

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1147 Session of
1975

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

REFERRED TO JUDICIARY, OCTOBER 16, 1975

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
18 estate of an incompetent for the care, maintenance or education

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

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

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

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

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

22 (4) exercise or release his powers as donee of a power
23 of appointment;

24 (5) enter into contracts;

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

28 (7) exercise options of the incompetent to purchase or
29 exchange securities or other property;

30 (8) exercise his rights to elect options and change

1 beneficiaries under insurance and annuity policies or
2 surrender the policies for their cash value;

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

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

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

17 Section 2. This act shall take effect immediately.