

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 775 Session of
1989

INTRODUCED BY GREENLEAF, SHAFFER, REIBMAN, SHUMAKER, WILLIAMS,
LEWIS, LEMMOND, ROCKS, MADIGAN, O'PAKE, PECORA, AFFLERBACH
AND FISHER, APRIL 4, 1989

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
SEPTEMBER 24, 1990

AN ACT

1 Amending ~~Title 20~~ TITLES 20 (Decedents, Estates and Fiduciaries) <—
2 AND 72 (TAXATION AND FISCAL AFFAIRS) of the Pennsylvania <—
3 Consolidated Statutes, reducing the time for advertisement of
4 accounts to two weeks; adding a section providing that
5 documents submitted to the register of wills, except for
6 probate, may be attested to by an affidavit or by a verified
7 statement; broadening the class of property deemed disclaimed
8 when a spouse takes an elective share; avoiding automatic
9 modification of wills and inter vivos conveyances that are
10 made in contemplation of a marriage or divorce; adding a rule
11 of interpretation for wills and conveyances regarding
12 corporate fiduciaries; confirming existing law that a gift to
13 any unfunded trust is valid; adding a chapter relating to
14 contracts concerning succession; authorizing personal
15 representatives to make certain temporary investments;
16 allowing fiduciaries to hold certain securities in book-entry
17 form; further providing for notice to parties in interest;
18 further providing for rights of claimants; authorizing the
19 guardian of the estate of a minor to distribute certain
20 income without court approval; adding the Pennsylvania
21 Uniform Transfers to Minors Act; ADDING PROVISIONS RELATING <—
22 TO GUARDIANS OF INCAPACITATED PERSONS; clarifying the
23 jurisdiction of the court to appoint certain temporary
24 guardians; authorizing the court to exercise all rights and
25 privileges under certain contracts which provide for payments
26 to an incompetent or others after the incompetent's death;
27 authorizing the court to modify the estate plan of an
28 incompetent to reflect changes in applicable tax laws;
29 permitting certain powers of attorney to be executed by mark;
30 ensuring the validity of durable powers of attorney;
31 authorizing the court to allow a shorter period of notice to

1 an absentee; providing that as a matter of law divorce
2 revokes any revocable beneficiary designation made in favor
3 of the former spouse; further providing for the annexation of
4 accounts; further authorizing the court to divide trusts;
5 further authorizing the court to grant declaratory relief
6 with respect to certain interests in real property; EXEMPTING <—
7 SPOUSAL TRANSFERS FROM INHERITANCE TAXATION; PROVIDING FOR
8 THE TAXATION OF CERTAIN SPOUSAL TRUSTS; ADDING CONFORMING
9 AMENDMENTS TO TITLES 13, 18, 23 AND 42; AMENDING TITLE 72 TO
10 EXEMPT SPOUSAL TRANSFERS FROM INHERITANCE TAXATION; and
11 making technical changes.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Section 745(b) of Title 20 of the Pennsylvania~~ <—
15 ~~Consolidated Statutes is amended to read:~~

16 SECTION 1. SECTIONS 102, 302, 711(10), 712, 721, 745(B) AND <—
17 777(B) OF TITLE 20 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE
18 AMENDED TO READ:

19 § 102. DEFINITIONS.

20 SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN SUBSEQUENT
21 PROVISIONS OF THIS TITLE WHICH ARE APPLICABLE TO SPECIFIC
22 PROVISIONS OF THIS TITLE, THE FOLLOWING WORDS AND PHRASES WHEN
23 USED IN THIS TITLE SHALL HAVE, UNLESS THE CONTEXT CLEARLY
24 INDICATES OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SECTION:

25 "CLERK." MEANS THE CLERK OF THE ORPHANS' COURT DIVISION OF
26 THE COURT OF COMMON PLEAS.

27 "COURT, ORPHANS' COURT, OR ORPHANS' COURT DIVISION." MEANS
28 THE COURT OF COMMON PLEAS EXERCISING THE JURISDICTION REFERRED
29 TO IN THIS TITLE THROUGH ITS ORPHANS' COURT DIVISION.

30 "FIDUCIARY." INCLUDES PERSONAL REPRESENTATIVES, GUARDIANS,
31 AND TRUSTEES, WHETHER DOMICILIARY OR ANCILLARY, INDIVIDUAL OR
32 CORPORATE, SUBJECT TO THE JURISDICTION OF THE ORPHANS' COURT
33 DIVISION.

34 "FIRST COMPLETE ADVERTISEMENT OF THE GRANT OF LETTERS." IN
35 COUNTIES HAVING NO LEGAL PUBLICATION, MEANS THE FIRST OF THE

1 THREE TIMES THAT THE GRANT OF LETTERS IS ADVERTISED IN A
2 NEWSPAPER, AND, IN COUNTIES HAVING A LEGAL PUBLICATION, IT MEANS
3 WHEN IT HAS BEEN ADVERTISED, ON AT LEAST ONE OCCASION, IN BOTH
4 THE NEWSPAPER AND IN THE LEGAL PUBLICATION.

5 "FOREIGN FIDUCIARY." MEANS A PERSONAL REPRESENTATIVE,
6 GUARDIAN OF A MINOR OR [INCOMPETENT] INCAPACITATED PERSON,
7 TRUSTEE OR ONE PERFORMING THE FUNCTIONS OF ANY SUCH FIDUCIARY,
8 WHO IS SUBJECT PRIMARILY TO THE CONTROL OF THE COURT OF ANOTHER
9 JURISDICTION AND HAS NOT RECEIVED ANCILLARY AUTHORITY IN THE
10 COMMONWEALTH.

11 "FOREIGN GUARDIAN." MEANS A GUARDIAN, OR ONE PERFORMING THE
12 FUNCTION OF A GUARDIAN, WHO IS SUBJECT PRIMARILY TO THE CONTROL
13 OF THE COURT OF ANOTHER JURISDICTION AND HAS NOT RECEIVED
14 ANCILLARY AUTHORITY IN THE COMMONWEALTH.

15 "GENERAL RULE OR RULE OF COURT." A RULE OR ORDER PROMULGATED
16 BY THE GOVERNING AUTHORITY, AS DEFINED IN 42 PA.C.S. § 102
17 (RELATING TO DEFINITIONS), OF THE UNIFIED JUDICIAL SYSTEM.

18 "GUARDIAN." MEANS A FIDUCIARY WHO HAS THE CARE AND
19 MANAGEMENT OF THE ESTATE OR PERSON OF A MINOR OR AN
20 [INCOMPETENT] INCAPACITATED PERSON.

21 "[INCOMPETENT] INCAPACITATED PERSON." MEANS A PERSON
22 DETERMINED TO BE [INCOMPETENT] AN INCAPACITATED PERSON UNDER THE
23 PROVISIONS OF CHAPTER 55 (RELATING TO [INCOMPETENTS]
24 INCAPACITATED PERSONS).

25 "LETTERS." MEANS LETTERS TESTAMENTARY OR LETTERS OF
26 ADMINISTRATION OF ANY DESCRIPTION.

27 "MINOR." MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

28 "PERSONAL REPRESENTATIVE." MEANS AN EXECUTOR OR
29 ADMINISTRATOR OF ANY DESCRIPTION.

30 "REGISTER." MEANS THE REGISTER OF WILLS HAVING JURISDICTION

1 OF GRANTING OF LETTERS TESTAMENTARY OR OF ADMINISTRATION.

2 "TRUST." MEANS ANY TRUST, WHETHER TESTAMENTARY OR INTER
3 VIVOS, SUBJECT TO THE JURISDICTION OF THE ORPHANS' COURT
4 DIVISION.

5 "WILL." MEANS A WRITTEN WILL, CODICIL OR OTHER TESTAMENTARY
6 WRITING.

7 § 302. TITLE TO REAL AND PERSONAL ESTATE OF AN [INCOMPETENT]
8 INCAPACITATED PERSON.

9 LEGAL TITLE TO ALL REAL ESTATE AND PERSONAL PROPERTY OF AN
10 [INCOMPETENT] INCAPACITATED PERSON SHALL REMAIN IN HIM, SUBJECT,
11 HOWEVER, TO ALL THE POWERS GRANTED TO HIS GUARDIAN BY THIS TITLE
12 AND LAWFULLY BY A GOVERNING INSTRUMENT AND TO ALL ORDERS OF THE
13 COURT.

14 § 711. MANDATORY EXERCISE OF JURISDICTION THROUGH ORPHANS'
15 COURT DIVISION IN GENERAL.

16 EXCEPT AS PROVIDED IN SECTION 712 (RELATING TO NONMANDATORY
17 EXERCISE OF JURISDICTION THROUGH THE ORPHANS' COURT DIVISION)
18 AND SECTION 713 (RELATING TO SPECIAL PROVISIONS FOR PHILADELPHIA
19 COUNTY), THE JURISDICTION OF THE COURT OF COMMON PLEAS OVER THE
20 FOLLOWING SHALL BE EXERCISED THROUGH ITS ORPHANS' COURT
21 DIVISION:

22 * * *

23 (10) [INCOMPETENTS'] INCAPACITATED PERSONS' ESTATES.--
24 THE ADMINISTRATION AND DISTRIBUTION OF THE REAL AND PERSONAL
25 PROPERTY OF THE ESTATES OF [INCOMPETENTS] INCAPACITATED
26 PERSONS, EXCEPT WHERE JURISDICTION THEREOF WAS ACQUIRED BY
27 THE COURT OF COMMON PLEAS PRIOR TO JANUARY 1, 1969 UNLESS THE
28 PRESIDENT JUDGE OF SUCH COURT ORDERS THE JURISDICTION OF THE
29 ESTATE TO BE EXERCISED THROUGH THE ORPHANS' COURT DIVISION.

30 * * *

§ 712. NONMANDATORY EXERCISE OF JURISDICTION THROUGH ORPHANS'
COURT DIVISION.

THE JURISDICTION OF THE COURT OF COMMON PLEAS OVER THE
FOLLOWING MAY BE EXERCISED THROUGH EITHER ITS ORPHANS' COURT
DIVISION OR OTHER APPROPRIATE DIVISION:

(1) TITLE TO REAL ESTATE.--THE DETERMINATION OF THE
PERSONS TO WHOM THE TITLE TO REAL ESTATE OF A DECEDENT OR OF
THE CREATOR OF AN ESTATE OR TRUST HAS PASSED BY DEVISE OR
DESCENT OR BY THE TERMS OF THE TRUST INSTRUMENT WHERE
JURISDICTION OF SUCH ESTATE OR TRUST IS EXERCISED THROUGH THE
ORPHANS' COURT DIVISION: PROVIDED, THAT NOTHING HEREIN SHALL
BE CONSTRUED TO RESTRICT THE PROVISIONS OF SECTION 711
(RELATING TO MANDATORY EXERCISE OF JURISDICTION THROUGH
ORPHANS' COURT DIVISION IN GENERAL) RELATING TO DISTRIBUTION
OF REAL ESTATE IN AN ESTATE OR TRUST.

(2) GUARDIAN OF PERSON.--THE APPOINTMENT, CONTROL AND
REMOVAL OF THE GUARDIAN OF THE PERSON OF ANY [INCOMPETENT]
INCAPACITATED PERSON.

(3) OTHER MATTERS.--THE DISPOSITION OF ANY CASE WHERE
THERE ARE SUBSTANTIAL QUESTIONS CONCERNING MATTERS ENUMERATED
IN SECTION 711 AND ALSO MATTERS NOT ENUMERATED IN THAT
SECTION.

(4) POWERS OF ATTORNEY.--ALL MATTERS PERTAINING TO THE
EXERCISE OF POWERS BY ATTORNEYS IN FACT OR AGENTS ACTING
UNDER POWERS OF ATTORNEY AS PROVIDED IN CHAPTER 56 (RELATING
TO POWERS OF ATTORNEY) WHEN THE PRINCIPAL IS OR MAY BE
DECEASED, DISABLED OR INCAPACITATED.

§ 721. VENUE OF DECEDENTS', MINORS' AND [INCOMPETENTS']
INCAPACITATED PERSONS' ESTATES.

WHEN A PENNSYLVANIA COURT HAS JURISDICTION OF A DECEDENT'S, A

1 MINOR'S, OR AN [INCOMPETENT'S] INCAPACITATED PERSON'S ESTATE,
2 EXCEPT AS OTHERWISE PROVIDED BY LAW, THE VENUE FOR ALL PURPOSES
3 SHALL BE AS FOLLOWS:

4 (1) DECEDENTS' ESTATES.--IN THE CASE OF A DECEDENT'S
5 ESTATE, IN THE COUNTY WHERE THE LETTERS ARE GRANTED TO THE
6 PERSONAL REPRESENTATIVE, AND IN THE ABSENCE OF SUCH LETTERS,
7 THEN WHERE THE DECEDENT HAD HIS LAST FAMILY OR PRINCIPAL
8 RESIDENCE, AND IF THE DECEDENT HAD NO DOMICILE IN THE
9 COMMONWEALTH, THEN IN ANY COUNTY WHERE ANY OF HIS PROPERTY IS
10 LOCATED.

11 (2) MINORS' AND [INCOMPETENTS'] INCAPACITATED PERSONS'
12 ESTATES.--IN THE CASE OF A GUARDIAN OF A MINOR OR
13 [INCOMPETENT] INCAPACITATED PERSON APPOINTED BY THE COURT, IN
14 THE COUNTY WHOSE COURT APPOINTED THE GUARDIAN. IN THE CASE OF
15 A GUARDIAN OF A MINOR OR [INCOMPETENT] INCAPACITATED PERSON
16 NOT APPOINTED BY THE COURT, OR WHEN THERE IS A MINOR'S OR
17 [INCOMPETENT'S] INCAPACITATED PERSON'S ESTATE BUT NO
18 GUARDIAN, IN THE COUNTY WHOSE COURT AT THE TIME PROCEEDINGS
19 ARE FIRST INITIATED WOULD HAVE JURISDICTION TO APPOINT A
20 GUARDIAN OF THE ESTATE.

21 § 745. Advertisement of accounts.

22 * * *

23 (b) Manner of advertisement.--The notice shall be advertised
24 at least once a week during the [four] two weeks immediately
25 preceding the time for presentation of the accounts to the
26 division:

27 (1) in the legal publication, if any, designated by rule
28 of court for the publication of legal notices; and

29 (2) in at least one newspaper of general circulation
30 published within the county, and if no such newspaper is

published in that county, then in one such newspaper
published nearest to that county.

§ 777. RIGHT TO JURY TRIAL; DISCRETION OF ORPHANS' COURT
DIVISION.

* * *

(B) DETERMINATION OF [INCOMPETENCY] INCAPACITY.--ANY PERSON
AGAINST WHOM PROCEEDINGS HAVE BEEN INSTITUTED TO ESTABLISH HIS
[INCOMPETENCY] INCAPACITY SHALL BE ENTITLED TO A TRIAL OF SUCH
ISSUE BY A JURY. THE VERDICT OF THE JURY SHALL HAVE THE SAME
EFFECT AS THE VERDICT OF A JURY IN A CASE AT LAW.

* * *

Section 2. Title 20 is amended by adding a section to read:

§ 911. Attestation of certain applications and documents.

Except as provided otherwise in section 3154 (relating to
affidavit and oath), applications and documents submitted to the
register for which attestation is required may be attested
either by an affidavit or by a verified statement. In case of
the latter alternative, the statement shall set forth that it is
subject to the penalties of 18 Pa.C.S. § 4904 (relating to
unsworn falsification to authorities).

Section 3. Sections 2204(a)(8) and (9), 2206 and 2507(2) and
(3) of Title 20 are amended to read:

§ 2204. Disclaimers, releases and charges against elective
share.

(a) Disclaimers.--Except as provided in subsections (b) and
(c), an election by a spouse to take his elective share shall be
deemed a disclaimer of any beneficial interest of the spouse in
the following, to the extent that such interest would otherwise
be payable to or enjoyed by the spouse after the decedent's
death:

1 * * *

2 (8) All intangible or tangible personal property and all
3 real property owned by the decedent and his spouse by the
4 entireties or jointly with right of survivorship, in the
5 proportion that such property represents contributions by the
6 decedent.

7 (9) All intangible or tangible personal property and all
8 real property given to his spouse by the decedent during his
9 lifetime which, or the proceeds of which, are still owned by
10 his spouse at the time of the decedent's death.

11 * * *

12 § 2206. RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE.

<—

13 THE RIGHT OF ELECTION OF THE SURVIVING SPOUSE MAY BE
14 EXERCISED IN WHOLE OR IN PART ONLY DURING HIS LIFETIME BY HIM OR
15 BY HIS ATTORNEY-IN-FACT IN ACCORDANCE WITH SECTION 5603(D)
16 (RELATING TO IMPLEMENTATION OF POWER OF ATTORNEY). IN THE CASE
17 OF A MINOR SPOUSE, THE RIGHT OF ELECTION MAY BE EXERCISED IN
18 WHOLE OR IN PART ONLY BY THE SPOUSE'S GUARDIAN; IN THE CASE OF
19 AN [INCOMPETENT] INCAPACITATED SPOUSE, THE RIGHT OF ELECTION MAY
20 BE EXERCISED IN WHOLE OR IN PART ONLY BY THE SPOUSE'S GUARDIAN
21 OR BY HIS ATTORNEY-IN-FACT IN ACCORDANCE WITH SECTION 5603(D) IF
22 THE POWER OF ATTORNEY QUALIFIES AS A DURABLE POWER OF ATTORNEY
23 UNDER SECTION 5604 (RELATING TO DURABLE POWERS OF ATTORNEY);
24 PROVIDED, THAT, IN EACH CASE, THE ELECTION SHALL BE EXERCISED
25 ONLY UPON ORDER OF THE COURT HAVING JURISDICTION OF THE MINOR'S
26 OR THE [INCOMPETENT'S] INCAPACITATED PERSON'S ESTATE, AFTER
27 FINDING THAT EXERCISE OF THE RIGHT IS ADVISABLE.

28 § 2507. Modification by circumstances.

