

AMENDMENTS TO SENATE BILL NO. 1104

Sponsor: SENATOR GREENLEAF

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1 Amend Bill, page 1, line 13, by inserting after "definitions,

2 "

3 for when health care power of attorney is operative,

4 Amend Bill, page 1, line 16, by inserting after "provisions,"

5 for authority that requires specific and general grant of

6 authority,

7 Amend Bill, page 12, line 16, by inserting after "Sections "

8 5454(d),

9 Amend Bill, page 12, by inserting between lines 17 and 18

10 § 5454. When health care power of attorney operative.

11 * * *

12 (d) Duration.--Unless the health care power of attorney
13 states a time of termination, [it is valid until revoked by the
14 principal or the principal's guardian of the person,
15 notwithstanding the lapse of time since its execution.]

16 notwithstanding the lapse of time since the health care power of
17 attorney was executed, the health care power of attorney is
18 valid until revoked by any of the following:

19 (1) The principal.

20 (2) The court.

21 (3) If authorized by the court, the principal's guardian
22 of the person.

23 * * *

24 Amend Bill, page 13, line 20, by striking out "and 5602(a)"

25 Amend Bill, page 13, line 20, by striking out "are" and

26 inserting

27 is

28 Amend Bill, page 14, lines 12 through 17, by striking out

29 "For" in line 12 and all of lines 13 through 17

1 Amend Bill, page 14, by inserting between lines 18 and 19

2 Section 6.1. Section 5601.4(c), (d) and (e) of Title 20 are
3 amended and the section is amended by adding a subsection to
4 read:

5 § 5601.4. Authority that requires specific and general grant of
6 authority.

7 * * *

8 (c) Scope of authority.--Subject to subsections (a), (b),
9 (d), (d.1) and (e), if a power of attorney grants to an agent
10 authority to do all acts that a principal is authorized to
11 perform, the agent has all of the powers which may be
12 incorporated by reference pursuant to section 5602(a).

13 (d) Gifts.--

14 (1) Unless the power of attorney otherwise provides, [a
15 grant of authority to make a gift is subject to section
16 5603(a.1) (relating to implementation of power of attorney).]
17 the power to make limited gifts or other language in a power
18 of attorney granting general authority with respect to gifts
19 authorizes the agent only to:

20 (i) Make outright to or for the benefit of a person,
21 a gift of any of the principal's property, including by
22 the exercise of a presently exercisable general power of
23 appointment held by the principal:

24 (A) in an amount per donee not to exceed the
25 annual dollar limits of the Federal gift tax
26 exclusion under section 2503(b) of the Internal
27 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
28 2503(b)), without regard to whether the Federal gift
29 tax exclusion applies to the gift; or

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

35 (ii) Consent, pursuant to section 2513 of the
36 Internal Revenue Code of 1986, to the splitting of a gift
37 made by the principal's spouse in an amount per donee not
38 to exceed the aggregate annual gift tax exclusions for
39 both spouses.

40 (2) An agent may make a gift of the principal's property
41 only as the agent determines is consistent with the
42 principal's objectives if actually known by the agent and, if
43 unknown, as the agent determines is consistent with the
44 principal's best interest based on all relevant factors,
45 including:

46 (i) The value and nature of the principal's
47 property.

48 (ii) The principal's foreseeable obligations and
49 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 (d.1) Disclaimers.--

15 (1) Unless the power of attorney otherwise provides, the
16 grant of the power to disclaim any interest in property or a
17 grant of general authority with disclaimers authorizes the
18 agent to release or disclaim any interest in property on
19 behalf of the principal in accordance with Chapter 62
20 (relating to disclaimers) or section 6103.1 (relating to
21 release of powers and interests and disclaimer of powers),
22 provided that any disclaimer under Chapter 62 shall be in
23 accordance with the provisions of section 6202 (relating to
24 disclaimers by fiduciaries or agents) in the case of a
25 principal who is an incapacitated person at the time of the
26 execution of the disclaimer.

27 (2) An agent may make a disclaimer as the agent
28 determines is consistent with the principal's objectives if
29 actually known by the agent and, if unknown, as the agent
30 determines is consistent with the principal's best interest
31 based on all relevant factors, including:

32 (i) The value and nature of the principal's
33 property.

34 (ii) The principal's foreseeable obligations and
35 need for maintenance.

36 (iii) Minimization of taxes, including income,
37 estate, inheritance, generation-skipping transfer and
38 gift taxes.

39 (iv) Eligibility for a benefit, program or
40 assistance under a statute or regulation.

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

43 (e) Similar or overlapping subjects.--Subject to subsections
44 (a), (b) [and], (d) and (d.1), if the subjects over which
45 authority is granted in a power of attorney are similar or
46 overlap, the broadest authority controls.

47 * * *

48 Section 6.2. Section 5602(a) of Title 20 is amended to read:

49 Amend Bill, page 15, line 29, by striking out "5603(d)" and

1 inserting

2 5603(a.1), (d)

3 Amend Bill, page 16, by inserting between lines 2 and 3

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

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

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

13 (A) in an amount per donee not to exceed the
14 annual dollar limits of the Federal gift tax
15 exclusion under section 2503(b) of the Internal
16 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
17 2503(b)), without regard to whether the Federal gift
18 tax exclusion applies to the gift; or

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

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

29 (2) An agent may make a gift of the principal's property
30 only as the agent determines is consistent with the
31 principal's objectives if actually known by the agent and, if
32 unknown, as the agent determines is consistent with the
33 principal's best interest based on all relevant factors,
34 including:

35 (i) The value and nature of the principal's
36 property.

37 (ii) The principal's foreseeable obligations and
38 need for maintenance.

39 (iii) Minimization of taxes, including income,
40 estate, inheritance, generation-skipping transfer and
41 gift taxes.

42 (iv) Eligibility for a benefit, program or
43 assistance under a statute or regulation.

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

46 (3) As used in this subsection, the phrase "a gift for
47 the benefit of a person" includes a gift to a trust, an
48 account under Chapter 53 (relating to Pennsylvania Uniform

1 Transfers to Minors Act) and a tuition savings account or
2 prepaid tuition plan as defined under section 529 of the
3 Internal Revenue Code of 1986 (26 U.S.C. § 529).]

4 Amend Bill, page 19, lines 17 through 21, by striking out all
5 of said lines