

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 120 Session of 2009

INTRODUCED BY MARSICO, DALLY, GODSHALL, HARHART AND REICHLEY,  
JANUARY 30, 2009

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 30, 2009

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 forfeiture, for modification of wills, for advertisement of  
4 grant of letters, for duty of personal representative, for  
5 enforcement of contribution or exoneration of Federal estate  
6 tax, for implementation of power of attorney, for  
7 applicability of rule against perpetuities, for modification  
8 of conveyance by divorce, for effect of divorce on  
9 designation of beneficiaries, for notice of representation,  
10 for creditor's claim against settlor, for actions contesting  
11 validity of revocable trusts, for claims and distribution  
12 after settlor's death, for trustee's duty to inform and  
13 report, for illustrative powers of trustee, for limitation of  
14 action against trustee, for power to convert to unitrust and  
15 for retirement benefits, individual retirement accounts,  
16 deferred compensation, annuities and similar payments; and  
17 making conforming amendments to Title 15.

18 The General Assembly of the Commonwealth of Pennsylvania  
19 hereby enacts as follows:

20 Section 1. Sections 2106(a), 2507(2), 3162, 3301(c), 3706,  
21 5603(p) and (q), 6107.1, 6111.1, 6111.2, 7725 and 7745 of Title  
22 20 of the Pennsylvania Consolidated Statutes are amended to  
23 read:

24 § 2106. Forfeiture.

25 (a) Spouse's share.--

1       (1) A spouse who, for one year or upwards previous to  
2       the death of the other spouse, has willfully neglected or  
3       refused to perform the duty to support the other spouse, or  
4       who for one year or upwards has willfully and maliciously  
5       deserted the other spouse, shall have no right or interest  
6       under this chapter in the real or personal estate of the  
7       other spouse.

8       (2) A spouse shall have no right or interest under this  
9       chapter in the real or personal estate of the other spouse  
10      if:

11           (i) the other spouse dies domiciled in this  
12           Commonwealth during the course of divorce proceedings;

13           (ii) no decree of divorce has been entered pursuant  
14           to 23 Pa.C.S. § 3323 (relating to decree of court); and

15           (iii) grounds have been established as provided in  
16           23 Pa.C.S. § 3323(g).

17      \* \* \*

18   § 2507. Modification by circumstances.

19       Wills shall be modified upon the occurrence of any of the  
20       following circumstances, among others:

21      \* \* \*

22           (2) Divorce or pending divorce.--[If the testator is  
23       divorced from the bonds of matrimony after making a will,  
24       any] Any provision in [the] a testator's will in favor of or  
25       relating to [his] the testator's spouse [so divorced] shall  
26       [thereby] become ineffective for all purposes unless it  
27       appears from the will that the provision was intended to  
28       survive [the divorce.] a divorce, if the testator:

29           (i) is divorced from such spouse after making the  
30           will; or

1           (ii) dies domiciled in this Commonwealth during the  
2           course of divorce proceedings, no decree of divorce has  
3           been entered pursuant to 23 Pa.C.S. § 3323 (relating to  
4           decree of court) and grounds have been established as  
5           provided in 23 Pa.C.S. § 3323(g).

6           \* \* \*

7   § 3162. Advertisement of grant of letters.

8       (a) Notice generally.--The personal representative,  
9 immediately after the grant of letters, shall cause notice  
10 thereof to be given in one newspaper of general circulation  
11 published at or near the place where the decedent resided or, in  
12 the case of a nonresident decedent, at or near the place where  
13 the letters were granted, and in the legal periodical, if any,  
14 designated by rule of court for the publication of legal  
15 notices, once a week for three successive weeks, together with  
16 his name and address; and in every such notice, he shall request  
17 all persons having claims against the estate of the decedent to  
18 make known the same to him or his attorney, and all persons  
19 indebted to the decedent to make payment to him without delay.

20       (b) Proofs of advertisement to trustee.--A personal  
21 representative who has advertised the grant of letters and  
22 received the notice required by section 7780.3(c) (relating to  
23 duty to inform and report) shall promptly send copies of the  
24 proofs of that advertisement to the trustee.

25   § 3301. Duty of personal representative.