29 Wills shall be modified upon the occurrence of any of the
30 following circumstances, among others:

1 * * *

2 (2) Divorce.--If the testator is divorced from the bonds
3 of matrimony after making a will, [all provisions] any
4 provision in the will in favor of or relating to his spouse
5 so divorced shall thereby become ineffective for all purposes
6 unless it appears from the will that the provision was
7 intended to survive the divorce.

8 (3) Marriage.--If the testator marries after making a
9 will, the surviving spouse shall receive the share of the
10 estate to which he would have been entitled had the testator
11 died intestate, unless the will shall give him a greater
12 share or unless it appears from the will that the will was
13 made in contemplation of marriage to the surviving spouse.

14 * * *

15 Section 4. Section ~~2514 of Title 20~~ 2514(16.1) AND (16.2) OF <—
16 TITLE 20 ARE AMENDED AND THE SECTION is amended by adding a
17 paragraph to read:

18 § 2514. Rules of interpretation.

19 In the absence of a contrary intent appearing therein, wills
20 shall be construed as to real and personal estate in accordance
21 with the following rules:

22 * * *

23 (16.1) NONADEMPTION; [INCOMPETENCY] INCAPACITY.--IF <—
24 PROPERTY OF AN ADJUDICATED [INCOMPETENT] INCAPACITATED PERSON
25 SPECIFICALLY DEVISED OR BEQUEATHED IS SOLD OR EXCHANGED OR IF
26 A CONDEMNATION AWARD OR INSURANCE PROCEEDS ARE PAID TO THE
27 ESTATE OF AN [INCOMPETENT] INCAPACITATED PERSON AS A RESULT
28 OF CONDEMNATION, FIRE OR CASUALTY, THE SPECIFIC LEGATEE OR
29 DEWISEE HAS THE RIGHT TO THE NET SALE PRICE, THE PROPERTY
30 RECEIVED IN EXCHANGE, THE CONDEMNATION AWARD OR THE INSURANCE

1 PROCEEDS. THIS PARAGRAPH DOES NOT APPLY IF SUBSEQUENT TO THE
2 SALE, EXCHANGE, CONDEMNATION, OR CASUALTY, THE TESTATOR HAS
3 BEEN ADJUDICATED [COMPETENT] AN INCAPACITATED PERSON AND
4 SURVIVES THE ADJUDICATION BY ONE YEAR.

5 (16.2) NONADEMPTION; ATTORNEY-IN-FACT.--IF AN ATTORNEY-
6 IN-FACT, DURING THE TIME THAT HIS PRINCIPAL IS [INCOMPETENT]
7 AN INCAPACITATED PERSON WITHIN THE MEANING OF SECTION 5501
8 (RELATING TO MEANING OF [INCOMPETENT] INCAPACITATED PERSON),
9 SELLS OR EXCHANGES PROPERTY OF THE PRINCIPAL WHICH IS
10 SPECIFICALLY DEvised OR BEQUEATHED, THE SPECIFIC LEGATEE OR
11 DEVISEE HAS THE RIGHT TO THE NET SALE PRICE OR THE PROPERTY
12 RECEIVED IN EXCHANGE. FOR THE PURPOSES OF THIS PARAGRAPH, A
13 SALE OR EXCHANGE OF PROPERTY MADE BY AN ATTORNEY-IN-FACT
14 SHALL BE DEEMED TO HAVE BEEN MADE DURING THE TIME THAT THE
15 PRINCIPAL IS [INCOMPETENT] AN INCAPACITATED PERSON, UNLESS
16 SHOWN TO THE CONTRARY. THIS PARAGRAPH DOES NOT APPLY IF IT IS
17 SHOWN THAT FOR A PERIOD OF AT LEAST ONE YEAR SUBSEQUENT TO
18 THE SALE OR EXCHANGE THE PRINCIPAL WAS NOT [INCOMPETENT] AN
19 INCAPACITATED PERSON WITHIN THE MEANING OF SECTION 5501.

20 * * *

21 (20) Corporate fiduciaries.--Provisions authorizing or
22 restricting investment in the securities or common trust
23 funds of a corporate fiduciary or the exercise of voting
24 rights in its securities shall also apply to the securities
25 or common trust funds of any corporation which is an
26 affiliate of the corporate fiduciary within the meaning of
27 section 1504 of the Internal Revenue Code.

28 Section 5. Section 2515 of Title 20 is amended to read:

29 § 2515. Devise or bequest to trust.

30 A devise or bequest in a will may be made to the trustee of a

1 trust [(including an unfunded life insurance trust, although the
2 settlor has reserved any or all rights of ownership in the
3 insurance contracts) established, in writing], including any
4 unfunded trust, established in writing by the testator or any
5 other person before, concurrently with or after the execution of
6 the will. Such devise or bequest shall not be invalid because
7 the trust is amendable or revocable, or both, or because the
8 trust was amended after execution of the will. Unless the will
9 provides otherwise, the property so devised or bequeathed shall
10 not be deemed held under a testamentary trust of the testator
11 but shall become and be a part of the principal of the trust to
12 which it is given to be administered and disposed of in
13 accordance with the provisions of the instrument establishing
14 that trust and any amendment thereof. An entire revocation of
15 the trust prior to the testator's death shall invalidate the
16 devise or bequest unless the will directs otherwise.

17 Section 6. Title 20 is amended by adding a chapter to read:

18 CHAPTER 27

19 CONTRACTUAL ARRANGEMENTS RELATING TO SUCCESSION

20 Sec.

21 2701. Contracts concerning succession.

22 § 2701. Contracts concerning succession.

23 (a) Establishment of contract.--A contract to die intestate
24 or to make or not to revoke a will or testamentary provision, or
25 an obligation dischargeable only at or after death, can be
26 established in support of a claim against the estate of a
27 decedent only by:

28 (1) provisions of a will of the decedent stating
29 material provisions of the contract;

30 (2) an express reference in a will of the decedent to a

1 contract and extrinsic evidence proving the terms of the
2 contract; or

3 (3) a writing signed by the decedent evidencing the
4 contract.

5 (b) Joint will or mutual wills.--The execution of a joint
6 will or mutual wills does not create a presumption of a contract
7 not to revoke the will or wills.

8 ~~Section 7. Sections 3316, 3321(e), 3503, 3532(a) and (b)(1),~~ <—
9 ~~3701, 3702(a), (b), (c) and (d), 3703, 3706(c) and 5164 of Title~~
10 ~~20 are amended to read:~~

11 SECTION 7. SECTIONS 3122(B), 3155(B), 3182, 3316, 3321(E), <—
12 3324, 3503, 3504, 3532(A) AND (B)(1), 3701, 3702(A), (B), (C)
13 AND (D), 3703, 3706(C), 4112, 4121, 5115, 5144 AND 5164 OF TITLE
14 20 ARE AMENDED TO READ:

15 § 3122. PAYMENT OR DELIVERY OF EXEMPTION.

16 * * *

17 (B) PROPERTY SET ASIDE FOR MINORS OR [INCOMPETENTS]
18 INCAPACITATED PERSONS.--WHEN ANY SPOUSE, CHILD OR PARENT
19 ENTITLED TO ALL OR PART OF THE EXEMPTION IS A MINOR OR
20 [INCOMPETENT] AN INCAPACITATED PERSON, THE GUARDIAN OF HIS
21 ESTATE, AND IF NO SUCH GUARDIAN HAS BEEN APPOINTED THEN THE
22 PERSONAL REPRESENTATIVE, WITHOUT REQUEST MADE TO HIM BY ANYONE,
23 SHALL SELECT, FOR THE USE AND BENEFIT OF THE MINOR OR
24 [INCOMPETENT] INCAPACITATED PERSON, REAL OR PERSONAL PROPERTY TO
25 THE FULL VALUE TO WHICH HE IS ENTITLED, AND IN SO DOING THE
26 GUARDIAN OR PERSONAL REPRESENTATIVE SHALL BE GOVERNED BY THE
27 NECESSITIES OF THE MINOR OR [INCOMPETENT] INCAPACITATED PERSON
28 IN THE CIRCUMSTANCES OF EACH CASE.

29 * * *

30 § 3155. PERSONS ENTITLED.

1 * * *

2 (B) LETTERS OF ADMINISTRATION.--LETTERS OF ADMINISTRATION
3 SHALL BE GRANTED BY THE REGISTER, IN SUCH FORM AS THE CASE SHALL
4 REQUIRE, TO ONE OR MORE OF THOSE HEREINAFTER MENTIONED AND,
5 EXCEPT FOR GOOD CAUSE, IN THE FOLLOWING ORDER:

6 (1) THOSE ENTITLED TO THE RESIDUARY ESTATE UNDER THE
7 WILL.

8 (2) THE SURVIVING SPOUSE.

9 (3) THOSE ENTITLED UNDER THE INTESTATE LAW AS THE
10 REGISTER, IN HIS DISCRETION, SHALL JUDGE WILL BEST ADMINISTER
11 THE ESTATE, GIVING PREFERENCE, HOWEVER, ACCORDING TO THE
12 SIZES OF THE SHARES OF THOSE IN THIS CLASS.

13 (4) THE PRINCIPAL CREDITORS OF THE DECEDENT AT THE TIME
14 OF HIS DEATH.

15 (5) OTHER FIT PERSONS.

16 (6) IF ANYONE OF THE FOREGOING SHALL RENOUNCE HIS RIGHT
17 TO LETTERS OF ADMINISTRATION, THE REGISTER, IN HIS
18 DISCRETION, MAY APPOINT A NOMINEE OF THE PERSON SO RENOUNCING
19 IN PREFERENCE TO THE PERSONS SET FORTH IN ANY SUCCEEDING
20 PARAGRAPH.

21 (7) A GUARDIANSHIP SUPPORT AGENCY SERVING AS GUARDIAN OF
22 AN INCAPACITATED PERSON WHO DIES DURING THE GUARDIANSHIP
23 ADMINISTERED PURSUANT TO SUBCHAPTER F OF CHAPTER 55 (RELATING
24 TO GUARDIANSHIP SUPPORT).

25 * * *

26 § 3182. GROUNDS FOR REMOVAL.

27 THE COURT SHALL HAVE EXCLUSIVE POWER TO REMOVE A PERSONAL
28 REPRESENTATIVE WHEN HE:

29 (1) IS WASTING OR MISMANAGING THE ESTATE, IS OR IS
30 LIKELY TO BECOME INSOLVENT, OR HAS FAILED TO PERFORM ANY DUTY

1 IMPOSED BY LAW; OR

2 [(2) HAS BEEN ADJUDGED A LUNATIC, A HABITUAL DRUNKARD,
3 OR A WEAKMINDED PERSON; OR]

4 (3) HAS BECOME [INCOMPETENT] INCAPACITATED TO DISCHARGE
5 THE DUTIES OF HIS OFFICE BECAUSE OF SICKNESS OR PHYSICAL OR
6 MENTAL INCAPACITY AND HIS [INCOMPETENCY] INCAPACITY IS LIKELY
7 TO CONTINUE TO THE INJURY OF THE ESTATE; OR

8 (4) HAS REMOVED FROM THE COMMONWEALTH OR HAS CEASED TO
9 HAVE A KNOWN PLACE OF RESIDENCE THEREIN, WITHOUT FURNISHING
10 SUCH SECURITY OR ADDITIONAL SECURITY AS THE COURT SHALL
11 DIRECT; OR

12 (5) WHEN, FOR ANY OTHER REASON, THE INTERESTS OF THE
13 ESTATE ARE LIKELY TO BE JEOPARDIZED BY HIS CONTINUANCE IN
14 OFFICE.

15 § 3316. Investment of funds.

16 Subject to his duty to liquidate the estate for prompt
17 distribution and to the provisions of the will, if any, the
18 personal representative may invest the funds of the estate but
19 shall have no duty to do so. Any such investment, except as the
20 court or the will may otherwise authorize or direct, shall be
21 restricted to obligations of the United States or the United
22 States Treasury, of the Commonwealth, or of any political
23 subdivision of the Commonwealth, and to interest bearing
24 deposits authorized by section 7313 (relating to interest-
25 bearing deposit) and to savings accounts in savings associations
26 authorized in section 7310(b) (relating to savings accounts
27 insured by Federal Savings and Loan Insurance Corporation). The
28 personal representative may also make temporary investments as
29 authorized by section 7315.1(b) (relating to retention of cash;
30 temporary investments) without regard to any investment

1 restrictions imposed by the will.

2 § 3321. Nominee registration; corporate fiduciary as attorney-
3 in-fact; deposit of securities in a
4 clearing corporation; book-entry securities.

5 * * *

6 (e) Accounting for book-entry securities.--With respect to
7 [United States Treasury securities and securities of agencies,
8 instrumentalities and establishments of the United States for
9 which] securities which are available in book-entry form [are
10 available] as an alternative to securities in definitive form
11 [under procedures in effect from time to time pursuant to
12 regulations, rules or operating circulars of the United States
13 Treasury, Federal Reserve banks and other agencies,
14 instrumentalities and establishments of the United States], the
15 receipt, holding or transfer of such securities in book-entry
16 form by a bank and trust company, trust company or National bank
17 acting as a sole or joint personal representative, or as an
18 attorney-in-fact for a personal representative, is for all
19 purposes equivalent to the receipt, holding or transfer of such
20 securities in definitive form and no segregation of such book-
21 entry securities shall be required other than by appropriate
22 accounting records to identify the accounts for which such
23 securities are held.

24 § 3324. DEATH OR [INCOMPETENCY] INCAPACITY OF FIDUCIARY. <—

25 THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED
26 FIDUCIARY OR THE GUARDIAN OF AN ADJUDGED [INCOMPETENT]
27 INCAPACITATED FIDUCIARY BY REASON OF HIS POSITION SHALL NOT
28 SUCCEED TO THE ADMINISTRATION OF, OR HAVE THE RIGHT TO POSSESS,
29 ANY ASSET OF AN ESTATE WHICH WAS BEING ADMINISTERED BY THE
30 DECEASED OR [INCOMPETENT] INCAPACITATED FIDUCIARY, EXCEPT TO

1 PROTECT IT PENDING ITS DELIVERY TO THE PERSON ENTITLED TO IT.
2 THE ACCOUNT OF THE DECEASED OR [INCOMPETENT] INCAPACITATED
3 FIDUCIARY MAY BE FILED BY THE FIDUCIARY OF HIS ESTATE AND IT
4 SHALL BE FILED IF THE COURT SHALL SO DIRECT. THE COURT MAY
5 DIRECT THE FIDUCIARY OF A DECEASED OR [INCOMPETENT]
6 INCAPACITATED FIDUCIARY TO MAKE THE DISTRIBUTION AND TO MAKE THE
7 TRANSFERS AND ASSIGNMENTS NECESSARY TO CARRY INTO EFFECT A
8 DECREE OF DISTRIBUTION.

9 § 3503. Notice to parties in interest.

10 The personal representative shall give written notice of the
11 filing of his account and of its call for audit or confirmation
12 [to every unpaid claimant who has given written notice of his
13 claim to the personal representative or his attorney of record,
14 and] to every [other] person known to the [accountant] personal
15 representative to have or assert an interest in the estate as
16 beneficiary, heir, [or] next of kin or claimant, unless the
17 interest of such person has been satisfied.

18 § 3504. REPRESENTATION OF PARTIES IN INTEREST.

<—

19 PERSONS INTERESTED IN THE ESTATE AS BENEFICIARY, HEIR, OR
20 NEXT OF KIN, IF MINORS OR OTHERWISE LEGALLY [INCOMPETENT]
21 INCAPACITATED, AND POSSIBLE UNBORN OR UNASCERTAINED PERSONS,
22 WHEN NOT ALREADY REPRESENTED BY A FIDUCIARY, MAY BE REPRESENTED
23 IN AN ACCOUNTING BY A GUARDIAN OR TRUSTEE AD LITEM, IF THE COURT
24 DEEMS IT NECESSARY. THE COURT MAY DISPENSE WITH THE APPOINTMENT
25 OF A GUARDIAN OR TRUSTEE AD LITEM FOR A PERSON LEGALLY
26 [INCOMPETENT] INCAPACITATED, UNBORN, OR UNASCERTAINED, WHEN
27 THERE IS A LIVING PERSON SUI JURIS HAVING A SIMILAR INTEREST OR
28 WHEN SUCH PERSON IS OR WOULD BE ISSUE OF A LIVING ANCESTOR SUI
29 JURIS AND INTERESTED IN THE ESTATE WHOSE INTEREST IS NOT ADVERSE
30 TO HIS. IF THE WHEREABOUTS OF ANY BENEFICIARY OR NEXT OF KIN IS

1 UNKNOWN, OR IF THERE IS DOUBT AS TO HIS EXISTENCE THE COURT
2 SHALL MAKE SUCH PROVISION FOR SERVICE OF NOTICE AND
3 REPRESENTATION IN THE ACCOUNTING AS IT DEEMS PROPER.

4 § 3532. At risk of personal representative.

5 (a) Rights of claimants against personal representatives.--A
6 personal representative, at his own risk and without the filing,
7 audit or confirmation of his account, may distribute real or
8 personal property and such distribution shall be without
9 liability to any claimant against the decedent [who has not
10 given notice of his claim as provided by this title], unless the
11 claim of such claimant is known to the personal representative
12 within one year after the first complete advertisement of the
13 grant of letters to such personal representative or thereafter
14 but prior to such distribution.

15 (b) Rights of claimants against distributed property.--

16 (1) Personal property.--No claimant shall have any claim
17 against personal property distributed by a personal
18 representative at his own risk pursuant to subsection (a)
19 [hereof], unless the claim of such claimant [has given notice
20 of his claim to the personal representative as provided by
21 this title] is known to the personal representative within
22 one year after the first complete advertisement of the grant
23 of letters[,] or thereafter but prior to such distribution.

24 * * *

25 § 3701. Power of decedent.

26 A testator, settlor, donor or possessor of any appropriate
27 power of appointment may direct how the Federal estate tax or
28 the Federal generation-skipping tax due because of his death,
29 including interest and penalties, shall be apportioned or may
30 grant a discretionary power to another so to direct, but any

1 direction regarding apportionment of the Federal generation-
2 skipping tax must expressly refer to that tax. Any such
3 direction shall take precedence over the provisions of this
4 chapter insofar as the direction provides for the payment of the
5 tax or any part thereof from property the disposition of which
6 can be controlled by the instrument containing the direction or
7 delegating the power to another.

