity and justice may require to the extent that, as
25 determined by the court, a gift made by the agent is
26 inconsistent with prudent estate planning or financial
27 management for the principal or with the known or probable
28 intent of the principal with respect to disposition of the
29 estate.

30 (f) Third party.--No transfer agent, depository or other

1 third party acting in good faith shall have any responsibility
2 to see to the proper discharge of the agent's duty.]

3 Section 3. Title 20 is amended by adding sections to read:

4 § 5601.3. Agent's duties.

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

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

10 (2) Act in good faith.

11 (3) Act only within the scope of authority granted in
12 the power of attorney.

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

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

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

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

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

23 (5) Cooperate with a person who has authority to make
24 health care decisions for the principal to carry out the
25 principal's reasonable expectations to the extent actually
26 known by the agent and, otherwise, act in the principal's
27 best interest.

28 (6) Attempt to preserve the principal's estate plan, to
29 the extent actually known by the agent, if preserving the
30 plan is consistent with the principal's best interest based

1 on all relevant factors, including:

2 (i) The value and nature of the principal's
3 property.

4 (ii) The principal's foreseeable obligations and
5 need for maintenance.

6 (iii) Minimization of taxes, including income,
7 estate, inheritance, generation-skipping transfer and
8 gift taxes.

9 (iv) Eligibility for a benefit, program or
10 assistance under a statute or regulation.

11 (c) Nonliability of agent.--

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

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

20 (3) If an agent is selected by the principal because of
21 special skills or expertise possessed by the agent or in
22 reliance on the agent's representation that the agent has
23 special skills or expertise, the special skills or expertise
24 must be considered in determining whether the agent has acted
25 with care, competence and diligence under the circumstances.

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

29 (5) An agent that exercises authority to delegate to
30 another person the authority granted by the principal or that

1 engages another person on behalf of the principal shall not
2 be liable for an act, error of judgment or default of that
3 person if the agent exercises care, competence and diligence
4 in selecting and monitoring the person.

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

6 (1) Except as otherwise provided in the power of
7 attorney, an agent shall not be required to disclose
8 receipts, disbursements or transactions conducted on behalf
9 of the principal unless ordered by a court or requested by
10 the principal, a guardian, conservator, another fiduciary
11 acting for the principal, governmental agency having
12 authority to protect the welfare of the principal or, upon
13 the death of the principal, the personal representative or
14 successor in interest of the principal's estate.

15 (2) Within 30 days of the request, the agent shall
16 either comply with the request or provide a writing or other
17 record substantiating the reason additional time is needed,
18 in which case the agent shall comply with the request within
19 an additional 30 days.

20 § 5601.4. Authority that requires specific and general grant of
21 authority.

22 (a) General rule.--An agent under a power of attorney may do
23 the following on behalf of the principal or with the principal's
24 property only if the power of attorney expressly grants the
25 agent the authority and exercise of the authority is not
26 otherwise prohibited by another agreement or instrument to which
27 the authority or property is subject:

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

1 (2) Make a gift.
2 (3) Create or change rights of survivorship.
3 (4) Create or change a beneficiary designation.
4 (5) Delegate authority granted under the power of
5 attorney.

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

9 (7) Exercise fiduciary powers that the principal has
10 authority to delegate.

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

12 (b) Limitation.--Notwithstanding a grant of authority to do
13 an act described in subsection (a), unless the power of attorney
14 otherwise provides, an agent that is not an ancestor, spouse or
15 descendant of the principal may not exercise authority under a
16 power of attorney to create in the agent, or in an individual to
17 whom the agent owes a legal obligation of support, an interest
18 in the principal's property, whether by gift, right of
19 survivorship, beneficiary designation, disclaimer or otherwise.

20 (c) Scope of authority.--Subject to subsections (a), (b),
21 (d), and (e), if a power of attorney grants to an agent
22 authority to do all acts that a principal is authorized to
23 perform, the agent has the general authority described in
24 section 5602(a).

25 (d) Gifts.--Unless the power of attorney otherwise provides,
26 a grant of authority to make a gift is subject to section
27 5603(a.1) (relating to implementation of power of attorney).

28 (e) Similar or overlapping subjects.--Subject to subsections
29 (a), (b) and (d), if the subjects over which authority is
30 granted in a power of attorney are similar or overlap, the

1 broadest authority controls.