26       \* \* \*

27       (c) Time for filing.--The personal representative shall file  
28 his inventory no later than the date he files his account or the  
29 due date, including any extension, for the filing of the  
30 inheritance tax return for the estate, whichever is earlier. Any

1 party in interest in the estate may request the filing of an  
2 inventory at an earlier date by writing delivered to the  
3 personal representative or his attorney in which event an  
4 inventory shall be filed within three months after the  
5 appointment of the personal representative or within 30 days  
6 after the request, whichever is later. The court[, upon cause  
7 shown,] may direct the [filing of] personal representative to  
8 file an inventory of estate assets at any time.

9 § 3706. Enforcement of contribution or exoneration of Federal  
10 estate tax.

11 (a) Duty to pay.--Parties liable for apportionment of the  
12 Federal estate tax, whether residents or nonresidents of this  
13 Commonwealth, shall pay the amounts apportioned against them  
14 [respectively.] at the time the Federal estate tax is due,  
15 without regard to any extension of time for paying such tax.

16 (b) [Duty] Power of fiduciary.--The fiduciary charged with  
17 the duty to pay the Federal estate tax may recover from parties  
18 liable to apportionment the amounts of Federal estate tax  
19 [apportionable] apportioned to them [respectively]. If the  
20 fiduciary pays the tax apportioned against another party, the  
21 fiduciary may recover from the other party the tax payment so  
22 advanced, together with interest of 5% per annum from the date  
23 of payment.

24 (c) Suspending distribution.--Distribution or delivery of  
25 property to any party, other than a fiduciary charged with a  
26 duty to pay the Federal estate tax, shall not be required of any  
27 fiduciary until [the Federal estate tax apportionable with  
28 respect thereto is paid or, if the Federal estate tax has not  
29 been determined and apportionment made, until adequate security  
30 for payment is furnished to the fiduciary making the

distribution or delivery.] that party pays the Federal estate tax apportioned to that party.

(d) Court decrees.--[The] Notwithstanding subsections (a) and (b), the court, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the Federal estate tax. The court may direct a fiduciary to collect the apportioned amounts from the property or interests in his possession of any parties against whom apportionment has been made and may direct all other parties against whom the Federal estate tax has been or may be apportioned or from whom any part of the Federal estate tax may be recovered to make payment of the apportioned amounts to the fiduciary. When a fiduciary holds property of a party liable to apportionment insufficient to satisfy the apportioned Federal estate tax, the court may direct that the balance of the apportioned amount of Federal estate tax shall be paid to the fiduciary by the party liable. Should an overpayment of the Federal estate tax be made by any party or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the court apportions any part of the Federal estate tax against any party interested in nontestamentary property or among the respective interests created by any nontestamentary instrument, the court, in its discretion, may assess against those properties or interests an equitable share of the expenses incurred in connection with the determination and apportionment of the Federal estate tax. If the fiduciary cannot recover the Federal estate tax apportioned against a party benefited, the unrecovered amount shall be charged in such manner as the court may determine.

§ 5603. Implementation of power of attorney.

1 \* \* \*

2 (p) Power to engage in insurance transactions.--A power to  
3 "engage in insurance transactions" shall mean that the agent  
4 may:

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

10 (2) Exercise nonforfeiture provisions under insurance  
11 policies.

12 (3) In general, exercise all powers with respect to  
13 insurance that the principal could if present; however, the  
14 agent cannot designate himself beneficiary of a life  
15 insurance policy unless the agent is the spouse, child,  
16 grandchild, parent, brother or sister of the principal. An  
17 agent and a beneficiary of a life insurance policy shall be  
18 liable as equity and justice may require to the extent that,  
19 as determined by the court, a beneficiary designation made by  
20 the agent is inconsistent with the known or probable intent  
21 of the principal.

22 (q) Power to engage in retirement plan transactions.--A  
23 power to "engage in retirement plan transactions" shall mean  
24 that the agent may contribute to, withdraw from and deposit  
25 funds in any type of retirement plan (including, but not limited  
26 to, any tax qualified or nonqualified pension, profit sharing,  
27 stock bonus, employee savings and retirement plan, deferred  
28 compensation plan or individual retirement account), select and  
29 change payment options for the principal, make roll-over  
30 contributions from any retirement plan to other retirement plans

1 and, in general, exercise all powers with respect to retirement  
2 plans that the principal could if present. However, the agent  
3 cannot designate himself beneficiary of a retirement plan unless  
4 the agent is the spouse, child, grandchild, parent, brother or  
5 sister of the principal. An agent and a beneficiary of a  
6 retirement plan shall be liable as equity and justice may  
7 require to the extent that, as determined by the court, a  
8 beneficiary designation made by the agent is inconsistent with  
9 the known or probable intent of the principal.