8 § 3702. Equitable apportionment of Federal estate tax.

9 (a) General rule.--Subject to the provisions of section 3701
10 (relating to power of decedent), the Federal estate tax shall be
11 apportioned equitably among all parties interested in property
12 includible in the gross estate for Federal estate tax purposes
13 in proportion to the value of the interest of each party,
14 subject to the rules stated in this section.

15 (b) Pre-residuary.--

16 (1) No Federal estate tax shall be apportioned against a
17 beneficiary of any pre-residuary gift made by will. Any
18 Federal estate tax attributable thereto shall be paid
19 entirely from the residue of the estate and charged in the
20 same manner as a general administration expense of the
21 estate, except that when a portion of the residue of the
22 estate is allowable as a deduction for Federal estate tax
23 purposes the tax shall be paid to the extent possible from
24 the portion of the residue which is not so allowable.

25 (2) No Federal estate tax shall be apportioned against a
26 beneficiary of any pre-residuary gift made by inter vivos
27 trust. Any Federal estate tax attributable thereto shall be
28 paid entirely from the residue of the trust and charged in
29 the same manner as a general administration expense of the
30 trust, except that when a portion of the residue of the trust

1 is allowable as a deduction for Federal estate tax purposes
2 the tax shall be paid to the extent possible from the portion
3 of the residue which is not so allowable.

4 (c) Deductions.--No Federal estate tax shall be apportioned
5 against an interest allowable as a Federal estate tax marital[,
6 orphan's] or charitable deduction (determined and valued without
7 regard to any Pennsylvania inheritance tax or other state or
8 foreign death taxes apportioned against such interest) except as
9 otherwise provided in subsections (b) and (g).

10 (d) Credits.--Any Federal estate tax credit for state or
11 foreign death taxes on property includable in the gross estate
12 for Federal estate tax purposes shall inure to the benefit of
13 the parties chargeable with the payment of the state or foreign
14 death taxes in proportion to the amount of the taxes paid by
15 each party, but any credit inuring to the benefit of a party
16 shall not exceed the Federal estate tax apportionable to that
17 party. Any unified credit against Federal estate tax, credit for
18 tax on prior transfers (sometimes called the credit for property
19 previously taxed) or credit for gift taxes paid by the decedent
20 or his estate with respect to gifts made by the decedent before
21 January 1, 1977, shall inure to the benefit of all parties
22 liable to apportionment in proportion to the amount of Federal
23 estate tax apportioned against each party under the other
24 provisions of this chapter. Any Federal estate tax credit for
25 gift taxes paid by the donee of a gift made before January 1,
26 1977, shall inure to the benefit of the donee.

27 * * *

28 § 3703. Apportionment of Pennsylvania inheritance tax.

29 The Pennsylvania inheritance tax shall be apportioned as
30 provided in [the act of June 15, 1961 (P.L.373, No.207), known

1 as the "Inheritance and Estate Tax Act of 1961."] 72 Pa.C.S. Ch.
2 17 (relating to Inheritance and Estate Tax Act).

3 § 3706. Enforcement of contribution or exoneration of Federal
4 estate tax.

5 * * *

6 (c) Suspending distribution.--Distribution or delivery of
7 property to any party, other than a fiduciary charged with a
8 duty to pay the Federal estate tax, shall not be required of any
9 fiduciary until the Federal estate tax apportionable with
10 respect thereto is paid or, if the Federal estate tax has not
11 been determined and apportionment made, until adequate security
12 for payment is furnished to the fiduciary making the
13 distribution or delivery.

14 * * *

15 § 4112. TO FOREIGN TRUSTEE, GUARDIAN OR COMMITTEE.

<—

16 WHEN A SHARE OF AN ESTATE ADMINISTERED IN THE COMMONWEALTH IS
17 DISTRIBUTABLE TO A NONRESIDENT MINOR, A TRUSTEE SUBJECT TO THE
18 JURISDICTION OF A FOREIGN COURT, OR A NONRESIDENT [INCOMPETENT]
19 INCAPACITATED PERSON, THE COURT MAY AWARD IT TO THE GUARDIAN OR
20 COMMITTEE OF THE NONRESIDENT APPOINTED IN THE FOREIGN
21 JURISDICTION, OR TO SUCH TRUSTEE: PROVIDED, THAT THE COURT SHALL
22 BE SATISFIED, IN ALL CASES WHERE AN APPLICABLE WILL OR TRUST
23 INSTRUMENT DOES NOT DIRECT DISTRIBUTION TO THE FOREIGN GUARDIAN,
24 COMMITTEE OR TRUSTEE, THAT ADEQUATE SECURITY OR OTHER PROTECTION
25 HAS BEEN PROVIDED IN THE DOMICILIARY JURISDICTION BY THE
26 DOMICILIARY LAW FOR THE PROTECTION OF THE PERSONS BENEFICIALLY
27 INTERESTED IN THE SHARE SO AWARDED.

28 § 4121. AWARD TO FOREIGN GUARDIAN WHEN MINOR OR [INCOMPETENT]
29 INCAPACITATED PERSON BECOMES A NONRESIDENT.

30 WHEN THE MINOR OR [INCOMPETENT] INCAPACITATED PERSON FOR

1 WHOSE ESTATE A GUARDIAN HAS BEEN APPOINTED BY THE COURT IS OR
2 BECOMES A NONRESIDENT OF THE COMMONWEALTH, THE COURT, UPON
3 SATISFACTORY PROOF THAT IT WILL BE FOR THE BEST INTERESTS OF THE
4 MINOR OR [INCOMPETENT] INCAPACITATED PERSON AND THAT NO RIGHTS
5 OF A RESIDENT OF THE COMMONWEALTH WILL BE ADVERSELY AFFECTED AND
6 THAT REMOVAL OF THE PROPERTY WILL NOT CONFLICT WITH ANY
7 LIMITATIONS UPON THE RIGHT OF THE MINOR OR [INCOMPETENT]
8 INCAPACITATED PERSON TO SUCH PROPERTY, MAY DIRECT THE LOCALLY
9 APPOINTED GUARDIAN TO TRANSFER THE ASSETS OF THE MINOR OR
10 [INCOMPETENT] INCAPACITATED PERSON WITHIN HIS CONTROL TO A DULY
11 QUALIFIED GUARDIAN OR GUARDIANS IN THE JURISDICTION WHERE THE
12 MINOR OR [INCOMPETENT] INCAPACITATED PERSON RESIDES.

13 § 5115. APPOINTMENT OF GUARDIAN IN CONVEYANCE.

14 ANY PERSON, WHO MAKES A DEED OR GIFT INTER VIVOS OR EXERCISES
15 A RIGHT UNDER AN INSURANCE OR ANNUITY POLICY TO DESIGNATE THE
16 BENEFICIARY TO RECEIVE THE PROCEEDS OF SUCH POLICY, MAY IN SUCH
17 DEED OR IN THE INSTRUMENT CREATING SUCH GIFT OR DESIGNATING SUCH
18 BENEFICIARY, APPOINT A GUARDIAN OF THE ESTATE OR INTEREST OF
19 EACH BENEFICIARY NAMED THEREIN WHO SHALL BE A MINOR OR OTHERWISE
20 [INCOMPETENT] INCAPACITATED. PAYMENT BY AN INSURANCE COMPANY TO
21 THE GUARDIAN OF SUCH BENEFICIARY SO APPOINTED SHALL DISCHARGE
22 THE INSURANCE COMPANY TO THE EXTENT OF SUCH PAYMENT TO THE SAME
23 EFFECT AS PAYMENT TO AN OTHERWISE DULY APPOINTED AND QUALIFIED
24 GUARDIAN.

25 § 5144. POWERS, DUTIES AND LIABILITIES IDENTICAL WITH PERSONAL
26 REPRESENTATIVES.

27 THE PROVISIONS CONCERNING THE POWERS, DUTIES AND LIABILITIES
28 OF A GUARDIAN APPOINTED BY THE COURT SHALL BE THE SAME AS THOSE
29 SET FORTH IN THE FOLLOWING PROVISIONS OF THIS TITLE FOR THE
30 ADMINISTRATION OF A DECEDENT'S ESTATE:

SECTION 3313 (RELATING TO LIABILITY INSURANCE).

SECTION 3314 (RELATING TO CONTINUATION OF BUSINESS).

SECTION 3315 (RELATING TO INCORPORATION OF ESTATE'S
BUSINESS).

SECTION 3317 (RELATING TO CLAIMS AGAINST CO-FIDUCIARY).

SECTION 3318 (RELATING TO REVIVAL OF JUDGMENTS AGAINST
PERSONAL REPRESENTATIVE).

SECTION 3319 (RELATING TO POWER OF ATTORNEY; DELEGATION
OF POWER OVER SUBSCRIPTION RIGHTS AND FRACTIONAL SHARES;
AUTHORIZED DELEGATIONS).

SECTION 3320 (RELATING TO VOTING STOCK BY PROXY).

SECTION 3321 (RELATING TO NOMINEE REGISTRATION; CORPORATE
FIDUCIARY AS ATTORNEY-IN-FACT; DEPOSIT OF SECURITIES IN A
CLEARING CORPORATION; BOOK-ENTRY SECURITIES).

SECTION 3322 (RELATING TO ACCEPTANCE OF DEED IN LIEU OF
FORECLOSURE).

SECTION 3323 (RELATING TO COMPROMISE OF CONTROVERSIES).

SECTION 3324 (RELATING TO DEATH OR [INCOMPETENCY]
INCAPACITY OF FIDUCIARY).

SECTION 3327 (RELATING TO SURVIVING OR REMAINING PERSONAL
REPRESENTATIVES).

SECTION 3328 (RELATING TO DISAGREEMENT OF PERSONAL
REPRESENTATIVES).

SECTION 3331 (RELATING TO LIABILITY OF PERSONAL
REPRESENTATIVES ON CONTRACTS).

SECTION 3332 (RELATING TO INHERENT POWERS AND DUTIES).

§ 5164. Distributions for support and education.

All income received by a guardian of the estate of a minor,
including, subject to the requirements of Federal law relating
thereto, all funds received from the Veterans' Administration,

1 Social Security Administration and other periodic retirement or
2 disability payments under private or government plans, in the
3 exercise of a reasonable discretion, may be expended in the
4 care, maintenance and education of the minor without the
5 necessity of court approval. The court, for cause shown and with
6 only such notice as it considers appropriate in the
7 circumstances, may authorize or direct the payment or
8 application of any or all of the income or principal of the
9 estate of a minor for the care, maintenance or education of the
10 minor, his spouse or children, or for the reasonable funeral
11 expenses of the minor's spouse, child or indigent parent. In
12 proper cases, the court may order payment of amounts directly to
13 the ward for his maintenance or for incidental expenses and may
14 ratify payments made for these purposes.

15 Section 8. Chapter 53 of Title 20 is repealed and ~~a chapter~~ <—
16 ~~is added~~ THE TITLE IS AMENDED BY ADDING A CHAPTER to read: <—

17 CHAPTER 53

18 PENNSYLVANIA UNIFORM TRANSFERS TO

19 MINORS ACT

20 Sec.

21 5301. Short title of chapter.

22 5302. Definitions.

23 5303. Scope and jurisdiction.

24 5304. Nomination of custodian.

25 5305. Transfer by gift or exercise of power of appointment.

26 5306. Transfer authorized by will or trust.

27 5307. Other transfer by fiduciary.

28 5308. Transfer by obligor.

29 5309. Receipt for custodial property.

30 5310. Manner of creating custodial property and effecting

1 transfer.

2 5311. Single custodianship.

3 5312. Validity and effect of transfer.

4 5313. Care of custodial property.

5 5314. Powers of custodian.

6 5315. Use of custodial property.

7 5316. Expenses, compensation and bond of custodian.

8 5317. Exemption of third person from liability.

9 5318. Liability to third persons.

10 5319. Renunciation, resignation, death or removal of

11 custodian.

12 5320. Accounting by and determination of liability of

13 custodian.

14 5321. Termination of custodianship.

15 § 5301. Short title of chapter.

16 This chapter shall be known and may be cited as the

17 Pennsylvania Uniform Transfers to Minors Act.

18 § 5302. Definitions.

19 The following words and phrases when used in this chapter

20 shall have the meanings given to them in this section unless the

21 context clearly indicates otherwise:

22 "Benefit plan." An employer's plan for the benefit of an

23 employee or partner.

24 "Broker." A person lawfully engaged in the business of

25 effecting transactions in securities or commodities for the

26 person's own account or for the account of others.

27 "Custodial property." Any interest in property transferred

28 to a custodian under this chapter and the income from and

29 proceeds of that interest in property.

30 "Custodian." A person so designated under section 5310

1 (relating to manner of creating custodial property and effecting
2 transfer) or a successor or substitute custodian designated
3 under section 5319 (relating to renunciation, resignation, death
4 or removal of custodian).

5 "Financial institution." A bank, trust company, savings
6 institution or credit union chartered and supervised under state
7 or Federal law.

8 "Legal representative." An individual's personal
9 representative or guardian.

10 "Member of the minor's family." The minor's parent,
11 stepparent, spouse, grandparent, brother, sister, uncle or aunt,
12 whether of the whole or half blood or by adoption.

13 "Minor." An individual who has not attained 21 years of age.

14 "Transfer." A transaction that creates custodial property
15 under section 5310.

16 "Transferor." A person who makes a transfer under this
17 chapter.

18 "Trust company." A financial institution, corporation or
19 other legal entity authorized to exercise general trust powers.
20 § 5303. Scope and jurisdiction.

21 (a) Application of chapter.--This chapter applies to a
22 transfer that refers to this chapter in the designation under
23 section 5310(a) (relating to manner of creating custodial
24 property and effecting transfer) by which the transfer is made
25 if, at the time of the transfer, the transferor, the minor or
26 the custodian is a resident of this Commonwealth or the
27 custodial property is located in this Commonwealth. The
28 custodianship created remains subject to this chapter despite a
29 subsequent change in residence of a transferor, the minor or the
30 custodian or the removal of custodial property from this

1 Commonwealth.

2 (b) Jurisdiction over custodian.--A person designated as
3 custodian under this chapter is subject to personal jurisdiction
4 in this Commonwealth with respect to any matter relating to the
5 custodianship.

6 (c) Laws of other states.--A transfer that purports to be
7 made and which is valid under the Uniform Transfers to Minors
8 Act, the Uniform Gifts to Minors Act or a substantially similar
9 act of another state is governed by the law of the designated
10 state and may be executed and is enforceable in this
11 Commonwealth if, at the time of the transfer, the transferor,
12 the minor or the custodian is a resident of the designated state
13 or the custodial property is located in the designated state.

14 § 5304. Nomination of custodian.

15 (a) General rule.--A person having the right to designate
16 the recipient of property transferable upon the occurrence of a
17 future event may revocably nominate a custodian to receive the
18 property for a minor beneficiary upon the occurrence of the
19 event by naming the custodian followed in substance by the
20 words: "as custodian for (name of minor) under the Pennsylvania
21 Uniform Transfers to Minors Act." The nomination may name one or
22 more persons as substitute custodians to whom the property must
23 be transferred, in the order named, if the first nominated
24 custodian dies before the transfer or is unable, declines or is
25 ineligible to serve. The nomination may be made in a will, trust
26 or deed or in an instrument exercising a power of appointment or
27 in a writing designating a beneficiary of contractual rights and
28 registered with or delivered to the payor, issuer or other
29 obligor of the contractual rights.

30 (b) Qualification of custodian.--A custodian nominated under

1 this section must be a person to whom a transfer of property of
2 that kind may be made under section 5310(a) (relating to manner
3 of creating custodial property and effecting transfer).

4 (c) When effective.--The nomination of a custodian under
5 this section does not create custodial property until the
6 nominating instrument becomes irrevocable or a transfer to the
7 nominated custodian is completed under section 5310. Unless the
8 nomination of a custodian has been revoked, upon the occurrence
9 of the future event, the custodianship becomes effective and the
10 custodian shall enforce a transfer of the custodial property
11 pursuant to section 5310.

12 § 5305. Transfer by gift or exercise of power of appointment.

13 A person may make a transfer by irrevocable gift to, or the
14 irrevocable exercise of a power of appointment in favor of, a
15 custodian for the benefit of a minor pursuant to section 5310
16 (relating to manner of creating custodial property and effecting
17 transfer).

18 § 5306. Transfer authorized by will or trust.

19 (a) General rule.--A personal representative or trustee may
20 make an irrevocable transfer pursuant to section 5310 (relating
21 to manner of creating custodial property and effecting transfer)
22 to a custodian for the benefit of a minor as authorized in the
23 governing will or trust.

24 (b) Transfer to custodian.--If the testator or settlor has
25 nominated a custodian under section 5304 (relating to nomination
26 of custodian) to receive the custodial property, the transfer
27 must be made to that person.

28 (c) Designation of custodian.--If the testator or settlor
29 has not nominated a custodian under section 5304, or all persons
30 so nominated as custodian die before the transfer or are unable,

1 decline or are ineligible to serve, the personal representative
2 or the trustee, as the case may be, shall designate the
3 custodian from among those eligible to serve as custodian for
4 property of that kind under section 5310(a).

5 § 5307. Other transfer by fiduciary.

6 (a) Irrevocable transfer by personal representative or
7 trustee.--Subject to subsection (c), a personal representative
8 or trustee may make an irrevocable transfer to another adult or
9 trust company as custodian for the benefit of a minor pursuant
10 to section 5310 (relating to manner of creating custodial
11 property and effecting transfer) in the absence of a will or
12 under a will or trust that does not contain an authorization to
13 do so.

14 (b) Irrevocable transfer by guardian.--Subject to subsection
15 (c), a guardian may make an irrevocable transfer to another
16 adult or trust company as custodian for the benefit of the minor
17 pursuant to section 5310.

