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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1147 Session of  
1975

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INTRODUCED BY FRAME, REIBMAN, AMMERMAN, HAGER, HILL AND O'PAKE,  
OCTOBER 16, 1975

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED JUNE 16, 1976

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AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, providing for estate  
3 planning in incompetents' estates.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Section 5536 of Title 20, act of November 25,  
7 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated  
8 Statutes, added June 30, 1972 (P.L.508, No.164), is amended to  
9 read:

10 § 5536. Distributions of income and principal during  
11 incompetency.

12 (a) In general.--All income received by a guardian of the  
13 estate of an incompetent, in the exercise of a reasonable  
14 discretion, may be expended in the care and maintenance of the  
15 incompetent, without the necessity of court approval. The court,  
16 for cause shown, may authorize or direct the payment or  
17 application of any or all of the income or principal of the

1 estate of an incompetent for the care, maintenance or education  
2 of the incompetent, his spouse, children or those for whom he  
3 was making such provision before his incompetency, or for the  
4 reasonable funeral expenses of the incompetent's spouse, child  
5 or indigent parent. In proper cases, the court may order payment  
6 of amounts directly to the incompetent for his maintenance or  
7 for incidental expenses and may ratify payments made for these  
8 purposes.

9 (b) Estate plan.--The court upon petition and with such <—  
10 notice, if any, as it shall deem appropriate, NOTICE TO ALL <—  
11 PARTIES IN INTEREST, shall have the power to substitute its  
12 judgment for that of the incompetent with respect to the estate  
13 and affairs of the incompetent for the benefit of the  
14 incompetent, his family, members of his household, his friends  
15 and charities in which he was interested. This power shall  
16 include, but is not limited to the power to:

17 (1) make gifts, outright or in trust;

18 (2) convey or release his contingent and expectant  
19 interests in property, including marital property rights and  
20 any right of survivorship incident to joint tenancy or  
21 tenancy by the entirety;

22 (3) release his powers as trustee, personal  
23 representative, custodian for minors, or guardian;

24 (4) exercise or release his powers as donee of a power  
25 of appointment;

26 (5) enter into contracts;

27 (6) create for the benefit of the incompetent or others,  
28 revocable or irrevocable trusts of his property which may  
29 extend beyond his disability or life;

30 (7) exercise options of the incompetent to purchase or

1     exchange securities or other property;

2             (8) exercise his rights to elect options and change  
3     beneficiaries under insurance and annuity policies or  
4     surrender the policies for their cash value;

5             (9) exercise his right to claim or disclaim an elective  
6     share in the estate of his deceased spouse and renounce any  
7     interest by testate or intestate succession or by inter vivos  
8     transfer; and

9             (10) change the incompetent's residence or domicile.

10    In the exercise of its judgment for that of the incompetent, the  
11    court first being satisfied that assets exist which are not  
12    required for the maintenance, support and well-being of the  
13    incompetent, may adopt a plan of gifts which result in  
14    minimizing current or prospective income, estate or inheritance  
15    taxes, or which carries out a lifetime giving pattern. The court  
16    in exercising its judgment may consider the testamentary and  
17    inter vivos intentions of the incompetent in so far as they can  
18    be ascertained.

19    Section 2. This act shall take effect immediately.