10 \* \* \*

11 § 6107.1. Applicability of rule against perpetuities.

12 (a) Traditional rule.--Sections 6104 (relating to rule  
13 against perpetuities), 6105 (relating to rule against  
14 perpetuities; disposition when invalidity occurs), 6106  
15 (relating to income accumulations; when valid) and 6107  
16 (relating to income accumulations; disposition when invalidity  
17 occurs):

18 (1) shall apply to every interest created before January  
19 1, 2007; but

20 (2) shall not apply to any interest created after  
21 December 31, 2006.

22 (b) Modern rule.--All of the following apply to every  
23 interest created after December 31, 2006:

24 (1) [No] Except as provided in paragraph (3), no  
25 interest shall be void as a perpetuity.

26 (2) No direction or authorization to [accumulated]  
27 accumulate income shall be void as a perpetuity.

28 (3) If a power of appointment is exercised to create a  
29 new power of appointment, any interest created by the  
30 exercise of the new power of appointment is invalid if it

1 does not vest within 360 years of the creation of the  
2 original power of appointment, unless the exercise of the new  
3 power of appointment expressly states that this provision  
4 shall not apply to the interests created by the exercise.

5 (4) Void interests shall be disposed of in the manner  
6 provided in section 6105.

7 § 6111.1. Modification by divorce or pending divorce.

8 [If the conveyer is divorced from the bonds of matrimony  
9 after making a conveyance, any] Any provision in [the] a  
10 conveyance which was revocable by [him] a conveyer at the time  
11 of [his] the conveyor's death and which was to take effect at or  
12 after [his] the conveyor's death in favor of or relating to [his  
13 spouse so divorced shall thereby] the conveyor's spouse shall  
14 become ineffective for all purposes unless it appears in the  
15 governing instrument that the provision was intended to survive  
16 [the divorce.] a divorce, if the conveyor:

17 (1) is divorced from such spouse after making the  
18 conveyance; or

19 (2) dies domiciled in this Commonwealth during the  
20 course of divorce proceedings, no decree of divorce has been  
21 entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of  
22 court) and grounds have been established as provided in 23  
23 Pa.C.S. § 3323(g).

24 § 6111.2. Effect of divorce or pending divorce on designation  
25 of beneficiaries.

26 [If a person domiciled in this Commonwealth at the time of  
27 his death is divorced from the bonds of matrimony after  
28 designating his spouse as beneficiary of a life insurance  
29 policy, annuity contract, pension or profit-sharing plan or  
30 other contractual arrangement providing for payments to his



spouse, any designation in favor of his former spouse which was revocable by him after the divorce shall become ineffective for all purposes and shall be construed as if such former spouse had predeceased him unless it appears from the wording of the designation, a court order or a written contract between the person and such former spouse that the designation was intended to survive the divorce.]

(a) Applicability.--This section is applicable if an individual:

(1) is domiciled in this Commonwealth;

(2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and

(3) either:

(i) at the time of the individual's death is divorced from the spouse; or

(ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

(b) General rule.--Any designation described in subsection (a) (2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

1           (2) a court order; or

2           (3) a written contract between the individual and the  
3           spouse or former spouse.

4           (c) Liability.--

5           (1) Unless restrained by court order, no insurance  
6           company, pension or profit-sharing plan trustee or other  
7           obligor shall be liable for making payments to a spouse or  
8           former spouse which would have been proper in the absence of  
9           this section.

10          (2) Any spouse or former spouse to whom payment is made  
11          shall be answerable to anyone prejudiced by the payment.

12       § 7725. Notice of representation.

13       A person representing another must be given written notice by  
14       the trustee that the person is representing the other person.