18 (c) Additional requirements for transfer.--A transfer under
19 subsection (a) or (b) may be made only if:

20 (1) the personal representative, trustee or guardian
21 considers the transfer to be in the best interest of the
22 minor;

23 (2) the transfer is not prohibited by or inconsistent
24 with provisions of the applicable will, trust agreement or
25 other governing instrument; and

26 (3) the transfer is authorized by the court if it
27 exceeds \$10,000 in value.

28 § 5308. Transfer by obligor.

29 (a) Irrevocable transfer for benefit of minor.--Subject to
30 subsections (b) and (c), a person not subject to section 5306

1 (relating to transfer authorized by will or trust) or 5307
2 (relating to other transfer by fiduciary) who holds property of
3 or owes a liquidated debt to a minor not having a guardian may
4 make an irrevocable transfer to a custodian for the benefit of
5 the minor pursuant to section 5310 (relating to manner of
6 creating custodial property and effecting transfer).

7 (b) Transfer to custodian.--If a person having the right to
8 do so under section 5304 (relating to nomination of custodian)
9 has nominated a custodian under that section to receive the
10 custodial property, the transfer must be made to that person.

11 (c) Transfer to minor's family or trust company.--If no
12 custodian has been nominated under section 5304 or all persons
13 so nominated as custodian die before the transfer or are unable,
14 decline or are ineligible to serve, a transfer under this
15 section may be made to an adult member of the minor's family or
16 to a trust company unless the property exceeds \$10,000 in value.
17 § 5309. Receipt for custodial property.

18 A written acknowledgment of delivery by a custodian
19 constitutes a sufficient receipt and discharge for custodial
20 property transferred to the custodian pursuant to this chapter.

21 § 5310. Manner of creating custodial property and effecting
22 transfer.

23 (a) Creation of custodial property.--Custodial property is
24 created and a transfer is made whenever:

25 (1) An uncertificated security or a certificated
26 security in registered form is either:

27 (i) registered in the name of the transferor, an
28 adult other than the transferor or a trust company,
29 followed in substance by the words: "as custodian for
30 (name of minor) under the Pennsylvania Uniform Transfers

1 to Minors Act"; or

2 (ii) delivered if in certificated form, or any
3 document necessary for the transfer of an uncertificated
4 security is delivered, together with any necessary
5 endorsement to an adult other than the transferor or to a
6 trust company as custodian, accompanied by an instrument
7 in substantially the form set forth in subsection (b).

8 (2) Money is paid or delivered to a broker or financial
9 institution for credit to an account in the name of the
10 transferor, an adult other than the transferor or a trust
11 company, followed in substance by the words: "as custodian
12 for (name of minor) under the Pennsylvania Uniform Transfers
13 to Minors Act."

14 (3) The ownership of a life or endowment insurance
15 policy or annuity contract is either:

16 (i) registered with the issuer in the name of the
17 transferor, an adult other than the transferor or a trust
18 company followed in substance by the words: "as custodian
19 for (name of minor) under the Pennsylvania Uniform
20 Transfers to Minors Act"; or

21 (ii) assigned in a writing delivered to an adult
22 other than the transferor or to a trust company whose
23 name in the assignment is followed in substance by the
24 words: "as custodian for (name of minor) under the
25 Pennsylvania Uniform Transfers to Minors Act."

26 (4) An irrevocable exercise of a power of appointment or
27 an irrevocable present right to future payment under a
28 contract is the subject of a written notification delivered
29 to the payor, issuer or other obligor that the right is
30 transferred to the transferor, an adult other than the

1 transferor or a trust company, whose name in the notification
2 is followed in substance by the words: "as custodian for
3 (name of minor) under the Pennsylvania Uniform Transfers to
4 Minors Act."

5 (5) An interest in real property is recorded in the name
6 of the transferor, an adult other than the transferor or a
7 trust company, followed in substance by the words: "as
8 custodian for (name of minor) under the Pennsylvania Uniform
9 Transfers to Minors Act."

10 (6) A certificate of title issued by a state or the
11 Federal Government which evidences title to tangible personal
12 property is either:

13 (i) issued in the name of the transferor, an adult
14 other than the transferor or a trust company, followed in
15 substance by the words: "as custodian for (name of minor)
16 under the Pennsylvania Uniform Transfers to Minors Act";
17 or

18 (ii) delivered to an adult other than the transferor
19 or to a trust company, endorsed to that person followed
20 in substance by the words: "as custodian for (name of
21 minor) under the Pennsylvania Uniform Transfers to Minors
22 Act."

23 (7) An interest in any property not described in
24 paragraphs (1) through (6) is transferred to an adult other
25 than the transferor or to a trust company by a written
26 instrument in substantially the form set forth in subsection
27 (b).

28 (b) Form.--An instrument in the following form satisfies the
29 requirements of subsection (a)(1)(ii) and (7):

30 "TRANSFER UNDER THE PENNSYLVANIA

1 UNIFORM TRANSFERS TO MINORS ACT

2 I, (name of transferor or name and representative capacity if
3 a fiduciary), hereby transfer to (name of custodian), as
4 custodian for (name of minor) under the Pennsylvania Uniform
5 Transfers to Minors Act, the following: (insert a description
6 of the custodial property sufficient to identify it).

7 Dated:_____

8 _____

9 (Signature)

10 (name of custodian) acknowledges receipt of the property
11 described above as custodian for the minor named above under
12 the Pennsylvania Uniform Transfers to Minors Act.

13 Dated:_____

14 _____

15 (Signature of custodian)"

16 (c) Control of custodial property.--A transferor shall place
17 the custodian in control of the custodial property as soon as
18 practicable.

19 § 5311. Single custodianship.

20 A transfer may be made only for one minor, and only one
21 person may be the custodian. All custodial property held under
22 this chapter by the same custodian for the benefit of the same
23 minor constitutes a single custodianship.

24 § 5312. Validity and effect of transfer.

25 (a) Validity of transfer.--The validity of a transfer made
26 in a manner prescribed in this chapter is not affected by:

27 (1) failure of the transferor to comply with section
28 5310(c) (relating to manner of creating custodial property
29 and effecting transfer) concerning possession and control;

30 (2) designation of an ineligible custodian, except

1 designation of the transferor in the case of property for
2 which the transferor is ineligible to serve as custodian
3 under section 5310(a); or

4 (3) death or incapacity of a person nominated under
5 section 5304 (relating to nomination of custodian) or
6 designated under section 5310 as custodian or the disclaimer
7 of the office by that person.

8 (b) Irrevocability of transfer.--A transfer made pursuant to
9 section 5310 is irrevocable, and the custodial property is
10 indefeasibly vested in the minor, but the custodian has all the
11 rights, powers, duties and authority provided in this chapter,
12 and neither the minor nor the minor's legal representative has
13 any right, power, duty or authority with respect to the
14 custodial property except as provided in this chapter.

15 (c) Incorporation of provisions of this chapter.--By making
16 a transfer, the transferor incorporates in the disposition all
17 the provisions of this chapter and grants to the custodian, and
18 to any third person dealing with a person designated as
19 custodian, the respective powers, rights and immunities provided
20 in this chapter.

21 § 5313. Care of custodial property.

22 (a) Duties of custodian.--A custodian shall:

23 (1) Take control of custodial property.

24 (2) Register or record title to custodial property if
25 appropriate.

26 (3) Collect, hold, manage, invest and reinvest custodial
27 property.

28 (b) Standard of care.--In dealing with custodial property, a
29 custodian shall observe the standard of care that would be
30 observed by a prudent person dealing with property of another

1 and is not limited by any other statute restricting investments
2 by fiduciaries. If a custodian has a special skill or expertise
3 or is named custodian on the basis of representations of a
4 special skill or expertise, the custodian shall use that skill
5 or expertise. However, a custodian, in the custodian's
6 discretion and without liability to the minor or the minor's
7 estate, may retain any custodial property received from a
8 transferor.

9 (c) Life insurance and endowment policies.--A custodian may
10 invest in or pay premiums on life insurance or endowment
11 policies on:

12 (1) the life of the minor only if the minor or the
13 minor's estate is the sole beneficiary; or

14 (2) the life of another person in whom the minor has an
15 insurable interest only to the extent that the minor, the
16 minor's estate or the custodian in the capacity of custodian
17 is the irrevocable beneficiary.

18 (d) Segregation of custodial property.--A custodian at all
19 times shall keep custodial property separate and distinct from
20 all other property in a manner sufficient to identify it clearly
21 as custodial property of the minor. Custodial property
22 consisting of an undivided interest is so identified if the
23 minor's interest is held as a tenant in common and is fixed.
24 Custodial property subject to recordation is so identified if it
25 is recorded, and custodial property subject to registration is
26 so identified if it is either registered or held in an account
27 designated in the name of the custodian, followed in substance
28 by the words: "as a custodian for (name of minor) under the
29 Pennsylvania Uniform Transfers to Minors Act."

30 (e) Records.--A custodian shall keep records of all

1 transactions with respect to custodial property, including
2 information necessary for the preparation of the minor's tax
3 returns, and shall make them available for inspection at
4 reasonable intervals by a parent or legal representative of the
5 minor or by the minor if the minor has attained 14 years of age.
6 § 5314. Powers of custodian.

7 (a) General rule.--A custodian, acting in a custodial
8 capacity, has all the rights, powers and authority over
9 custodial property that unmarried adult owners have over their
10 own property, but a custodian may exercise those rights, powers
11 and authority in that capacity only.

12 (b) Liability for breach of standard of care.--This section
13 does not relieve a custodian from liability for breach of
14 section 5313 (relating to care of custodial property).

15 § 5315. Use of custodial property.

16 (a) Without court order.--A custodian may deliver or pay to
17 the minor or expend for the minor's benefit so much of the
18 custodial property as the custodian considers advisable for the
19 use and benefit of the minor, without court order and without
20 regard to:

21 (1) the duty or ability of the custodian personally or
22 of any other person to support the minor; or

23 (2) any other income or property of the minor which may
24 be applicable or available for that purpose.

25 (b) With court order.--On petition of an interested person
26 or the minor if the minor has attained 14 years of age, the
27 court may order the custodian to deliver or pay to the minor or
28 expend for the minor's benefit so much of the custodial property
29 as the court considers advisable for the use and benefit of the
30 minor.

(c) Obligation of support not affected.--A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ 5316. Expenses, compensation and bond of custodian.

(a) Expenses.--A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Compensation.--Except for one who is a transferor under section 5305 (relating to transfer by gift or exercise of power of appointment), a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Bond.--Except as provided in section 5319(f) (relating to renunciation, resignation, death or removal of custodian), a custodian need not give a bond.

§ 5317. Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

1 (4) the propriety of the application of any property of
2 the minor delivered to the purported custodian.

3 § 5318. Liability to third persons.

4 (a) Claim against custodial property.--Any claim based on
5 the following may be asserted against the custodial property by
6 proceeding against the custodian in the custodial capacity,
7 whether or not the custodian or the minor is personally liable:

8 (1) A contract entered into by a custodian acting in a
9 custodial capacity.

10 (2) An obligation arising from the ownership or control
11 of custodial property.

12 (3) A tort committed during the custodianship.

13 (b) Limitation on custodian's liability.--A custodian is not
14 personally liable:

15 (1) on a contract properly entered into in the custodial
16 capacity unless the custodian fails to reveal that capacity
17 and to identify the custodianship in the contract; or

18 (2) for an obligation arising from control of custodial
19 property or for a tort committed during the custodianship
20 unless the custodian is personally at fault.

21 (c) Limitation on minor's personal liability.--A minor is
22 not personally liable for an obligation arising from ownership
23 of custodial property or for a tort committed during the
24 custodianship unless the minor is personally at fault.

25 § 5319. Renunciation, resignation, death or removal of
26 custodian.

27 (a) Renunciation.--A person nominated under section 5304
28 (relating to nomination of custodian) or designated under
29 section 5310 (relating to manner of creating custodial property
30 and effecting transfer) as custodian may decline to serve by

1 delivering a valid disclaimer under Chapter 62 (relating to
2 disclaimers) to the person who made the nomination or to the
3 transferor or the transferor's legal representative. If the
4 event giving rise to a transfer has not occurred and no
5 substitute custodian able, willing and eligible to serve was
6 nominated under section 5304, the person who made the nomination
7 may nominate a substitute custodian under section 5304.
8 Otherwise, the transferor or the transferor's legal
9 representative shall designate a substitute custodian at the
10 time of the transfer. In either case, the substitute custodian
11 shall be from among the persons eligible to serve as custodian
12 for that kind of property under section 5310(a). The custodian
13 so designated has the rights of a successor custodian.

14 (b) Designation of trust company or adult as successor
15 custodian.--A custodian at any time may designate a trust
16 company or an adult other than a transferor under section 5305
17 (relating to transfer by gift or exercise of power of
18 appointment) as successor custodian by executing and dating an
19 instrument of designation before a subscribing witness other
20 than the successor. If the instrument of designation does not
21 contain or is not accompanied by the resignation of the
22 custodian, the designation of the successor does not take effect
23 until the custodian resigns, dies, becomes incapacitated or is
24 removed.

25 (c) Resignation.--A custodian may resign at any time by
26 delivering written notice to the minor if the minor has attained
27 14 years of age and to the successor custodian and by delivering
28 the custodial property to the successor custodian.

29 (d) Ineligibility, death or incapacitation.--If a custodian
30 is ineligible, dies or becomes incapacitated without having

1 effectively designated a successor and the minor has attained 14
2 years of age, the minor may designate as successor custodian, in
3 the manner prescribed in subsection (b), an adult member of the
4 minor's family, a guardian of the minor or a trust company. If
5 the minor has not attained 14 years of age or fails to act
6 within 60 days after the ineligibility, death or incapacity, the
7 guardian of the minor becomes successor custodian. If the minor
8 has no guardian or the guardian declines to act, the transferor,
9 the legal representative of the transferor or of the custodian,
10 an adult member of the minor's family or any other interested
11 person may petition the court to designate a successor
12 custodian.

13 (e) Transfer of custodial property and records to successor
14 custodian.--A custodian who declines to serve under subsection
15 (a) or resigns under subsection (c), or the legal representative
16 of a deceased or incapacitated custodian, as soon as
17 practicable, shall put the custodial property and records in the
18 possession and control of the successor custodian. The successor
19 custodian by action may enforce the obligation to deliver
20 custodial property and records and becomes responsible for each
21 item as received.

22 (f) Removal for cause.--A transferor, the legal
23 representative of a transferor, an adult member of the minor's
24 family, a guardian of the person of the minor, the guardian of
25 the minor or the minor if the minor has attained 14 years of age
26 may petition the court to remove the custodian for cause and to
27 designate a successor custodian other than a transferor under
28 section 5305 or to require the custodian to give appropriate
29 bond.

30 § 5320. Accounting by and determination of liability of

1 custodian.

2 (a) Petition.--A minor who has attained 14 years of age, the
3 minor's guardian of the person or legal representative, an adult
4 member of the minor's family, a transferor or a transferor's
5 legal representative may petition the court for:

6 (1) an accounting by the custodian or the custodian's
7 legal representative; or

8 (2) a determination of responsibility, as between the
9 custodial property and the custodian personally, for claims
10 against the custodial property unless the responsibility has
11 been adjudicated in an action under section 5318 (relating to
12 liability to third persons) to which the minor or the minor's
13 legal representative was a party.

14 (b) Petition by successor custodian for accounting by
15 predecessor.--A successor custodian may petition the court for
16 an accounting by the predecessor custodian.

17 (c) Court order to account.--The court, in a proceeding
18 under this chapter or in any other proceeding, may require or
19 permit the custodian or the custodian's legal representative to
20 account.

21 (d) Court order when custodian removed.--If a custodian is
22 removed under section 5319(f) (relating to removal for cause),
23 the court shall require an accounting and order delivery of the
24 custodial property and records to the successor custodian and
25 the execution of all instruments required for transfer of the
26 custodial property.

27 § 5321. Termination of custodianship.

28 The custodian shall transfer in an appropriate manner the
29 custodial property to the minor or the minor's estate upon the
30 earlier of:

1 (1) the minor's attainment of 21 years of age with
2 respect to custodial property transferred under section 5305
3 (relating to transfer by gift or exercise of power of
4 appointment) or 5306 (relating to transfer authorized by will
5 or trust);

6 (2) the minor's attainment of majority under the laws of
7 this Commonwealth other than this chapter with respect to
8 custodial property transferred under section 5307 (relating
9 to other transfer by fiduciary) or 5308 (relating to transfer
10 by obligor); or

11 (3) the minor's death.

12 ~~Section 9. Sections 5513, 5536(b), 5601, 5603(a), 5604(b),~~ <—
13 ~~5704 and 6111.1 of Title 20 are amended to read:~~

14 ~~§ 5513. Temporary guardian.~~

15 ~~Notwithstanding the provisions of section 5511 (relating to~~
16 ~~petition and hearing), the court, upon petition and a hearing at~~
17 ~~which good cause is shown, may appoint a temporary guardian or~~
18 ~~guardians of the person or estate of a person alleged to be~~
19 ~~incompetent, when it appears that a failure to make such~~
20 ~~appointment will result in irreparable harm to the person or~~
21 ~~estate of the alleged incompetent. The provisions of section~~
22 ~~5511 shall be applicable to such proceedings, except that only~~
23 ~~such notice of the petition and hearing shall be required as~~
24 ~~shall appear to the court to be feasible in the circumstances,~~
25 ~~and need not be given at such times or to such persons as would~~
26 ~~be required by the provisions of section 5511 in a proceeding~~
27 ~~for the appointment of a guardian. A temporary guardian so~~
28 ~~appointed for the person or estate of an alleged incompetent~~
29 ~~shall only have and be subject to such powers, duties and~~
30 ~~liabilities and serve for such time as the court shall direct in~~

~~its decree. The court may also appoint a temporary guardian of the person pursuant to this section for an alleged incompetent who is present in this Commonwealth but is domiciled outside of this Commonwealth, regardless of whether the alleged incompetent has property in this Commonwealth.~~

~~§ 5536. Distributions of income and principal during incompetency.~~

~~* * *~~

~~(b) Estate plan. The court, upon petition and with notice to all parties in interest, shall have the power to substitute its judgment for that of the incompetent with respect to the estate and affairs of the incompetent for the benefit of the incompetent, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:~~

~~(1) Make gifts, outright or in trust.~~

~~(2) Convey, release or disclaim his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.~~

~~(3) Release or disclaim his powers as trustee, personal representative, custodian for minors, or guardian.~~

~~(4) Exercise, release or disclaim his powers as donee of a power of appointment.~~

~~(5) Enter into contracts.~~

~~(6) Create for the benefit of the incompetent or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.~~

~~(7) Exercise options of the incompetent to purchase or exchange securities or other property.~~

* * *

SUBCHAPTER A

[MEANING OF INCOMPETENT]

GENERAL PROVISIONS

* * *

§ 5501. MEANING OF [INCOMPETENT] INCAPACITATED PERSON.