2 (f) Property.--Authority granted in a power of attorney is
3 exercisable with respect to property that the principal has when
4 the power of attorney is executed or acquires later, whether or
5 not the property is located in this State and whether or not the
6 authority is exercised or the power of attorney is executed in
7 this State.

8 (g) Legal effect of agent's actions.--An act performed by an
9 agent pursuant to a power of attorney has the same effect and
10 inures to the benefit of and binds the principal and the
11 principal's successors in interest as if the principal had
12 performed the act.

13 Section 4. Section 5602(a)(5) and (17) of Title 20 are
14 amended to read:

15 § 5602. Form of power of attorney.

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

22 * * *

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

24 * * *

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

26 * * *

27 Section 5. Section 5603(a), (e), (p) and (q) of Title 20 are
28 amended and the section is amended by adding a subsection to
29 read:

30 § 5603. Implementation of power of attorney.

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

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

5 (i) The class of permissible donees under this
6 paragraph shall consist solely of the principal's spouse,
7 issue and a spouse of the principal's issue (including
8 the agent if a member of any such class), or any of them.

9 (ii) During each calendar year, the gifts made to
10 any permissible donee, pursuant to such power, shall have
11 an aggregate value not in excess of, and shall be made in
12 such manner as to qualify in their entirety for, the
13 annual exclusion from the Federal gift tax permitted
14 under section 2503(b) of the Internal Revenue Code of
15 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the
16 principal and, if applicable, the principal's spouse.

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

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

1 Revenue Code of 1986.]

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

3 (1) Unless the power of attorney otherwise provides, the
4 power to make limited gifts or other language in a power of
5 attorney granting general authority with respect to gifts
6 authorizes the agent only to:

7 (i) Make outright to or for the benefit of a person,
8 a gift of any of the principal's property, including by
9 the exercise of a presently exercisable general power of
10 appointment held by the principal:

11 (A) in an amount per donee not to exceed the
12 annual dollar limits of the Federal gift tax
13 exclusion under section 2503(b) of the Internal
14 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
15 2503(b)), without regard to whether the Federal gift
16 tax exclusion applies to the gift; or

17 (B) if the principal's spouse agrees to consent
18 to a split gift pursuant to section 2513 of the
19 Internal Revenue Code of 1986, in an amount per donee
20 not to exceed twice the annual Federal gift tax
21 exclusion limit.

22 (ii) Consent, pursuant to section 2513 of the
23 Internal Revenue Code of 1986, to the splitting of a gift
24 made by the principal's spouse in an amount per donee not
25 to exceed the aggregate annual gift tax exclusions for
26 both spouses.

27 (2) An agent may make a gift of the principal's property
28 only as the agent determines is consistent with the
29 principal's objectives if actually known by the agent and, if
30 unknown, as the agent determines is consistent with the

1 principal's best interest based on all relevant factors,
2 including:

3 (i) The value and nature of the principal's
4 property.

5 (ii) The principal's foreseeable obligations and
6 need for maintenance.

7 (iii) Minimization of taxes, including income,
8 estate, inheritance, generation-skipping transfer and
9 gift taxes.

10 (iv) Eligibility for a benefit, program or
11 assistance under a statute or regulation.

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

14 (3) As used in this subsection, the phrase "a gift for
15 the benefit of a person" includes a gift to a trust, an
16 account under Chapter 53 (relating to Pennsylvania Uniform
17 Transfers to Minors Act) and a tuition savings account or
18 prepaid tuition plan as defined under section 529 of the
19 Internal Revenue Code of 1986.

20 * * *

21 [(e) Power to disclaim any interest in property.--A power
22 "to disclaim any interest in property" shall mean that the agent
23 may release or disclaim any interest in property on behalf of
24 the principal in accordance with Chapter 62 (relating to
25 disclaimers) or section 6103 (relating to release or disclaimer
26 of powers or interests), provided that any disclaimer under
27 Chapter 62 shall be in accordance with the provisions of section
28 6202 (relating to disclaimers by fiduciaries or agents) in the
29 case of a principal who shall have been adjudicated an
30 incapacitated person at the time of the execution of the

1 disclaimer.]

2 * * *

3 (p) Power to engage in insurance and annuity transactions.--

4 A power to "engage in insurance and annuity transactions" shall
5 mean that the agent may:

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

11 (2) Exercise nonforfeiture provisions under insurance
12 policies and annuity contracts.