15       [The person to whom the notice is given may decline the  
16       representation by a writing that is given to the trustee no  
17       later than 60 days after receipt of the trustee's notice.] A  
18       person to whom the notice is given is presumed to accept the  
19       representation unless the person declines the representation in  
20       a writing delivered to the trustee no later than 30 days after  
21       receipt of the notice.

22       § 7745. Creditor's claim against settlor - UTC 505(a).

23       Whether or not a trust instrument contains a spendthrift  
24       provision and notwithstanding section 7744 (relating to  
25       discretionary trusts; effect of standard - UTC 504):

26           (1) During the lifetime of the settlor, the property of  
27           a revocable trust is subject to claims of the settlor's  
28           creditors.

29           (2) A judgment creditor or assignee of the settlor of an  
30           irrevocable trust may reach the maximum amount that can be

1 distributed to or for the settlor's benefit. If a trust has  
2 more than one settlor, the creditor or assignee of a  
3 particular settlor may reach the portion of the trust  
4 attributable to that settlor's contribution. However, the  
5 assets of an irrevocable trust are not subject to the claims  
6 of a creditor of the settlor solely because of the existence  
7 of the trustee's discretionary power to pay directly to the  
8 taxing authorities or to reimburse the settlor for any income  
9 tax payable by the settlor attributable to trust income or  
10 principal.

11 (3) After the death of the settlor and subject to the  
12 settlor's right to direct the source from which liabilities  
13 will be paid, the property of a revocable trust is subject to  
14 claims of the settlor's creditors, costs of administration of  
15 the settlor's estate, the expenses of the settlor's funeral  
16 and disposal of remains and the family exemption to the  
17 extent the settlor's probate estate is inadequate to satisfy  
18 those claims, costs, expenses and exemption and no other  
19 statute specifically exempts the property from those claims.

20 Section 2. Section 7754 of Title 20 is amended by adding a  
21 subsection to read:

22 § 7754. Actions contesting validity of revocable trust.

23 \* \* \*

24 (d) Competency of witnesses.--The competency of a witness in  
25 an action contesting the validity of a revocable trust shall be  
26 governed by the same rules that apply in actions contesting the  
27 validity of a will.

28 Section 3. Sections 7755(c), 7780.3(a), (f), (g), (i), (k)  
29 and (l), 7780.6(a), 7785(a), 8105(d) and (e) and 8149(c) of  
30 Title 20 are amended to read:

1 § 7755. Claims and distribution after settlor's death.

2 \* \* \*

3 (c) [No personal representative.--If no personal  
4 representative is appointed within 90 days after the settlor's  
5 death, the trustee shall advertise the trust's existence and the  
6 name and address of the trustee in the manner set forth in  
7 section 3162 (relating to advertisement of grant of letters).]

8 Trustee's duty to advertise.--

9 (1) A trustee of a revocable trust:

10 (i) May advertise at any time after the settlor's  
11 death.

12 (ii) Shall advertise if the first advertisement of  
13 the grant of letters by the settlor's personal  
14 representative does not occur within 90 days after the  
15 settlor's death.

16 (2) Advertisements by the trustee under this subsection  
17 shall be in the manner set forth in section 3162 (relating to  
18 advertisement of grant of letters) and shall include:

19 (i) The fact of the trust's existence.

20 (ii) The trustee's name and address.

21 (3) The personal representative of the settlor of a  
22 revocable trust shall send to the trustee copies of the proof  
23 of publication of the advertisement of the grant of letters.

24 \* \* \*

25 § 7780.3. Duty to inform and report.

26 (a) Duty to respond to requests.--A trustee shall promptly  
27 respond to a [beneficiary's] reasonable request by the settlor  
28 of a trust or by a beneficiary of an irrevocable trust for  
29 information related to the trust's administration.

30 \* \* \*

1 (f) Notice to current beneficiaries.--No later than 30 days  
2 after the date on which the trustee of an irrevocable trust  
3 learns that a person who did not previously receive the notice  
4 described in subsection (i) is a current beneficiary of the  
5 trust, the trustee shall send the notice described in subsection  
6 (i) to the current beneficiary if, at that time, the trustee  
7 knows that the settlor is then deceased or has been adjudicated  
8 incapacitated. With respect to a testamentary trust, the time  
9 specified in this subsection commences to run when the trust is  
10 first funded, whether or not the trust is completely funded on  
11 that date.