["INCOMPETENT" MEANS A PERSON WHO, BECAUSE OF INFIRMITIES OF OLD AGE, MENTAL ILLNESS, MENTAL DEFICIENCY OR RETARDATION, DRUG ADDICTION OR INEBRIETY:

(1) IS UNABLE TO MANAGE HIS PROPERTY, OR IS LIABLE TO DISSIPATE IT OR BECOME THE VICTIM OF DESIGNING PERSONS; OR

(2) LACKS SUFFICIENT CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS PERSON.]

"INCAPACITATED PERSON" MEANS AN ADULT WHOSE ABILITY TO
RECEIVE AND EVALUATE INFORMATION EFFECTIVELY AND COMMUNICATE
DECISIONS IN ANY WAY IS IMPAIRED TO SUCH A SIGNIFICANT EXTENT
THAT HE IS PARTIALLY OR TOTALLY UNABLE TO MANAGE HIS FINANCIAL
RESOURCES OR TO MEET ESSENTIAL REQUIREMENTS FOR HIS PHYSICAL
HEALTH AND SAFETY.

SECTION 10. TITLE 20 IS AMENDED BY ADDING A SECTION TO READ:

§ 5502. PURPOSE OF CHAPTER.

RECOGNIZING THAT EVERY INDIVIDUAL HAS UNIQUE NEEDS AND
DIFFERING ABILITIES, IT IS THE PURPOSE OF THIS CHAPTER TO
PROMOTE THE GENERAL WELFARE OF ALL CITIZENS BY ESTABLISHING A
SYSTEM WHICH PERMITS INCAPACITATED PERSONS TO PARTICIPATE AS
FULLY AS POSSIBLE IN ALL DECISIONS WHICH AFFECT THEM; WHICH
ASSISTS THESE PERSONS IN MEETING THE ESSENTIAL REQUIREMENTS FOR
THEIR PHYSICAL HEALTH AND SAFETY, PROTECTING THEIR RIGHTS,
MANAGING THEIR FINANCIAL RESOURCES AND DEVELOPING OR REGAINING
THEIR ABILITIES TO THE MAXIMUM EXTENT POSSIBLE; AND WHICH

1 ACCOMPLISHES THESE OBJECTIVES THROUGH THE USE OF THE LEAST
2 RESTRICTIVE ALTERNATIVE; AND RECOGNIZING FURTHER THAT WHEN
3 GUARDIANSHIP SERVICES ARE NECESSARY, IT IS IMPORTANT TO
4 FACILITATE THE FINDING OF SUITABLE INDIVIDUALS OR ENTITIES
5 WILLING TO SERVE AS GUARDIANS.

6 SECTION 11. SECTIONS 5505, 5511 AND 5512 OF TITLE 20 ARE
7 AMENDED TO READ:

8 § 5505. PROVISIONS SIMILAR TO SMALL ESTATES OF MINORS.

9 THE PROVISIONS CONCERNING SMALL ESTATES OF [INCOMPETENTS]
10 INCAPACITATED PERSONS SHALL BE THE SAME AS ARE SET FORTH IN THE
11 FOLLOWING PROVISIONS OF THIS TITLE RELATING TO MINORS' ESTATES:

12 SECTION 5101 (RELATING TO WHEN GUARDIAN UNNECESSARY).

13 SECTION 5102 (RELATING TO POWER OF NATURAL GUARDIAN).

14 SECTION 5103 (RELATING TO SEQUESTERED DEPOSIT).

15 § 5511. PETITION AND HEARING; [EXAMINATION BY COURT-APPOINTED
16 PHYSICIAN] INDEPENDENT EVALUATION.

17 (A) RESIDENT.--THE COURT, UPON PETITION [AND A HEARING AT
18 WHICH GOOD CAUSE IS SHOWN,] AND HEARING AND UPON THE
19 PRESENTATION OF CLEAR AND CONVINCING EVIDENCE, MAY FIND A PERSON
20 DOMICILED IN THE COMMONWEALTH TO BE [INCOMPETENT] INCAPACITATED
21 AND APPOINT A GUARDIAN OR GUARDIANS OF HIS PERSON OR ESTATE. THE
22 PETITIONER MAY BE ANY PERSON INTERESTED IN THE ALLEGED
23 [INCOMPETENT'S] INCAPACITATED PERSON'S WELFARE. THE COURT MAY
24 DISMISS A PROCEEDING WHERE IT [FINDS AS A FACT] DETERMINES THAT
25 THE PROCEEDING HAS NOT BEEN INSTITUTED TO AID OR BENEFIT THE
26 ALLEGED [INCOMPETENT. NOTICE] INCAPACITATED PERSON, OR THAT THE
27 PETITION IS INCOMPLETE OR FAILS TO PROVIDE SUFFICIENT FACTS TO
28 PROCEED. WRITTEN NOTICE OF THE PETITION AND HEARING SHALL BE
29 GIVEN IN LARGE TYPE AND IN SIMPLE LANGUAGE TO THE ALLEGED
30 INCAPACITATED PERSON. THE NOTICE SHALL INDICATE THE PURPOSE AND

1 SERIOUSNESS OF THE PROCEEDING AND THE RIGHTS THAT CAN BE LOST AS
2 A RESULT OF THE PROCEEDING. IT SHALL INCLUDE THE DATE, TIME AND
3 PLACE OF THE HEARING AND AN EXPLANATION OF ALL RIGHTS, INCLUDING
4 THE RIGHT TO COUNSEL AND THE RIGHT TO HAVE COUNSEL PAID FOR IF
5 IT CANNOT BE AFFORDED. THE SUPREME COURT SHALL ESTABLISH A
6 UNIFORM CITATION FOR THIS PURPOSE. A COPY OF THE PETITION SHALL
7 BE ATTACHED. PERSONAL SERVICE SHALL BE MADE ON THE ALLEGED
8 INCAPACITATED PERSON AND THE CONTENTS AND TERMS OF THE PETITION
9 SHALL BE EXPLAINED TO THE MAXIMUM EXTENT POSSIBLE IN LANGUAGE
10 AND TERMS THE INDIVIDUAL IS MOST LIKELY TO UNDERSTAND. SERVICE
11 SHALL BE NO LESS THAN 20 DAYS IN ADVANCE OF THE HEARING. IN
12 ADDITION, NOTICE OF THE PETITION AND HEARING SHALL BE GIVEN IN
13 SUCH MANNER AS THE COURT SHALL DIRECT [TO THE ALLEGED
14 INCOMPETENT,] TO ALL PERSONS RESIDING WITHIN THE COMMONWEALTH
15 WHO ARE SUI JURIS AND WOULD BE ENTITLED TO SHARE IN THE ESTATE
16 OF THE ALLEGED [INCOMPETENT] INCAPACITATED PERSON IF HE DIED
17 INTESTATE AT THAT TIME, TO THE PERSON OR INSTITUTION PROVIDING
18 RESIDENTIAL SERVICES TO THE ALLEGED INCAPACITATED PERSON AND TO
19 SUCH OTHER PARTIES AS THE COURT MAY DIRECT, INCLUDING OTHER
20 SERVICE PROVIDERS. THE HEARING MAY BE CLOSED TO THE PUBLIC AND
21 WITHOUT A JURY UNLESS THE ALLEGED [INCOMPETENT] INCAPACITATED
22 PERSON OR HIS COUNSEL OBJECTS. THE HEARING SHALL BE CLOSED AND
23 WITH OR WITHOUT A JURY IF THE PERSON ALLEGED TO BE [INCOMPETENT]
24 INCAPACITATED OR HIS COUNSEL SO REQUESTS. THE HEARING MAY BE
25 HELD AT THE RESIDENCE OF THE ALLEGED INCAPACITATED PERSON. THE
26 ALLEGED [INCOMPETENT] INCAPACITATED PERSON SHALL BE PRESENT AT
27 THE HEARING UNLESS:

28 [(I)] (1) THE COURT IS SATISFIED, UPON THE
29 [PRESENTATION OF POSITIVE TESTIMONY, THAT BECAUSE OF]
30 DEPOSITION OR TESTIMONY OF, OR SWORN STATEMENT BY A PHYSICIAN

1 OR LICENSED PSYCHOLOGIST, THAT HIS PHYSICAL OR MENTAL
2 CONDITION [HIS WELFARE WOULD NOT BE PROMOTED] WOULD BE HARMED
3 BY HIS PRESENCE; OR

4 [(II)] (2) IT IS IMPOSSIBLE FOR HIM TO BE PRESENT
5 BECAUSE OF HIS ABSENCE FROM THE COMMONWEALTH. IT SHALL NOT BE
6 NECESSARY FOR THE ALLEGED [INCOMPETENT] INCAPACITATED PERSON
7 TO BE REPRESENTED BY A GUARDIAN AD LITEM IN THE PROCEEDING.
8 PETITIONER SHALL BE REQUIRED TO NOTIFY THE COURT AT LEAST SEVEN
9 DAYS PRIOR TO THE HEARING IF COUNSEL HAS NOT BEEN RETAINED BY OR
10 ON BEHALF OF THE ALLEGED INCAPACITATED PERSON. IN AN APPROPRIATE
11 CASE, COUNSEL SHALL BE APPOINTED TO REPRESENT THE ALLEGED
12 INCAPACITATED PERSON IN ANY MATTER FOR WHICH COUNSEL HAS NOT
13 BEEN RETAINED BY OR ON BEHALF OF THAT INDIVIDUAL.

14 (B) NONRESIDENT.--THE COURT MAY FIND A PERSON NOT DOMICILED
15 IN THE COMMONWEALTH, HAVING PROPERTY IN THE COMMONWEALTH, TO BE
16 [INCOMPETENT] INCAPACITATED AND MAY APPOINT A GUARDIAN OF HIS
17 ESTATE. THE APPOINTMENT MAY BE MADE AFTER PETITION, HEARING AND
18 NOTICE, AS IN THE CASE OF A PERSON DOMICILED IN THE
19 COMMONWEALTH, OR UPON THE SUBMISSION OF AN EXEMPLIFIED COPY OF A
20 DECREE ESTABLISHING HIS [INCOMPETENCY] INCAPACITY IN ANOTHER
21 JURISDICTION. THE COURT SHALL GIVE PREFERENCE IN ITS APPOINTMENT
22 TO THE FOREIGN GUARDIAN OF THE NONRESIDENT [INCOMPETENT]
23 INCAPACITATED PERSON, UNLESS IT FINDS THAT SUCH APPOINTMENT WILL
24 NOT BE FOR THE BEST INTERESTS OF THE [INCOMPETENT] INCAPACITATED
25 PERSON.

26 [(C) COURT-APPOINTED PHYSICIAN.--UPON THE FILING OF A
27 PETITION THE ALLEGED INCOMPETENT MAY BE EXAMINED BY A PHYSICIAN
28 APPOINTED BY THE COURT WHO SHALL SUBMIT HIS REPORT IN WRITING TO
29 THE COURT AND TO THE PARTIES BEFORE THE HEARING.]

30 (C) PAYMENT OF CERTAIN COSTS.--IF THE ALLEGED INCAPACITATED

1 PERSON IS UNABLE TO PAY FOR COUNSEL OR FOR THE EVALUATION, OR IF
2 PAYMENT WOULD RESULT IN SUBSTANTIAL FINANCIAL HARDSHIP, THE
3 COURT SHALL ORDER THE COUNTY TO PAY THESE COSTS. THESE COSTS
4 SHALL BE REIMBURSED BY THE COMMONWEALTH IN THE FOLLOWING FISCAL
5 YEAR.

6 (D) INDEPENDENT EVALUATION.--THE COURT, UPON ITS OWN MOTION
7 OR UPON PETITION BY THE ALLEGED INCAPACITATED PERSON FOR CAUSE
8 SHOWN, SHALL ORDER AN INDEPENDENT EVALUATION WHICH SHALL MEET
9 THE REQUIREMENTS OF SECTION 5518 (RELATING TO EVIDENCE OF
10 INCAPACITY). THE COURT SHALL GIVE DUE CONSIDERATION TO THE
11 APPOINTMENT OF AN EVALUATOR NOMINATED BY THE ALLEGED
12 INCAPACITATED PERSON. IF THE ALLEGED INCAPACITATED PERSON IS
13 UNABLE TO PAY FOR THE INDEPENDENT EVALUATION OR IF PAYMENT WOULD
14 RESULT IN SUBSTANTIAL FINANCIAL HARDSHIP, COSTS OF THE
15 INDEPENDENT EVALUATION SHALL BE PAID BY THE COURT AND BE
16 REIMBURSED BY THE COMMONWEALTH IN THE FOLLOWING FISCAL YEAR.

17 (E) PETITION CONTENTS.--THE COURT SHALL DEVELOP AN EASY TO
18 USE FORM FOR GUARDIANSHIP PETITIONS. THE PETITION SHALL INCLUDE
19 THE NAME, AGE, RESIDENCE AND POST OFFICE ADDRESS OF THE ALLEGED
20 INCAPACITATED PERSON; THE NAMES AND ADDRESSES OF THE SPOUSE,
21 PARENTS AND PRESUMPTIVE ADULT HEIRS OF THE ALLEGED INCAPACITATED
22 PERSON; THE NAME AND ADDRESS OF THE PERSON OR INSTITUTION
23 PROVIDING RESIDENTIAL SERVICES TO THE ALLEGED INCAPACITATED
24 PERSON; THE NAMES AND ADDRESSES OF OTHER SERVICE PROVIDERS; THE
25 NAME AND ADDRESS OF THE PERSON OR ENTITY WHOM PETITIONER ASKS TO
26 BE APPOINTED GUARDIAN; THE PROPOSED GUARDIAN'S AVERMENT THAT
27 THERE IS NO INTEREST ADVERSE TO THE ALLEGED INCAPACITATED
28 PERSON; THE REASONS WHY GUARDIANSHIP IS SOUGHT; A DESCRIPTION OF
29 THE FUNCTIONAL LIMITATIONS AND PHYSICAL AND MENTAL CONDITION OF
30 THE ALLEGED INCAPACITATED PERSON; THE STEPS TAKEN TO FIND LESS

1 RESTRICTIVE ALTERNATIVES; THE SPECIFIC AREAS OF INCAPACITY OVER
2 WHICH IT IS REQUESTED THAT THE GUARDIAN BE ASSIGNED POWERS; AND
3 THE QUALIFICATIONS OF THE PROPOSED GUARDIAN. IF A LIMITED OR
4 PLENARY GUARDIAN OF THE ESTATE IS SOUGHT, THE PETITION SHALL
5 ALSO INCLUDE THE GROSS VALUE OF THE ESTATE AND NET INCOME FROM
6 ALL SOURCES TO THE EXTENT KNOWN.

7 § 5512. COUNTY OF APPOINTMENT; QUALIFICATIONS.

8 (A) RESIDENT [INCOMPETENT] INCAPACITATED PERSON.--A GUARDIAN
9 OF THE PERSON OR ESTATE OF AN [INCOMPETENT] INCAPACITATED PERSON
10 MAY BE APPOINTED BY THE COURT OF THE COUNTY IN WHICH THE
11 [INCOMPETENT] INCAPACITATED PERSON IS DOMICILED, IS A RESIDENT,
12 OR IS RESIDING IN A LONG-TERM CARE FACILITY.

13 (B) NONRESIDENT [INCOMPETENT] INCAPACITATED PERSON.--A
14 GUARDIAN OF THE ESTATE WITHIN THE COMMONWEALTH OF AN
15 [INCOMPETENT] INCAPACITATED PERSON DOMICILED OUTSIDE OF THE
16 COMMONWEALTH MAY BE APPOINTED BY THE COURT OF THE JUDICIAL
17 DISTRICT HAVING JURISDICTION OF A DECEDENT'S ESTATE OR OF A
18 TRUST IN WHICH THE [INCOMPETENT] INCAPACITATED PERSON HAS AN
19 INTEREST. WHEN THE NONRESIDENT [INCOMPETENT'S] INCAPACITATED
20 PERSON'S ESTATE IS DERIVED OTHERWISE THAN FROM A DECEDENT'S
21 ESTATE OR A TRUST WITHIN THE COMMONWEALTH, A GUARDIAN MAY BE
22 APPOINTED BY THE COURT OF ANY COUNTY WHERE AN ASSET OF THE
23 [INCOMPETENT] INCAPACITATED PERSON IS LOCATED.

24 (C) EXCLUSIVENESS OF APPOINTMENT.--WHEN A COURT HAS
25 APPOINTED A GUARDIAN OF [AN INCOMPETENT'S] THE PERSON OR ESTATE
26 OF AN INCAPACITATED PERSON PURSUANT TO SUBSECTION (A) OR (B) [OF
27 THIS SECTION], NO OTHER COURT SHALL APPOINT A SIMILAR GUARDIAN
28 FOR THE [INCOMPETENT] INCAPACITATED PERSON WITHIN THE
29 COMMONWEALTH.

30 SECTION 12. TITLE 20 IS AMENDED BY ADDING SECTIONS TO READ:

1 § 5512.1. DETERMINATION OF INCAPACITY AND APPOINTMENT OF
2 GUARDIAN.

3 (A) DETERMINATION OF INCAPACITY.--IN RESPONSE TO A PETITION
4 FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ESTATE, THE
5 COURT SHALL CONSIDER AND MAKE SPECIFIC FINDINGS OF FACT
6 CONCERNING:

7 (1) THE NATURE OF ANY CONDITION OR DISABILITY WHICH
8 IMPAIRS THE INDIVIDUAL'S CAPACITY TO MAKE AND COMMUNICATE
9 DECISIONS.