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

27 (q) Power to engage in retirement plan transactions.--A
28 power to "engage in retirement plan transactions" shall mean
29 that the agent may contribute to, withdraw from and deposit
30 funds in any type of retirement plan (including, but not limited

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

18 * * *

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

20 § 5608. [Liability] Acceptance of and reliance upon power of
21 attorney.

22 [(a) Third party liability.--Any person who is given
23 instructions by an agent in accordance with the terms of a power
24 of attorney shall comply with the instructions. Any person who
25 without reasonable cause fails to comply with those instructions
26 shall be subject to civil liability for any damages resulting
27 from noncompliance. Reasonable cause under this subsection shall
28 include, but not be limited to, a good faith report having been
29 made by the third party to the local protective services agency
30 regarding abuse, neglect, exploitation or abandonment pursuant

1 to section 302 of the act of November 6, 1987 (P.L.381, No.79),
2 known as the Older Adults Protective Services Act.

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

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

11 (1) The principal.

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

14 (3) A witness.

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

17 (d) Immunity.--A person who in good faith accepts a power of
18 attorney without actual knowledge of any of the following may,
19 without liability, rely upon the power of attorney as if the
20 power of attorney and agent's authority were genuine, valid and
21 still in effect and the agent had not exceeded and had properly
22 exercised the authority that:

23 (1) The power of attorney is void, invalid or
24 terminated.

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

27 (3) The agent is exceeding or improperly exercising the
28 agent's authority.

29 (e) Request for information.--A person who is asked to
30 accept a power of attorney may request and, without liability,

1 rely upon without further investigation:

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

6 (2) An English translation of the power of attorney, if
7 the power of attorney contains, in whole or in part, language
8 other than English.

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

13 (f) Additional request for information.--A person who has
14 accepted a power of attorney, whether or not the person has a
15 certification or opinion of counsel under subsection (e) or an
16 affidavit under section 5606, and has acted upon it by allowing
17 the agent to exercise authority granted under the power of
18 attorney, shall not be precluded from requesting at later times
19 a certification or opinion of counsel under this subsection,
20 subsection (e) or an affidavit under section 5606 with regard to
21 any further exercise of authority by the agent under the power
22 of attorney.

23 (g) English translation.--An English translation or an
24 opinion of counsel requested under this section shall be at the
25 principal's expense, unless the request is made more than seven
26 business days after the power of attorney is presented for
27 acceptance.

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

30 (1) validate a forged instrument conveying an interest

1 in real property;

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

5 (3) limit the liability of an insurer, indemnitor or
6 guarantor of contractual obligations to indemnify, hold
7 harmless or defend a person who accepts or relies upon a
8 power of attorney.

9 Section 7. Title 20 is amended by adding sections to read:

10 § 5608.1. Liability for refusal to accept power of attorney.

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

13 (1) A person shall either:

14 (i) accept a power of attorney; or

15 (ii) request one of the following:

16 (A) an affidavit under section 5606 (relating to
17 proof of continuance of powers of attorney by
18 affidavit); or

19 (B) a certification, translation or an opinion
20 of counsel under section 5608(e) (relating to
21 acceptance of and reliance upon power of attorney);
22 not later than seven business days after presentation of
23 the power of attorney for acceptance.

24 (2) If a person requests a certification, a translation,
25 an affidavit under section 5606 or an opinion of counsel
26 under section 5608(e), the person shall accept the power of
27 attorney not later than five business days after receipt of
28 the certification, translation, affidavit or opinion of
29 counsel or, unless the information provided by the
30 certification, translation, affidavit or opinion of counsel

1 provides a substantial basis for making a further request
2 under section 5606 or 5608(e).

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

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

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

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

13 (i) the failure of the power of attorney to be
14 executed in the manner required under section 5601(b)
15 (relating to general provisions); and

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

20 (3) Engaging in a transaction with the agent in the same
21 circumstances would be inconsistent with any other law or
22 regulation.

23 (4) The person has actual knowledge of the termination
24 of the agent's authority or of the power of attorney before
25 exercise of the power.

26 (5) A request for a certification, a translation, an
27 affidavit under section 5606 or an opinion of counsel under
28 section 5608(e) is refused, including a certification, an
29 affidavit or an opinion of counsel requested to demonstrate
30 that the exercise of authority pursuant to a power of

1 attorney is proper without the notice provided for under
2 section 5601(c), except as provided under section 5601(e.1)
3 or (e.2).