12 (g) Change in trusteeship.--[Apart from the other  
13 requirements of this section, the trustee shall send the notice  
14 described in subsection (i) to the current beneficiaries each  
15 time there is a change in trusteeship.]

16 (1) Each time there is a change in trusteeship of any  
17 trust, the trustee shall notify the settlor in writing of the  
18 change.

19 (2) Each time there is a change in trusteeship of any  
20 trust whose settlor is deceased or of an irrevocable trust  
21 whose settlor has been adjudicated incapacitated, the trustee  
22 shall notify the current beneficiaries in writing of the  
23 change.

24 (3) Notice under this subsection shall include the  
25 trustee's name, address and telephone number.

26 \* \* \*

27 (i) Contents of notice.--[Any] Except as provided in  
28 subsection (g), any notice under this section shall be written  
29 and convey the following information:

30 (1) The fact of the trust's existence.

- 1           (2) The identity of the settlor.
- 2           (3) The trustee's name, address and telephone number.
- 3           (4) The recipient's right to receive upon request a copy
- 4 of the trust instrument.
- 5           (5) [The recipient's] Each current beneficiary's right
- 6 to receive, [at least annually, a] upon request, an annual
- 7 written report of the trust's assets and their market values
- 8 if feasible, the trust's liabilities and the trust's receipts
- 9 and disbursements since the date of the last such report.

10 \* \* \*

11       (k) Notice to settlor's appointee.--The settlor of a trust

12 may in the trust instrument appoint one or more persons or a

13 succession of persons to receive, on behalf of one or more named

14 current beneficiaries of the trust, the notices required by this

15 section. The trustee giving the notice required by this section

16 to that appointee satisfies the trustee's duty to give to the

17 named current beneficiary the notice required by this section

18 if:

19           (1) the trustee notifies the appointee that the notice

20 is being given to the appointee as representing the named

21 current beneficiary; and

22           (2) the appointee does not decline to receive the notice

23 in a writing [that is given] delivered to the trustee no

24 later than [60] 30 days after receipt of the trustee's

25 notice.

26       (1) Applicability.--

27           (1) If the death or adjudication of incapacity described

28 in subsection (b), (c), (d) or (e) occurs on or after

29 November 6, 2006, the time limit for notice set forth in that

30 subsection shall apply.

1           (2) If the death or adjudication of incapacity described  
2 in subsection (b), [(c),] (d) or (e) has occurred before  
3 November 6, 2006, the time limit for notice set forth in that  
4 subsection shall be November 6, 2008.

5           (3) The notice under subsection (f) shall not be  
6 required to be completed until two years after November 6,  
7 2006.

8 § 7780.6. Illustrative powers of trustee.

9           (a) Listing.--The powers which a trustee may exercise  
10 pursuant to section 7780.5 (relating to powers of trustees - UTC  
11 815) include the following powers:

12           (1) To accept, hold, invest in and retain investments as  
13 provided in Chapter 72 (relating to prudent investor rule).

14           (2) To pay or contest a claim; settle a claim by or  
15 against the trust by compromise, arbitration or otherwise;  
16 and release, in whole or in part, any claim belonging to the  
17 trust.

18           (3) To resolve a dispute regarding the interpretation of  
19 the trust or the administration of the trust by mediation,  
20 arbitration or other alternative dispute resolution  
21 procedures.

22           (4) To prosecute or defend actions, claims or  
23 proceedings for the protection of trust assets and of the  
24 trustee in the performance of the trustee's duties.

25           (5) To abandon or decline to administer any property  
26 which is of little or no value, transfer title to abandoned  
27 property and decline to accept title to and administer  
28 property which has or may have environmental or other  
29 liability attached to it.

30           (6) To insure the assets of the trust against damage or

1 loss and, at the expense of the trust, protect the trustee,  
2 the trustee's agents and the beneficiaries from liability to  
3 third persons arising from the administration of the trust.

4 (7) To advance money for the protection of the trust and  
5 for all expenses, losses and liability sustained in the  
6 administration of the trust or because of the holding or  
7 ownership of any trust assets. The trustee has a lien on the  
8 trust assets as against the beneficiary for an advance under  
9 this paragraph, including interest on the advance.