10 (2) THE EXTENT OF THE INDIVIDUAL'S CAPACITY TO MAKE AND
11 COMMUNICATE DECISIONS.

12 (3) THE NEED FOR GUARDIANSHIP SERVICES, IF ANY, IN LIGHT
13 OF SUCH FACTORS AS THE AVAILABILITY OF FAMILY, FRIENDS AND
14 OTHER SUPPORTS TO ASSIST THE INDIVIDUAL IN MAKING DECISIONS;
15 AND IN LIGHT OF THE EXISTENCE, IF ANY, OF ADVANCE DIRECTIVES
16 SUCH AS DURABLE POWERS OF ATTORNEY OR TRUSTS.

17 (4) THE TYPE OF GUARDIAN, LIMITED OR PLENARY, OF THE
18 PERSON OR ESTATE, NEEDED BASED ON THE NATURE OF ANY CONDITION
19 OR DISABILITY AND THE CAPACITY TO MAKE AND COMMUNICATE
20 DECISIONS; THE COURT SHALL PREFER LIMITED GUARDIANSHIP.

21 (5) THE DURATION OF THE GUARDIANSHIP.

22 (B) LIMITED GUARDIAN OF THE PERSON.--UPON A FINDING THAT THE
23 PERSON IS PARTIALLY INCAPACITATED AND IN NEED OF GUARDIANSHIP
24 SERVICES, THE COURT SHALL ENTER AN ORDER APPOINTING A LIMITED
25 GUARDIAN OF THE PERSON WITH POWERS CONSISTENT WITH THE COURT'S
26 FINDINGS OF LIMITATIONS, WHICH MAY INCLUDE:

27 (1) GENERAL CARE, MAINTENANCE AND CUSTODY OF THE
28 INCAPACITATED PERSON.

29 (2) DESIGNATING THE PLACE FOR THE INCAPACITATED PERSON
30 TO LIVE.

1 (3) ASSURING THAT THE INCAPACITATED PERSON RECEIVES SUCH
2 TRAINING, EDUCATION, MEDICAL AND PSYCHOLOGICAL SERVICES AND
3 SOCIAL AND VOCATIONAL OPPORTUNITIES, AS APPROPRIATE, AS WELL
4 AS ASSISTING THE INCAPACITATED PERSON IN THE DEVELOPMENT OF
5 MAXIMUM SELF-RELIANCE AND INDEPENDENCE.

6 (4) PROVIDING REQUIRED CONSENTS OR APPROVALS ON BEHALF
7 OF THE INCAPACITATED PERSON.

8 (C) PLENARY GUARDIAN OF THE PERSON.--THE COURT MAY APPOINT A
9 PLENARY GUARDIAN OF THE PERSON ONLY UPON A FINDING THAT THE
10 PERSON IS TOTALLY INCAPACITATED AND IN NEED OF PLENARY
11 GUARDIANSHIP SERVICES.

12 (D) LIMITED GUARDIAN OF THE ESTATE.--UPON A FINDING THAT THE
13 PERSON IS PARTIALLY INCAPACITATED AND IN NEED OF GUARDIANSHIP
14 SERVICES, THE COURT SHALL ENTER AN ORDER APPOINTING A LIMITED
15 GUARDIAN OF THE ESTATE WITH POWERS CONSISTENT WITH THE COURTS
16 FINDING OF LIMITATIONS, WHICH SHALL SPECIFY THE PORTION OF
17 ASSETS OR INCOME OVER WHICH THE GUARDIAN OF THE ESTATE IS
18 ASSIGNED POWERS AND DUTIES.

19 (E) PLENARY GUARDIAN OF THE ESTATE.--A COURT MAY APPOINT A
20 PLENARY GUARDIAN OF THE ESTATE ONLY UPON A FINDING THAT THE
21 PERSON IS TOTALLY INCAPACITATED AND IN NEED OF PLENARY
22 GUARDIANSHIP SERVICES.

23 (F) NO PRESUMPTION.--NO PRESUMPTION OF INCAPACITY SHALL BE
24 RAISED FROM THE ALLEGED INCAPACITATED PERSON'S
25 INSTITUTIONALIZATION.

26 (G) LEGAL RIGHTS RETAINED.--EXCEPT IN THOSE AREAS DESIGNATED
27 BY COURT ORDER AS AREAS OVER WHICH THE LIMITED GUARDIAN HAS
28 POWER, A PARTIALLY INCAPACITATED PERSON SHALL RETAIN ALL LEGAL
29 RIGHTS.

30 (H) INFORMATION AS TO RIGHTS.--AT THE CONCLUSION OF A

1 PROCEEDING IN WHICH THE PERSON HAS BEEN ADJUDICATED
2 INCAPACITATED, THE COURT SHALL ASSURE THAT THE PERSON IS
3 INFORMED OF HIS RIGHT TO APPEAL AND TO PETITION TO MODIFY OR
4 TERMINATE THE GUARDIANSHIP.

5 § 5512.2. REVIEW HEARING.

6 (A) TIME OF HEARING.--THE COURT MAY SET A DATE FOR A REVIEW
7 HEARING IN ITS ORDER ESTABLISHING THE GUARDIANSHIP, OR HOLD A
8 REVIEW HEARING AT ANY TIME IT SHALL DIRECT. THE COURT SHALL
9 CONDUCT A REVIEW HEARING PROMPTLY IF:

10 (1) THE INCAPACITATED PERSON OR ANY INTERESTED PARTY
11 PETITIONS THE COURT FOR A HEARING FOR REASON OF A SIGNIFICANT
12 CHANGE IN THE PERSON'S CAPACITY, A CHANGE IN THE NEED FOR
13 GUARDIANSHIP SERVICES, OR THE GUARDIAN'S FAILURE TO PERFORM
14 HIS DUTIES IN ACCORDANCE WITH THE LAW OR TO ACT IN THE BEST
15 INTEREST OF THE INCAPACITATED PERSON; OR

16 (2) THE GUARDIAN PETITIONS THE COURT FOR A HEARING
17 BECAUSE OF A SIGNIFICANT CHANGE IN THE PERSON'S CAPACITY, OR
18 CHANGE IN THE NEED FOR GUARDIANSHIP SERVICES.

19 THE COURT MAY DISMISS A PETITION FOR REVIEW HEARING IF IT
20 DETERMINES THAT THE PETITION IS FRIVOLOUS.

21 (B) BURDEN OF PROOF AND RIGHTS.--THE INCAPACITATED PERSON
22 SHALL HAVE ALL OF THE RIGHTS ENUMERATED IN THIS CHAPTER. EXCEPT
23 WHEN THE HEARING IS HELD TO APPOINT A SUCCESSOR GUARDIAN, THE
24 BURDEN OF PROOF SHALL BE ON THE PARTY ADVOCATING CONTINUATION OF
25 GUARDIANSHIP OR EXPANSION OF AREAS OF INCAPACITY.

26 (C) WHO MAY BE APPOINTED GUARDIAN.--THE COURT MAY APPOINT AS
27 GUARDIAN ANY QUALIFIED INDIVIDUAL OR CORPORATE FIDUCIARY,
28 NONPROFIT CORPORATION, COUNTY AGENCY OR THE GUARDIAN OFFICE AT A
29 STATE FACILITY. THE COURT SHALL NOT APPOINT A PERSON OR ENTITY
30 PROVIDING RESIDENTIAL SERVICES FOR A FEE TO THE INCAPACITATED

1 PERSON OR ANY OTHER PERSON WHOSE INTERESTS CONFLICT WITH THOSE
2 OF THE INCAPACITATED PERSON EXCEPT WHERE IT IS CLEARLY
3 DEMONSTRATED THAT THERE IS NO ALTERNATIVE. ANY FAMILY
4 RELATIONSHIP TO SUCH INDIVIDUAL SHALL NOT, BY ITSELF, BE
5 CONSIDERED AS AN INTEREST ADVERSE TO THE ALLEGED INCAPACITATED
6 PERSON. IF APPROPRIATE, THE COURT SHALL GIVE PREFERENCE TO A
7 NOMINEE OF THE INCAPACITATED PERSON.

8 § 5512.3. ANNUAL REPORT.

9 THE COURT SHALL ANNUALLY FILE WITH THE SUPREME COURT
10 ADMINISTRATORS OFFICE ON FORMS FURNISHED BY THE OFFICE A
11 STATISTICAL AND DESCRIPTIVE REPORT TO ASSIST IN EVALUATING THE
12 OPERATION AND COSTS OF THE GUARDIANSHIP SYSTEM.

13 SECTION 13. SECTIONS 5513, 5514, 5515, 5516, 5517 AND 5518
14 OF TITLE 20 ARE AMENDED TO READ:

15 § 5513. [TEMPORARY] EMERGENCY GUARDIAN.

16 NOTWITHSTANDING THE PROVISIONS OF SECTION 5511 (RELATING TO
17 PETITION AND HEARING; INDEPENDENT EVALUATION), THE COURT, UPON
18 PETITION AND A HEARING AT WHICH [GOOD CAUSE] CLEAR AND
19 CONVINCING EVIDENCE IS SHOWN, MAY APPOINT [A TEMPORARY] AN
20 EMERGENCY GUARDIAN OR GUARDIANS OF THE PERSON OR ESTATE OF A
21 PERSON ALLEGED TO BE [INCOMPETENT] INCAPACITATED, WHEN IT
22 APPEARS THAT THE PERSON LACKS CAPACITY, IS IN NEED OF A
23 GUARDIAN, AND A FAILURE TO MAKE SUCH APPOINTMENT WILL RESULT IN
24 IRREPARABLE HARM TO THE PERSON OR ESTATE OF THE ALLEGED
25 [INCOMPETENT] INCAPACITATED PERSON. THE PROVISIONS OF SECTION
26 5511, INCLUDING THOSE RELATING TO COUNSEL, SHALL BE APPLICABLE
27 TO SUCH PROCEEDINGS, EXCEPT [THAT ONLY SUCH NOTICE OF THE
28 PETITION AND HEARING SHALL BE REQUIRED AS SHALL APPEAR TO THE
29 COURT TO BE] WHEN THE COURT HAS FOUND THAT IT IS NOT FEASIBLE IN
30 THE CIRCUMSTANCES[, AND NEED NOT BE GIVEN AT SUCH TIMES OR TO

1 SUCH PERSONS AS WOULD BE REQUIRED BY THE PROVISIONS OF SECTION
2 5511 IN A PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN. A
3 TEMPORARY]. AN EMERGENCY GUARDIAN SO APPOINTED FOR THE PERSON OR
4 ESTATE OF AN ALLEGED [INCOMPETENT] INCAPACITATED PERSON SHALL
5 ONLY HAVE AND BE SUBJECT TO SUCH POWERS, DUTIES AND LIABILITIES
6 AND SERVE FOR SUCH TIME AS THE COURT SHALL DIRECT IN ITS DECREE.
7 AN EMERGENCY ORDER MAY BE IN EFFECT FOR UP TO 72 HOURS. AFTER 72
8 HOURS, A FULL GUARDIANSHIP PROCEEDING MUST BE INITIATED PURSUANT
9 TO SECTION 5511. IF THE EMERGENCY CONTINUES, THEN THE EMERGENCY
10 ORDER MAY BE EXTENDED FOR NO MORE THAN 20 DAYS FROM THE
11 EXPIRATION OF THE INITIAL EMERGENCY ORDER. THE COURT MAY ALSO
12 APPOINT A TEMPORARY GUARDIAN OF THE PERSON PURSUANT TO THIS
13 SECTION FOR AN ALLEGED INCAPACITATED PERSON WHO IS PRESENT IN
14 THIS COMMONWEALTH BUT IS DOMICILED OUTSIDE OF THIS COMMONWEALTH,
15 REGARDLESS OF WHETHER THE ALLEGED INCAPACITATED PERSON HAS
16 PROPERTY IN THIS COMMONWEALTH.

17 § 5514. TO FILL VACANCY; CO-GUARDIAN.

18 THE COURT, AFTER SUCH NOTICE TO PARTIES IN INTEREST AS IT
19 SHALL DIRECT, MAY WITHOUT A HEARING APPOINT A SUCCEEDING
20 GUARDIAN TO FILL A VACANCY IN THE OFFICE OF GUARDIAN OR MAY
21 APPOINT A CO-GUARDIAN OF THE ESTATE OF [A PERSON FOUND TO BE
22 INCOMPETENT WITHOUT A HEARING.] AN INCAPACITATED PERSON. WHERE
23 THE VACATING GUARDIAN WAS A PARENT WHO IS NOW DECEASED, ANY
24 TESTAMENTARY NOMINEE OF THE PARENT SHALL BE GIVEN PREFERENCE BY
25 THE COURT.

26 § 5515. PROVISIONS SIMILAR TO OTHER ESTATES.

27 THE PROVISIONS RELATING TO A GUARDIAN OF AN [INCOMPETENT]
28 INCAPACITATED PERSON AND HIS SURETY SHALL BE THE SAME AS ARE SET
29 FORTH IN THE FOLLOWING PROVISIONS OF THIS TITLE RELATING TO A
30 PERSONAL REPRESENTATIVE OR A GUARDIAN OF A MINOR AND THEIR

1 SURETIES:

2 SECTION 3182 (RELATING TO GROUNDS FOR REMOVAL).

3 SECTION 3183 (RELATING TO PROCEDURE FOR AND EFFECT OF
4 REMOVAL).

5 SECTION 3184 (RELATING TO DISCHARGE OF PERSONAL
6 REPRESENTATIVE AND SURETY).

7 SECTION 5115 (RELATING TO APPOINTMENT OF GUARDIAN IN
8 CONVEYANCE).

9 SECTION 5121 (RELATING TO NECESSITY, FORM AND AMOUNT).

10 SECTION 5122 (RELATING TO WHEN BOND NOT REQUIRED).

11 SECTION 5123 (RELATING TO REQUIRING OR CHANGING AMOUNT OF
12 BOND).

13 § 5516. FIDUCIARY ESTATE.

14 THE COURT, IN ITS DISCRETION, UPON THE APPLICATION OF ANY
15 PARTY IN INTEREST, IN ADDITION TO ANY BOND REQUIRED FOR THE
16 [INCOMPETENT'S] INCAPACITATED PERSON'S INDIVIDUAL ESTATE, MAY
17 REQUIRE A SEPARATE BOND IN THE NAME OF THE COMMONWEALTH, WITH
18 SUFFICIENT SURETY, IN SUCH AMOUNT AS THE COURT SHALL CONSIDER
19 NECESSARY FOR THE PROTECTION OF THE PARTIES IN INTEREST IN AN
20 ESTATE OF WHICH THE [INCOMPETENT IS] INCAPACITATED PERSON IS
21 SERVING IN THE CAPACITY AS A FIDUCIARY AND CONDITIONED IN THE
22 FOLLOWING FORM:

23 (1) WHEN ONE GUARDIAN.--THE CONDITION OF THIS OBLIGATION
24 IS THAT, IF THE SAID GUARDIAN SHALL WELL AND TRULY ACCOUNT
25 FOR PROPERTY HELD BY THE [INCOMPETENT] INCAPACITATED PERSON
26 AS FIDUCIARY ACCORDING TO LAW, THIS OBLIGATION SHALL BE VOID;
27 BUT OTHERWISE IT SHALL REMAIN IN FORCE.

28 (2) WHEN TWO OR MORE GUARDIANS.--THE CONDITION OF THIS
29 OBLIGATION IS THAT, IF THE SAID GUARDIANS OR ANY OF THEM
30 SHALL WELL AND TRULY ACCOUNT FOR PROPERTY HELD BY THE

1 [INCOMPETENT] INCAPACITATED PERSON AS FIDUCIARY ACCORDING TO
2 LAW, THIS OBLIGATION SHALL BE VOID AS TO THE GUARDIAN OR
3 GUARDIANS WHO SHALL SO ACCOUNT; BUT OTHERWISE IT SHALL REMAIN
4 IN FORCE.

5 § 5517. ADJUDICATION OF [COMPETENCY.] CAPACITY AND MODIFICATION
6 OF EXISTING ORDERS.

7 [THE COURT, UPON PETITION AND AFTER SUCH NOTICE AS IT SHALL
8 DIRECT, MAY FIND, AFTER A HEARING AT WHICH GOOD CAUSE IS SHOWN,
9 THAT A PERSON PREVIOUSLY ADJUDGED INCOMPETENT HAS BECOME
10 COMPETENT.] IN ADDITION TO THE REMEDIES SET FORTH IN SECTION
11 3182 (RELATING TO GROUNDS FOR REMOVAL), THE COURT, AFTER A
12 HEARING UNDER SECTION 5512.2 (RELATING TO REVIEW HEARING), MAY
13 ORDER THAT A PERSON PREVIOUSLY ADJUDGED INCAPACITATED IS NO
14 LONGER INCAPACITATED OR THE COURT MAY FIND THAT THE
15 INCAPACITATED PERSON HAS REGAINED OR LOST CAPACITY IN CERTAIN
16 AREAS IN WHICH CASE THE COURT SHALL MODIFY THE EXISTING
17 GUARDIANSHIP ORDER.

18 § 5518. EVIDENCE OF [MENTAL CONDITION] INCAPACITY.