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

10 (7) The person makes a report to the local protective
11 services agency under section 302 of the act of November 6,
12 1987 (P.L.381, No.79), known as the Older Adults Protective
13 Services Act, stating a good faith belief that the principal
14 may be subject to physical or financial abuse, neglect,
15 exploitation or abandonment by the agent or someone acting
16 for or with the agent.

17 (8) The person has actual knowledge that another person
18 has made a report to the local protective services agency
19 under section 302 of the Older Adults Protective Services
20 Act, stating a good faith belief that the principal may be
21 subject to physical or financial abuse, neglect, exploitation
22 or abandonment by the agent or someone acting for or with the
23 agent.

24 (c) Violation.--A person who refuses, in violation of this
25 section, to accept a power of attorney shall be subject to civil
26 liability for pecuniary harm to the economic interests of the
27 principal proximately caused by the person's refusal to comply
28 with the instructions of the agent designated in the power of
29 attorney.

30 (d) Nonapplicability.--The requirements of this section

1 shall not apply to:

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

4 (2) a power of attorney prescribed by a government or
5 governmental subdivision, agency or instrumentality for a
6 governmental purpose.

7 § 5608.2. Activities through employees.

8 For the purposes of sections 5608 (relating to acceptance of
9 and reliance upon power of attorney) and 5608.1 (relating to
10 liability for refusal to accept power of attorney), the
11 following shall apply:

12 (1) A person who conducts activities through employees
13 shall be considered to be without actual knowledge of a fact
14 relating to a power of attorney, a principal or an agent, if
15 the employee conducting the transaction involving the power
16 of attorney is without knowledge of the fact.

17 (2) An employee has knowledge of a fact if the employee
18 has actual knowledge of the fact or acts with conscious
19 disregard or willful ignorance regarding the existence of the
20 fact.

21 Section 8. Section 5611 of Title 20 is amended to read:

22 § 5611. Validity.

23 A power of attorney executed in [another state or
24 jurisdiction and in conformity with the laws of that state or
25 jurisdiction shall be considered valid in this Commonwealth,
26 except to the extent that the power of attorney executed in
27 another state or jurisdiction would allow an agent to make a
28 decision inconsistent with the laws of this Commonwealth.] or
29 under the laws of another state or jurisdiction shall be valid
30 in this Commonwealth if, when the power of attorney was

1 executed, the execution complied with:

2 (1) the law of the jurisdiction indicated in the power
3 of attorney and, in the absence of an indication of
4 jurisdiction, the law of the jurisdiction in which the power
5 of attorney was executed; or

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

8 Section 9. Title 20 is amended by adding a section read:
9 § 5612. Principles of law and equity.

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

12 Section 10. The following shall apply:

13 (1) Except as provided by this section, the provisions
14 of this act apply to powers of attorney created before, on or
15 after the respective effective dates of such provisions, but
16 do not apply to the acts or omissions of agents, or third
17 parties presented with instructions by agents, that occur
18 before such respective effective dates.

19 (2) Except as provided by this section, the provisions
20 of this act apply to judicial proceedings concerning a power
21 of attorney commenced before, on or after the respective
22 effective dates of such provisions, unless the court finds
23 that application of a provision of this act would
24 substantially interfere with the effective conduct of the
25 judicial proceeding or prejudice the rights of a party, in
26 which case that provision does not apply and the superseded
27 law applies.

28 (3) The amendment or addition of 20 Pa.C.S. §§ 5601(b),
29 (c), (d) and (e.2), 5601.2, 5601.4, 5602(a)(5) and (17) and
30 5603 apply only to powers of attorney created on or after the

1 effective dates of those provisions.

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

6 (5) In interpreting and applying the amendment or
7 addition of 20 Pa.C.S. §§ 5601(f), 5608, 5608.1, 5608.2 and
8 5611, a court shall give due consideration of the intent of
9 the General Assembly to reverse the interpretation of 20
10 Pa.C.S. § 5608 as set forth in *Teresa M. Vine v. Commonwealth*
11 *of Pennsylvania, State Employees' Retirement Board*, 9 A.3d
12 1150 (Pa. 2010).

13 Section 11. This act shall take effect as follows:

14 (1) The amendment or addition of 20 Pa.C.S. §§ 5601(f),
15 5608, 5608.1, 5608.2, 5611 and 5612 shall take effect
16 immediately.

17 (2) This section shall take effect immediately.

18 (3) The remainder of this act shall take effect on the
19 first July 1 or January 1 which occurs five months or more
20 after the date of enactment of this act.