10 (8) To pay taxes, assessments, compensation of the  
11 trustee and employees and agents of the trustee and other  
12 expenses incurred in the administration of the trust.

13 (9) To receive additions to the assets of the trust.

14 (10) To sell or exchange any real or personal property  
15 at public or private sale, without obligation to repudiate an  
16 otherwise binding agreement in favor of better offers. If the  
17 trustee has been required to give bond, no proceeds of the  
18 sale of real estate, including proceeds arising by the reason  
19 of involuntary conversion, shall be paid to the trustee  
20 until:

21 (i) the court has made an order excusing the trustee  
22 from entering additional security; or

23 (ii) the court has made an order requiring  
24 additional security and the trustee has entered the  
25 additional security.

26 (11) To enter for any purpose into a lease as lessor or  
27 lessee with or without option to purchase or renew for a term  
28 within or extending beyond the term of the trust.

29 (12) To grant options for sales or leases of a trust  
30 asset and acquire options for the acquisition of assets,



1 including options exercisable after the trust terminates.

2 (13) To join in any reorganization, consolidation,  
3 merger, dissolution, liquidation, voting trust plan or other  
4 concerted action of securityholders and to delegate  
5 discretionary duties with respect thereto.

6 (14) To vote a security, in person or by general or  
7 limited proxy, with or without power of substitution.

8 (15) To borrow funds and mortgage or pledge trust assets  
9 as security for repayment of the funds borrowed, including  
10 repayments after the trust terminates.

11 (16) To make loans to and buy property from the personal  
12 representatives of the settlor and the settlor's spouse.  
13 Loans under this paragraph shall be adequately secured, and  
14 the purchases under this paragraph shall be for fair market  
15 value.

16 (17) To partition, subdivide, repair, improve or develop  
17 real estate; enter into agreements concerning the partition,  
18 subdivision, repair, improvement, development, zoning or  
19 management of real estate; impose or extinguish restrictions  
20 on real estate; dedicate land and easements to public use;  
21 adjust boundaries; and do anything else regarding real estate  
22 which is commercially reasonable or customary under the  
23 circumstances.

24 (18) With respect to possible liability for violation of  
25 environmental law:

26 (i) to inspect or investigate property the trustee  
27 holds or has been asked to hold or property owned or  
28 operated by an organization in which the trustee holds or  
29 has been asked to hold an interest, for the purpose of  
30 determining the application of environmental law with

1           respect to the property;

2           (ii) to take action to prevent, abate or otherwise  
3           remedy any actual or potential violation of environmental  
4           law affecting property held directly or indirectly by the  
5           trustee, whether taken before or after the assertion of a  
6           claim or the initiation of governmental enforcement;

7           (iii) to decline to accept property into trust or  
8           disclaim a power with respect to property that is or may  
9           be burdened with liability for violation of environmental  
10          law;

11          (iv) to compromise claims against the trust which  
12          may be asserted for an alleged violation of environmental  
13          law; and

14          (v) to pay the expense of inspection, review,  
15          abatement or remedial action to comply with environmental  
16          law.

17          (19) To operate, repair, maintain, equip and improve any  
18          farm or farm operation; to purchase and sell livestock,  
19          crops, feed and other property that is normally perishable;  
20          and to purchase, use and dispose of farm equipment and employ  
21          one or more farm managers and others in connection with farm  
22          equipment and pay them reasonable compensation.

23          (20) To make ordinary or extraordinary repairs or  
24          alterations in buildings or other structures; demolish  
25          improvements; and raze existing or erect new party walls or  
26          buildings.

27          (21) To enter into a lease or arrangements for  
28          exploration and removal of minerals or other natural  
29          resources or enter into a pooling or utilization agreement.

30          (22) To exercise all rights and incidents of ownership

1 of life insurance policies held by the trust, including  
2 borrowing on policies, entering into and terminating split-  
3 dollar plans, exercising conversion privileges and rights to  
4 acquire additional insurance and selecting settlement  
5 options.

6 (23) To employ a custodian; hold property unregistered  
7 or in the name of a nominee, including the nominee of any  
8 institution employed as custodian, without disclosing the  
9 fiduciary relationship and without retaining possession and  
10 control of securities or other property so held or  
11 registered; and pay reasonable compensation to the custodian.