19 [IN ANY HEARING RELATING TO THE MENTAL CONDITION OF A PERSON
20 WHOSE COMPETENCY IS IN QUESTION, THE DEPOSITION OF, OR SWORN
21 STATEMENT BY, A SUPERINTENDENT, MANAGER, PHYSICIAN OR
22 PSYCHIATRIST OF ANY STATE-OWNED MENTAL HOSPITAL OR VETERANS'
23 ADMINISTRATION HOSPITAL OR A PHYSICIAN OR PSYCHIATRIST AT ANY
24 HOSPITAL OR INSTITUTION SHALL BE ADMISSIBLE IN EVIDENCE AS TO
25 THE CONDITION OF AN INMATE OF SUCH HOSPITAL IN LIEU OF HIS
26 APPEARANCE AND TESTIMONY, UNLESS BY SPECIAL ORDER, THE COURT
27 DIRECTS HIS APPEARANCE AND TESTIMONY IN PERSON.] TO ESTABLISH
28 INCAPACITY, PETITIONER MUST PRESENT TESTIMONY BY INDIVIDUALS
29 QUALIFIED BY TRAINING AND EXPERIENCE IN EVALUATING INDIVIDUALS
30 WITH INCAPACITIES OF THE TYPE ALLEGED BY PETITIONER, WHICH

1 ESTABLISHES THE NATURE AND EXTENT OF INCAPACITIES AND
2 DISABILITIES FOUND; THE PERSON'S MENTAL, EMOTIONAL AND PHYSICAL
3 CONDITION, ADAPTIVE BEHAVIOR AND SOCIAL SKILLS; THE SERVICES
4 BEING UTILIZED TO MEET ESSENTIAL REQUIREMENTS FOR PHYSICAL
5 HEALTH AND SAFETY OR MANAGE FINANCIAL RESOURCES OR TO DEVELOP OR
6 REGAIN ABILITIES; AN OPINION REGARDING THE TYPES OF ASSISTANCE
7 REQUIRED BY THE PERSON AND WHY NO LESS RESTRICTIVE ALTERNATIVES
8 WOULD BE APPROPRIATE; AN OPINION REGARDING THE PROBABILITY THAT
9 THE EXTENT OF THE ALLEGED INCAPACITATED PERSON'S INCAPACITIES
10 MAY SIGNIFICANTLY LESSEN OR CHANGE.

11 SECTION 14. TITLE 20 IS AMENDED BY ADDING A SECTION TO READ:

12 § 5518.1. CROSS-EXAMINATION OF WITNESSES.

13 IN ANY HEARING TO ESTABLISH A GUARDIANSHIP, WITNESSES
14 TESTIFYING TO THE CAPACITY OF THE ALLEGED INCAPACITATED PERSON
15 SHALL BE SUBJECT TO CROSS-EXAMINATION BY COUNSEL FOR THE ALLEGED
16 INCAPACITATED PERSON.

17 SECTION 15. SECTIONS 5521, 5522, 5524, 5525, 5533, 5534,
18 5535, 5536 AND 5537 OF TITLE 20 ARE AMENDED TO READ:

19 § 5521. PROVISIONS CONCERNING POWERS, DUTIES AND LIABILITIES.

20 (A) DUTY OF GUARDIAN OF THE PERSON.--IT SHALL BE THE DUTY OF
21 THE GUARDIAN OF THE PERSON TO ASSERT THE RIGHTS AND BEST
22 INTERESTS OF THE INCAPACITATED PERSON. EXPRESSED WISHES AND
23 PREFERENCES OF THE INCAPACITATED PERSON SHALL BE RESPECTED TO
24 THE GREATEST POSSIBLE EXTENT. WHERE APPROPRIATE, THE GUARDIAN
25 SHALL ASSURE AND PARTICIPATE IN THE DEVELOPMENT OF A PLAN OF
26 SUPPORTIVE SERVICES TO MEET THE PERSON'S NEEDS WHICH EXPLAINS
27 HOW SERVICES WILL BE OBTAINED. THE GUARDIAN SHALL ALSO ENCOURAGE
28 THE INCAPACITATED PERSON TO PARTICIPATE TO THE MAXIMUM EXTENT OF
29 HIS ABILITIES IN ALL DECISIONS WHICH AFFECT HIM, TO ACT ON HIS
30 OWN BEHALF WHENEVER HE IS ABLE TO DO SO, AND TO DEVELOP OR

1 REGAIN, TO THE MAXIMUM EXTENT POSSIBLE, HIS CAPACITY TO MANAGE
2 HIS PERSONAL AFFAIRS.

3 (B) DUTY OF GUARDIAN OF THE ESTATE.--THE PROVISIONS
4 CONCERNING THE POWERS, DUTIES AND LIABILITIES OF GUARDIANS OF
5 [INCOMPETENTS'] INCAPACITATED PERSONS' ESTATES SHALL BE THE SAME
6 AS THOSE SET FORTH IN THE FOLLOWING PROVISIONS OF THIS TITLE
7 RELATING TO PERSONAL REPRESENTATIVES OF DECEDENTS' ESTATES AND
8 GUARDIANS OF MINORS' ESTATES:

9 SECTION 3313 (RELATING TO LIABILITY INSURANCE).

10 SECTION 3314 (RELATING TO CONTINUATION OF BUSINESS).

11 SECTION 3315 (RELATING TO INCORPORATION OF ESTATE'S
12 BUSINESS).

13 SECTION 3317 (RELATING TO CLAIMS AGAINST CO-FIDUCIARY).

14 SECTION 3318 (RELATING TO REVIVAL OF JUDGMENTS AGAINST
15 PERSONAL REPRESENTATIVE).

16 SECTION 3319 (RELATING TO POWER OF ATTORNEY; DELEGATION
17 OF POWER OVER SUBSCRIPTION RIGHTS AND FRACTIONAL SHARES;
18 AUTHORIZED DELEGATIONS).

19 SECTION 3320 (RELATING TO VOTING STOCK BY PROXY).

20 SECTION 3321 (RELATING TO NOMINEE REGISTRATION; CORPORATE
21 FIDUCIARY AS ATTORNEY-IN-FACT; DEPOSIT OF SECURITIES IN A
22 CLEARING CORPORATION; BOOK-ENTRY SECURITIES).

23 SECTION 3322 (RELATING TO ACCEPTANCE OF DEED IN LIEU OF
24 FORECLOSURE).

25 SECTION 3323 (RELATING TO COMPROMISE OF CONTROVERSIES).

26 SECTION 3324 (RELATING TO DEATH OR [INCOMPETENCY]
27 INCAPACITY OF FIDUCIARY).

28 SECTION 3327 (RELATING TO SURVIVING OR REMAINING PERSONAL
29 REPRESENTATIVES).

30 SECTION 3328 (RELATING TO DISAGREEMENT OF PERSONAL

1 REPRESENTATIVES).

2 SECTION 3331 (RELATING TO LIABILITY OF PERSONAL
3 REPRESENTATIVE ON CONTRACTS).

4 SECTION 3332 (RELATING TO INHERENT POWERS AND DUTIES).

5 SECTION 3355 (RELATING TO RESTRAINT OF SALE).

6 SECTION 3356 (RELATING TO PURCHASE BY PERSONAL
7 REPRESENTATIVE).

8 SECTION 3359 (RELATING TO RECORD OF PROCEEDINGS; COUNTY
9 WHERE REAL ESTATE LIES).

10 SECTION 3360 (RELATING TO CONTRACTS, INADEQUACY OF
11 CONSIDERATION OR BETTER OFFER; BROKERS' COMMISSIONS).

12 SECTION 3372 (RELATING TO SUBSTITUTION OF PERSONAL
13 REPRESENTATIVE IN PENDING ACTION OR PROCEEDINGS).

14 SECTION 3374 (RELATING TO DEATH OR REMOVAL OF FIDUCIARY).

15 SECTION 3390 (RELATING TO SPECIFIC PERFORMANCE OF
16 CONTRACTS).

17 SECTION 5141 (RELATING TO POSSESSION OF REAL AND PERSONAL
18 PROPERTY).

19 SECTION 5142 (RELATING TO INVENTORY).

20 SECTION 5143 (RELATING TO ABANDONMENT OF PROPERTY).

21 SECTION 5145 (RELATING TO INVESTMENTS).

22 SECTION 5146 (RELATING TO GUARDIAN NAMED IN CONVEYANCE).

23 SECTION 5147 (RELATING TO PROCEEDINGS AGAINST GUARDIAN).

24 SECTION 5151 (RELATING TO POWER TO SELL PERSONAL
25 PROPERTY).

26 SECTION 5154 (RELATING TO TITLE OF PURCHASER).

27 SECTION 5155 (RELATING TO ORDER OF COURT).

28 (C) REPORTS.--

29 (1) EACH GUARDIAN OF AN INCAPACITATED PERSON SHALL FILE
30 WITH THE COURT APPOINTING HIM A CERTIFICATION, AT LEAST ONCE

1 WITHIN THE FIRST 12 MONTHS OF HIS APPOINTMENT AND AT LEAST
2 ANNUALLY THEREAFTER, ATTESTING TO THE FOLLOWING:

3 (I) GUARDIAN OF THE ESTATE:

4 (A) CURRENT PRINCIPAL AND HOW IT IS INVESTED;

5 (B) CURRENT INCOME;

6 (C) EXPENDITURES OF PRINCIPAL AND INCOME SINCE
7 THE LAST REPORT; AND

8 (D) NEEDS OF THE INCAPACITATED PERSON FOR WHICH
9 THE GUARDIAN HAS PROVIDED SINCE THE LAST REPORT.

10 (II) GUARDIAN OF THE PERSON:

11 (A) CURRENT ADDRESS AND TYPE OF PLACEMENT OF THE
12 INCAPACITATED PERSON;

13 (B) MAJOR MEDICAL OR MENTAL PROBLEMS OF THE
14 INCAPACITATED PERSON;

15 (C) A BRIEF DESCRIPTION OF THE INCAPACITATED
16 PERSON'S LIVING ARRANGEMENTS AND THE SOCIAL, MEDICAL,
17 PSYCHOLOGICAL AND OTHER SUPPORT SERVICES HE IS
18 RECEIVING;

19 (D) THE OPINION OF THE GUARDIAN AS TO WHETHER
20 THE GUARDIANSHIP SHOULD CONTINUE OR BE TERMINATED OR
21 MODIFIED, AND THE REASONS THEREFOR; AND

22 (E) NUMBER AND LENGTH OF TIMES THE GUARDIAN
23 VISITED THE INCAPACITATED PERSON IN THE PAST YEAR.

24 (2) THE COURT SHALL REQUIRE THE FILING OF A FINAL REPORT
25 WITHIN 60 DAYS OF THE DEATH OR RESTORATION OF CAPACITY OF THE
26 INCAPACITATED PERSON.

27 (D) POWERS AND DUTIES ONLY GRANTED BY COURT.--UNLESS
28 EMPOWERED BY THE GUARDIANSHIP ORDER AFTER SPECIFIC FINDINGS OF
29 FACT OR OTHERWISE ORDERED AFTER A SUBSEQUENT HEARING WITH
30 SPECIFIC FINDINGS OF FACT, A GUARDIAN OR EMERGENCY GUARDIAN

1 SHALL NOT HAVE THE POWER AND DUTY TO:

2 (1) CONSENT ON BEHALF OF THE INCAPACITATED PERSON TO AN
3 ABORTION, STERILIZATION, PSYCHOSURGERY, ELECTROCONVULSIVE
4 THERAPY OR REMOVAL OF A HEALTHY BODY ORGAN.

5 (2) PROHIBIT THE MARRIAGE OR CONSENT TO THE DIVORCE OF
6 THE INCAPACITATED PERSON.

7 (3) CONSENT ON BEHALF OF THE INCAPACITATED PERSON TO THE
8 PERFORMANCE OF ANY EXPERIMENTAL BIOMEDICAL OR BEHAVIORAL
9 MEDICAL PROCEDURE OR PARTICIPATION IN ANY BIOMEDICAL OR
10 BEHAVIORAL EXPERIMENT.

11 (E) KNOWLEDGE OF OBJECTION.--IN A HEARING TO DETERMINE
12 WHETHER A GUARDIAN SHALL BE ORDERED TO CONSENT TO A SPECIFIC ACT
13 OR OMISSION, IF THE GUARDIAN KNOWS OR HAS REASON TO KNOW OF THE
14 INCAPACITATED PERSON'S OBJECTION TO THE ACTION OR OMISSION,
15 WHETHER SUCH OBJECTION HAD BEEN EXPRESSED PRIOR OR SUBSEQUENT TO
16 THE DETERMINATION OF INCAPACITY, THE GUARDIAN SHALL REPORT TO
17 THE COURT SUCH KNOWLEDGE OR INFORMATION.

18 (F) POWERS AND DUTIES NOT GRANTED TO GUARDIAN.--THE COURT
19 MAY NOT GRANT TO A GUARDIAN POWERS CONTROLLED BY OTHER STATUTE
20 INCLUDING, BUT NOT LIMITED TO, THE POWER:

21 (1) TO ADMIT THE INCAPACITATED PERSON TO AN INPATIENT
22 PSYCHIATRIC FACILITY OR STATE CENTER FOR THE MENTALLY
23 RETARDED.

24 (2) TO CONSENT, ON BEHALF OF THE INCAPACITATED PERSON,
25 TO THE RELINQUISHMENT OF THE PERSON'S PARENTAL RIGHTS.

26 (G) CRIMINAL AND CIVIL IMMUNITY.--IN THE ABSENCE OF GROSS
27 NEGLIGENCE, RECKLESSNESS OR INTENTIONAL MISCONDUCT, A UNIT OF
28 LOCAL GOVERNMENT OR NONPROFIT CORPORATION APPOINTED AS A
29 GUARDIAN SHALL NOT BE CRIMINALLY LIABLE OR CIVILLY LIABLE FOR
30 DAMAGES FOR PERFORMING DUTIES AS A GUARDIAN OF THE PERSON, AS

1 AUTHORIZED PURSUANT TO THIS TITLE.

2 § 5522. POWER TO LEASE.

3 A GUARDIAN MAY LEASE ANY REAL OR PERSONAL PROPERTY OF THE
4 [INCOMPETENT] INCAPACITATED PERSON FOR A TERM NOT EXCEEDING FIVE
5 YEARS AFTER ITS EXECUTION.

6 § 5524. EFFECT OF DETERMINATION OF [INCOMPETENCY] INCAPACITY.

7 [AN INCOMPETENT] A PARTIALLY INCAPACITATED PERSON SHALL BE
8 INCAPABLE OF MAKING ANY CONTRACT OR GIFT OR ANY INSTRUMENT IN
9 WRITING [AFTER HE IS ADJUDGED INCOMPETENT AND BEFORE HE IS
10 ADJUDGED TO HAVE REGAINED HIS COMPETENCY] IN THOSE SPECIFIC
11 AREAS IN WHICH THE PERSON HAS BEEN FOUND TO BE INCAPACITATED. A
12 TOTALLY INCAPACITATED PERSON SHALL BE INCAPABLE OF MAKING ANY
13 CONTRACT OR GIFT OR ANY INSTRUMENT IN WRITING. THIS SECTION
14 SHALL NOT IMPAIR THE INTEREST IN REAL ESTATE ACQUIRED BY A BONA
15 FIDE GRANTEE OF, OR A BONA FIDE HOLDER OF A LIEN ON, REAL ESTATE
16 IN A COUNTY OTHER THAN THAT IN WHICH THE DECREE ESTABLISHING THE
17 [INCOMPETENCY] INCAPACITY IS ENTERED, UNLESS THE DECREE OR A
18 DUPLICATE ORIGINAL OR CERTIFIED COPY THEREOF IS RECORDED IN THE
19 OFFICE OF THE RECORDER OF DEEDS IN THE COUNTY IN WHICH THE REAL
20 ESTATE LIES BEFORE THE RECORDING OR ENTERING OF THE INSTRUMENT
21 OR LIEN UNDER WHICH THE GRANTEE OR LIENHOLDER CLAIMS.

22 § 5525. NOTICE TO COMMONWEALTH AND POLITICAL SUBDIVISIONS.

23 WHEN THE COMMONWEALTH OR A POLITICAL SUBDIVISION THEREOF HAS
24 A CLAIM FOR MAINTAINING AN [INCOMPETENT] INCAPACITATED PERSON IN
25 AN INSTITUTION, THE GUARDIAN WITHIN THREE MONTHS OF HIS
26 APPOINTMENT, SHALL GIVE NOTICE THEREOF TO THE DEPARTMENT OF
27 [REVENUE] PUBLIC WELFARE OR THE PROPER OFFICER OF SUCH POLITICAL
28 SUBDIVISION, AS THE CASE MAY BE.

29 § 5533. NOTICE, AUDITS, REVIEWS AND DISTRIBUTION.

30 THE PROVISIONS CONCERNING ACCOUNTS, AUDITS, REVIEWS,

DISTRIBUTION AND RIGHTS OF DISTRIBUTEES IN AN [INCOMPETENT'S]
INCAPACITATED PERSON'S ESTATE SHALL BE THE SAME AS THOSE SET
FORTH IN THE FOLLOWING PROVISIONS OF THIS TITLE FOR THE
ADMINISTRATION OF A DECEDENT'S OR MINOR'S ESTATE:

SECTION 3503 (RELATING TO NOTICE TO PARTIES IN INTEREST).

SECTION 3504 (RELATING TO REPRESENTATION OF PARTIES IN
INTEREST).

SECTION 3511 (RELATING TO AUDITS IN COUNTIES HAVING
SEPARATE ORPHANS' COURT DIVISION).

SECTION 3512 (RELATING TO AUDITS IN COUNTIES HAVING NO
SEPARATE ORPHANS' COURT DIVISION).

SECTION 3513 (RELATING TO STATEMENT OF PROPOSED
DISTRIBUTION).

SECTION 3514 (RELATING TO CONFIRMATION OF ACCOUNT AND
APPROVAL OF PROPOSED DISTRIBUTION).

SECTION 3521 (RELATING TO REHEARING; RELIEF GRANTED).

SECTION 3532(C) (RELATING TO RECORD OF RISK
DISTRIBUTIONS).

SECTION 3533 (RELATING TO AWARD UPON FINAL CONFIRMATION
OF ACCOUNT).

SECTION 3534 (RELATING TO DISTRIBUTION IN KIND).

SECTION 3536 (RELATING TO RECORDING AND REGISTERING
DECREES AWARDING REAL ESTATE).

SECTION 3544 (RELATING TO LIABILITY OF PERSONAL
REPRESENTATIVE FOR INTEREST).

SECTION 3545 (RELATING TO TRANSCRIPTS OF BALANCES DUE BY
PERSONAL REPRESENTATIVE).

SECTION 5167 (RELATING TO FAILURE TO PRESENT CLAIM AT
AUDIT).

§ 5534. RECOGNITION OF CLAIMS.