12 (24) To apply funds distributable to a beneficiary who  
13 is, in the trustee's opinion, disabled by illness or other  
14 cause and unable properly to manage the funds directly for  
15 the beneficiary's benefit or to pay such funds for  
16 expenditure on the beneficiary's behalf to:

17 (i) the beneficiary;

18 (ii) a guardian of the beneficiary's estate;

19 (iii) an agent acting under a general power of  
20 attorney for the beneficiary; or

21 (iv) if there is no agent or guardian, a relative or  
22 other person having legal or physical custody or care of  
23 the beneficiary.

24 (25) To pay funds distributable to a minor beneficiary  
25 to the minor or to a guardian of the minor's estate or to  
26 apply the funds directly for the minor's benefit.

27 (26) To do any of the following:

28 (i) Pay any funds distributable to a beneficiary who  
29 is not 21 years of age or older to:

30 (A) the beneficiary;

1 (B) an existing custodian for the beneficiary  
2 under Chapter 53 (relating to Pennsylvania Uniform  
3 Transfers to Minors Act) or under any other state's  
4 version of the Uniform Transfers to Minors Act;

5 (C) an existing custodian for the beneficiary  
6 under the former Pennsylvania Uniform Gifts to Minors  
7 Act or under any other state's version of the Uniform  
8 Gifts to Minors Act; or

9 (D) a custodian for the beneficiary appointed by  
10 the trustee under Chapter 53.

11 (ii) Apply the funds for the beneficiary.

12 (27) To pay calls, assessments and other sums chargeable  
13 or accruing against or on account of securities.

14 (28) To sell or exercise stock subscription or  
15 conversion rights.

16 (29) To continue or participate in the operation of any  
17 business or other enterprise and to effect incorporation,  
18 merger, consolidation, dissolution or other change in the  
19 form of the organization of the business or enterprise.

20 (30) To select a mode of payment under a qualified  
21 employee benefit plan or a retirement plan payable to the  
22 trustee and exercise rights under the plan.

23 (31) To distribute in cash or in kind or partly in each  
24 and allocate particular assets in proportionate or  
25 disproportionate shares.

26 (32) To appoint a trustee to act in another jurisdiction  
27 with respect to trust property located in the other  
28 jurisdiction, confer upon the appointed trustee all the  
29 powers and duties of the appointing trustee, require that the  
30 appointed trustee furnish security and remove the appointed

1 trustee.

2 (33) To exercise elections with respect to Federal,  
3 State and local taxes.

4 [(33)] (34) To execute and deliver instruments which  
5 will accomplish or facilitate the exercise of the trustee's  
6 powers.

7 \* \* \*

8 § 7785. Limitation of action against trustee.

9 (a) Imposed by trustee's written reports.--

10 (1) A beneficiary may not challenge a transaction or  
11 assert a claim against a trustee for breach of trust on the  
12 basis of a transaction if:

13 (i) the trustee provided the beneficiary with a  
14 single written report of the trust's assets and their  
15 market values if feasible, the trust's liabilities and  
16 the trust's receipts and disbursements for the full  
17 calendar year or entire part of the calendar year during  
18 which the trust was in existence in which the transaction  
19 occurred and for each of the four subsequent calendar  
20 years;

21 (ii) the transaction was disclosed in the first of  
22 the five reports to which subparagraph (i) refers;

23 (iii) the beneficiary did not notify the trustee in  
24 writing within six months after receiving the fifth  
25 [annual] report that the beneficiary objects to the  
26 transaction and provide the basis in writing for that  
27 objection; and

28 (iv) all five reports were accompanied by a  
29 conspicuous written statement describing the effect of  
30 this paragraph.

(2) A claim not barred by paragraph (1) may nevertheless be barred by subsection (b).

\* \* \*

§ 8105. Power to convert to unitrust.

\* \* \*

(d) Post conversion.--After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(i) from appreciation of capital;

(ii) from earnings and distributions from capital;

or

(iii) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) The term "income" in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 4% (the payout percentage) of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) the [three] preceding years in the smoothing period selected by the trustee; or

(ii) the period during which the trust has been in existence.

(e) Discretion of trustee.--The trustee may, in the trustee's discretion from time to time, determine all of the following:

1 (1) The effective date of a conversion to a unitrust.

2 (2) The provisions for prorating a unitrust distribution  
3 for a short year in which a beneficiary's right to payments  
4 commences or ceases.

5 (3) The frequency of unitrust distributions during the  
6 year.

7 (4) The effect of other payments from or contributions  
8 to the trust on the trust's valuation.

9 (5) Whether to value the trust's assets annually or more  
10 frequently.

11 (5.1) Whether to average the net assets of the trust  
12 over a smoothing period of three, four or five years.

13 (6) What valuation dates to use.

14 (7) How frequently to value nonliquid assets and whether  
15 to estimate their value.

16 (8) Whether to omit from the calculations trust property  
17 occupied or possessed by a beneficiary.

18 (9) Any other matters necessary for the proper  
19 functioning of the unitrust.

20 \* \* \*

21 § 8149. Retirement benefits, individual retirement accounts,  
22 deferred compensation, annuities and similar  
23 payments.

24 \* \* \*

25 (c) Allocation when internal net income of fund is readily  
26 ascertained.--

27 (1) If no portion of a payment from a separate fund held  
28 exclusively for the benefit of the trust is allocable to  
29 income under subsections (a) and (b) but the internal net  
30 income of the fund determined as if the fund were a separate

1 trust subject to Subchapters [B (relating to decedent's  
2 estate or terminating income interest)] A (relating to  
3 preliminary provisions; power to adjust; power to convert to  
4 unitrust) through E (relating to allocation of disbursements  
5 during administration of trust) is readily ascertainable by  
6 the trustee, the internal net income of the fund shall be  
7 considered to be the income earned by the fund, and the  
8 portion of the payment equal to the then undistributed net  
9 income of the fund realized since the trust acquired its  
10 interest in the fund shall be deemed to be a distribution of  
11 such income and shall be allocated to the trust income  
12 account.

13 (2) The balance of any such payment shall be allocated  
14 to principal.

15 (3) The power to adjust under section 8104 (relating to  
16 trustee's power to adjust), the power to convert to a  
17 unitrust under section 8105 (relating to power to convert to  
18 unitrust) and the provisions governing express trusts under  
19 section 8107 (relating to express trusts) shall apply to  
20 retirement benefits covered by this subsection which are  
21 payable to a trust. These powers may be exercised separately  
22 and independently by the payee trustee or in the governing  
23 instrument as between the retirement benefits and the trust  
24 as if they were separate trusts subject to this chapter.

25 \* \* \*

26 Section 4. Sections 5547(b) and 5548(b) of Title 15 are  
27 amended to read:

28 § 5547. Authority to take and hold trust property.

29 \* \* \*

30 (b) Nondiversion of certain property.--Property committed to



charitable purposes shall not, by any proceeding under Chapter 59 (relating to fundamental changes) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D (relating to creation, validity, modification and termination of trust) specifying the disposition of the property.

§ 5548. Investment of trust funds.

\* \* \*

(b) Use and management.--Except as otherwise permitted under 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D (relating to creation, validity, modification and termination of trust), the board of directors or other body shall apply all assets thus received to the purposes specified in the trust instrument. The directors or other body shall keep accurate accounts of all trust funds, separate and apart from the accounts of other assets of the corporation.

\* \* \*

Section 5. The amendment of 20 Pa.C.S. § 6107.1 shall apply to any interest created after December 31, 2006.

Section 6. (a) The following provisions shall be retroactive to November 6, 2006:

(1) The amendment of 20 Pa.C.S. § 7745.

(2) The amendment of 20 Pa.C.S. § 7780.3(1)(2).

(3) The amendment of 20 Pa.C.S. § 7780.6(a).

(b) The amendment of 20 Pa.C.S. § 6107.1 shall be retroactive to January 1, 2007.

Section 7. This act shall take effect as follows:

(1) The following provisions shall take effect

1 immediately:  
2 (i) This section.  
3 (ii) Sections 5 and 6 of this act.  
4 (iii) The amendment of 20 Pa.C.S. §§ 6107.1, 7745,  
5 7780.3(1)(2) and 7780.6(a).  
6 (2) The remainder of this act shall take effect in 60  
7 days.