1 UPON THE AUDIT OF THE ACCOUNT OF THE GUARDIAN OF A PERSON WHO
2 HAS DIED DURING [INCOMPETENCY] INCAPACITY, THE AUDITING JUDGE OR
3 AUDITOR PASSING ON THE ACCOUNT SHALL NOT PASS UPON ANY CLAIMS
4 AGAINST THE ESTATE OF THE [INCOMPETENT] INCAPACITATED PERSON
5 OTHER THAN NECESSARY ADMINISTRATION EXPENSES, INCLUDING
6 COMPENSATION OF THE GUARDIAN AND HIS ATTORNEY. ALL CLAIMS
7 REMAINING UNPAID AT THE [INCOMPETENT'S] INCAPACITATED PERSON'S
8 DEATH SHALL BE PRESENTED TO THE PERSONAL REPRESENTATIVE.

9 § 5535. DISPOSITION OF TRUST INCOME.

10 EXCEPT AS OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, THE
11 TRUSTEE OF AN INTER VIVOS OR TESTAMENTARY TRUST, WITH THE
12 APPROVAL OF THE COURT HAVING JURISDICTION OF THE TRUST, MAY PAY
13 INCOME DISTRIBUTABLE TO [AN INCOMPETENT BENEFICIARY] A
14 BENEFICIARY WHO IS AN INCAPACITATED PERSON FOR WHOSE ESTATE NO
15 GUARDIAN HAS BEEN APPOINTED DIRECTLY TO THE [INCOMPETENT]
16 INCAPACITATED PERSON, OR EXPEND AND APPLY IT FOR HIS CARE AND
17 MAINTENANCE OR THE CARE, MAINTENANCE AND EDUCATION OF HIS
18 DEPENDENTS.

19 § 5536. DISTRIBUTIONS OF INCOME AND PRINCIPAL DURING

20 [INCOMPETENCY] INCAPACITY.

21 (A) IN GENERAL.--ALL INCOME RECEIVED BY A GUARDIAN OF THE
22 ESTATE OF AN [INCOMPETENT] IN INCAPACITATED PERSON, INCLUDING
23 (SUBJECT TO THE REQUIREMENTS OF FEDERAL LAW RELATING THERETO)
24 ALL FUNDS RECEIVED FROM THE VETERANS' ADMINISTRATION, SOCIAL
25 SECURITY ADMINISTRATION AND OTHER PERIODIC RETIREMENT OR
26 DISABILITY PAYMENTS UNDER PRIVATE OR GOVERNMENTAL PLANS, IN THE
27 EXERCISE OF A REASONABLE DISCRETION, MAY BE EXPENDED IN THE CARE
28 AND MAINTENANCE OF THE [INCOMPETENT] INCAPACITATED PERSON,
29 WITHOUT THE NECESSITY OF COURT APPROVAL. THE COURT, FOR CAUSE
30 SHOWN AND WITH ONLY SUCH NOTICE AS IT CONSIDERS APPROPRIATE IN

1 THE CIRCUMSTANCES, MAY AUTHORIZE OR DIRECT THE PAYMENT OR
2 APPLICATION OF ANY OR ALL OF THE INCOME OR PRINCIPAL OF THE
3 ESTATE OF AN [INCOMPETENT] INCAPACITATED PERSON FOR THE CARE,
4 MAINTENANCE OR EDUCATION OF THE [INCOMPETENT] INCAPACITATED
5 PERSON, HIS SPOUSE, CHILDREN OR THOSE FOR WHOM HE WAS MAKING
6 SUCH PROVISION BEFORE HIS [INCOMPETENCY] INCAPACITY, OR FOR THE
7 REASONABLE FUNERAL EXPENSES OF THE [INCOMPETENT'S] INCAPACITATED
8 PERSON'S SPOUSE, CHILD OR INDIGENT PARENT. IN PROPER CASES, THE
9 COURT MAY ORDER PAYMENT OF AMOUNTS DIRECTLY TO THE [INCOMPETENT]
10 INCAPACITATED FOR HIS MAINTENANCE OR FOR INCIDENTAL EXPENSES AND
11 MAY RATIFY PAYMENTS MADE FOR THESE PURPOSES.

12 (B) ESTATE PLAN.--THE COURT, UPON PETITION AND WITH NOTICE
13 TO ALL PARTIES IN INTEREST, SHALL HAVE THE POWER TO SUBSTITUTE
14 ITS JUDGMENT FOR THAT OF THE [INCOMPETENT] INCAPACITATED PERSON
15 WITH RESPECT TO THE ESTATE AND AFFAIRS OF THE [INCOMPETENT]
16 INCAPACITATED PERSON FOR THE BENEFIT OF THE [INCOMPETENT]
17 INCAPACITATED PERSON, HIS FAMILY, MEMBERS OF HIS HOUSEHOLD, HIS
18 FRIENDS AND CHARITIES IN WHICH HE WAS INTERESTED. THIS POWER
19 SHALL INCLUDE, BUT IS NOT LIMITED TO, THE POWER TO:

20 (1) MAKE GIFTS, OUTRIGHT OR IN TRUST.

21 (2) CONVEY, RELEASE OR DISCLAIM HIS CONTINGENT AND
22 EXPECTANT INTERESTS IN PROPERTY, INCLUDING MARITAL PROPERTY
23 RIGHTS AND ANY RIGHT OF SURVIVORSHIP INCIDENT TO JOINT
24 TENANCY OR TENANCY BY THE ENTIRETY.

25 (3) RELEASE OR DISCLAIM HIS POWERS AS TRUSTEE, PERSONAL
26 REPRESENTATIVE, CUSTODIAN FOR MINORS, OR GUARDIAN.

27 (4) EXERCISE, RELEASE OR DISCLAIM HIS POWERS AS DONEE OF
28 A POWER OF APPOINTMENT.

29 (5) ENTER INTO CONTRACTS.

30 (6) CREATE FOR THE BENEFIT OF THE [INCOMPETENT]

1 INCAPACITATED PERSON OR OTHERS, REVOCABLE OR IRREVOCABLE
2 TRUSTS OF HIS PROPERTY WHICH MAY EXTEND BEYOND HIS DISABILITY
3 OR LIFE.

4 (7) EXERCISE OPTIONS OF THE [INCOMPETENT] INCAPACITATED
5 PERSON TO PURCHASE OR EXCHANGE SECURITIES OR OTHER PROPERTY.

6 (8) EXERCISE [HIS RIGHTS TO ELECT OPTIONS AND CHANGE
7 BENEFICIARIES UNDER INSURANCE AND ANNUITY POLICIES OR
8 SURRENDER THE POLICIES FOR THEIR CASH VALUE.] ALL RIGHTS AND
9 PRIVILEGES UNDER LIFE INSURANCE POLICIES, ANNUITY CONTRACTS
10 OR OTHER PLANS OR CONTRACTUAL ARRANGEMENTS PROVIDING FOR
11 PAYMENTS TO THE INCAPACITATED PERSON OR TO OTHERS AFTER HIS
12 DEATH.

13 (9) EXERCISE HIS RIGHT TO CLAIM OR DISCLAIM AN ELECTIVE
14 SHARE IN THE ESTATE OF HIS DECEASED SPOUSE AND RENOUNCE ANY
15 INTEREST BY TESTATE OR INTESTATE SUCCESSION OR BY INTER VIVOS
16 TRANSFER.

17 (10) CHANGE THE [INCOMPETENT'S] INCAPACITATED PERSON'S
18 RESIDENCE OR DOMICILE.

19 (11) MODIFY BY MEANS OF CODICIL OR TRUST AMENDMENT, AS
20 THE CASE MAY BE, THE TERMS OF THE INCAPACITATED PERSON'S WILL
21 OR OF ANY REVOCABLE TRUST CREATED BY THE INCAPACITATED
22 PERSON, AS THE COURT MAY DEEM ADVISABLE IN LIGHT OF CHANGES
23 IN APPLICABLE TAX LAWS.

24 IN THE EXERCISE OF ITS JUDGMENT FOR THAT OF THE [INCOMPETENT]
25 INCAPACITATED PERSON, THE COURT FIRST BEING SATISFIED THAT
26 ASSETS EXIST WHICH ARE NOT REQUIRED FOR THE MAINTENANCE, SUPPORT
27 AND WELL-BEING OF THE [INCOMPETENT] INCAPACITATED PERSON, MAY
28 ADOPT A PLAN OF GIFTS WHICH RESULTS IN MINIMIZING CURRENT OR
29 PROSPECTIVE [INCOME, ESTATE OR INHERITANCE] TAXES, OR WHICH
30 CARRIES OUT A LIFETIME GIVING PATTERN. THE COURT IN EXERCISING

1 ITS JUDGMENT [MAY] SHALL CONSIDER THE TESTAMENTARY AND INTER
2 VIVOS INTENTIONS OF THE [INCOMPETENT] INCAPACITATED PERSON
3 INsofar AS THEY CAN BE ASCERTAINED.

4 § 5537. RESERVE FOR FUNERAL.

5 (A) IN GENERAL.--THE COURT MAY AUTHORIZE THE GUARDIAN TO
6 RETAIN SUCH ASSETS [NOT EXCEEDING \$1,200 IN VALUE] AS ARE DEEMED
7 APPROPRIATE FOR THE ANTICIPATED EXPENSE OF THE [INCOMPETENT'S]
8 INCAPACITATED PERSON'S FUNERAL, INCLUDING THE COST OF A BURIAL
9 LOT OR OTHER RESTING PLACE, WHICH SHALL BE EXEMPT FROM ALL
10 CLAIMS INCLUDING CLAIMS OF THE COMMONWEALTH. THE COURT WITH
11 NOTICE THEREOF TO THE INSTITUTION OR PERSON HAVING CUSTODY OF
12 THE [INCOMPETENT] INCAPACITATED PERSON MAY ALSO AUTHORIZE THE
13 GUARDIAN OR ANOTHER PERSON TO SET ASIDE SUCH ASSETS IN THE FORM
14 OF A SAVINGS ACCOUNT IN A FINANCIAL INSTITUTION WHICH ACCOUNT
15 SHALL NOT BE SUBJECT TO ESCHEAT DURING THE LIFETIME OF THE
16 [INCOMPETENT] INCAPACITATED PERSON. SUCH ASSETS MAY BE DISBURSED
17 BY THE GUARDIAN OR PERSON WHO SET ASIDE SUCH ASSETS OR BY THE
18 FINANCIAL INSTITUTION FOR SUCH FUNERAL EXPENSES WITHOUT FURTHER
19 AUTHORIZATION OR ACCOUNTING. ANY PART OF SUCH ASSETS NOT SO
20 DISBURSED SHALL CONSTITUTE A PART OF THE DECEASED
21 [INCOMPETENT'S] INCAPACITATED PERSON'S ESTATE. SHOULD THE
22 [INCOMPETENT BECOME COMPETENT] INCAPACITATED PERSON BECOME
23 CAPACITATED OR SHOULD SUCH ASSETS BECOME EXCESSIVE, THE COURT,
24 UPON PETITION OF ANY PARTY IN INTEREST, MAY MAKE SUCH ORDER AS
25 THE CIRCUMSTANCES SHALL REQUIRE.

26 (B) DEFINITION.--AS USED IN THIS SECTION "FINANCIAL
27 INSTITUTION" INCLUDES A BANK, A BANK AND TRUST COMPANY, A TRUST
28 COMPANY, A SAVINGS AND LOAN ASSOCIATION, A BUILDING AND LOAN
29 ASSOCIATION, A SAVINGS BANK, A PRIVATE BANK AND A NATIONAL BANK.

30 SECTION 16. CHAPTER 55 OF TITLE 20 IS AMENDED BY ADDING A

1 SUBCHAPTER TO READ:

2 SUBCHAPTER F

3 GUARDIANSHIP SUPPORT

4 SEC.

5 5551. GUARDIANSHIP SUPPORT DEMONSTRATION PROJECT.

6 5552. SERVICES TO INDIVIDUALS WHOSE DECISION-MAKING ABILITY
7 IS IMPAIRED.

8 5553. GUARDIANSHIP SERVICES.

9 5554. SERVICES TO COURTS, GUARDIANS AND OTHERS.

10 5555. COSTS AND COMPENSATION.

11 § 5551. GUARDIANSHIP SUPPORT DEMONSTRATION PROJECT.

12 THE DEPARTMENT OF AGING AND THE DEPARTMENT OF PUBLIC WELFARE
13 SHALL JOINTLY INSTITUTE A GUARDIANSHIP SUPPORT DEMONSTRATION
14 PROJECT TO ASSESS THE NEED FOR GUARDIANSHIP SUPPORT SERVICES.
15 THE OBJECTIVE OF THE DEMONSTRATION PROJECT SHALL BE TO TEST
16 PRIVATE AND PUBLIC SERVICE DELIVERY MODELS AND TO EXPLORE
17 FUNDING OPTIONS, INCLUDING REVENUES GENERATED FROM FEES. THE
18 PROVISIONS OF THE REMAINING SECTIONS OF THIS SUBCHAPTER SHALL
19 BECOME OPERATIVE WHEN THE GUARDIANSHIP DEMONSTRATION PROJECT HAS
20 BEEN COMPLETED AND THE DEPARTMENT OF AGING AND THE DEPARTMENT OF
21 PUBLIC WELFARE, ACTING JOINTLY, CAUSE A NOTICE TO BE PUBLISHED
22 IN THE PENNSYLVANIA BULLETIN AUTHORIZING THE ESTABLISHMENT OF
23 GUARDIANSHIP SUPPORT AGENCIES. THEREAFTER, EACH COUNTY MAY
24 CONTRACT WITH ONE OR MORE PRIVATE OR PUBLIC AGENCIES TO PROVIDE
25 GUARDIANSHIP SUPPORT SERVICES FOR RESIDENTS OF THE COUNTY WHOSE
26 DECISIONMAKING ABILITY IS IMPAIRED, AS PROVIDED IN THIS
27 SUBCHAPTER.

28 § 5552. SERVICES TO INDIVIDUALS WHOSE DECISION-MAKING ABILITY
29 IS IMPAIRED.

30 GUARDIANSHIP SUPPORT DEMONSTRATION PROJECTS SHALL INCLUDE

GUARDIANSHIP SERVICES UNDER THIS CHAPTER. SUCH SERVICES SHALL
INCLUDE, BUT NOT BE LIMITED TO:

(1) ASSISTANCE TO INDIVIDUALS IN DECISION MAKING,
INCLUDING FINANCIAL MANAGEMENT TRAINING.

(2) ASSISTANCE TO INDIVIDUALS IN SECURING AND
MAINTAINING BENEFITS AND SERVICES.

(3) RECRUITING, TRAINING AND MAINTAINING A GROUP OF
INDIVIDUALS TO SERVE AS REPRESENTATIVE PAYEES OR SIMILAR
FIDUCIARIES ESTABLISHED BY BENEFIT-ISSUING AGENCIES,
ATTORNEYS-IN-FACT PURSUANT TO A POWER OF ATTORNEY, AND
TRUSTEES.

§ 5553. GUARDIANSHIP SERVICES.

(A) IN GENERAL.--THE GUARDIANSHIP SUPPORT AGENCY SHALL BE
AVAILABLE TO SERVE AS GUARDIAN OF THE ESTATE OR OF THE PERSON,
OR BOTH, OF AN INCAPACITATED PERSON WHEN NO LESS RESTRICTIVE
ALTERNATIVE WILL MEET THE NEEDS OF THE INDIVIDUAL AND WHEN NO
OTHER PERSON IS WILLING AND QUALIFIED TO BECOME GUARDIAN. THE
AGENCY ITSELF MAY BE APPOINTED GUARDIAN AND NO INDIVIDUAL NEED
BE SPECIFIED BY THE COURT. IF APPOINTED, THE GUARDIANSHIP
SUPPORT AGENCY SHALL HAVE ALL OF THE POWERS AND DUTIES OF A
CORPORATE FIDUCIARY AND SHALL NOT BE REQUIRED TO POST BOND.

(B) POWERS AND DUTIES.--THE GUARDIANSHIP SUPPORT AGENCY
SHALL BE TREATED THE SAME AS ALL OTHER GUARDIANS IN REGARD TO
APPOINTMENT AS GUARDIAN OR SUCCESSOR OR CO-GUARDIAN, REPORTING,
POWERS AND DUTIES, COMPENSATION, AND IN ALL OTHER RESPECTS. IN
ADDITION TO SECTION 5521 (RELATING TO PROVISIONS CONCERNING
POWERS, DUTIES, AND LIABILITIES) A GUARDIANSHIP SUPPORT AGENCY
SHALL HAVE THE POWER AND DUTY TO:

(1) INVEST THE PRINCIPAL AND INCOME OF INCAPACITATED
PERSONS FOR WHOM IT IS THE GUARDIAN OF THE ESTATE. FOR THIS

PURPOSE, IT MAY POOL THE PRINCIPAL AND INCOME BUT SHALL
MAINTAIN AN INDIVIDUAL ACCOUNT FOR EACH INCAPACITATED PERSON
REFLECTING THE PERSON'S PARTICIPATION THEREIN.

(2) EXPEND AND, IF NECESSARY, ADVANCE COSTS NECESSARY TO
ADMINISTER GUARDIANSHIPS FOR WHICH IT HAS BEEN APPOINTED
GUARDIAN.

(3) APPLY FOR LETTERS OR OTHERWISE ADMINISTER THE ESTATE
OF ANY INCAPACITATED PERSON FOR WHOM IT HAS BEEN APPOINTED
GUARDIAN WHO DIES DURING THE GUARDIANSHIP WHEN NO ONE ELSE IS
WILLING AND QUALIFIED TO SERVE.

§ 5554. SERVICES TO COURTS, GUARDIANS AND OTHERS.

(A) SERVICES TO COURTS.--GUARDIANSHIP SUPPORT AGENCIES MAY
BE AVAILABLE TO ASSIST COURTS ON REQUEST WITH REVIEWING
PETITIONS FOR APPOINTMENT OF A GUARDIAN, RECOMMENDING
ALTERNATIVES TO GUARDIANSHIP, INVESTIGATING PETITIONS,
EXPLAINING PETITIONS TO RESPONDENTS OR REVIEWING REPORTS AND
MONITORING GUARDIANSHIP ARRANGEMENTS.

(B) SERVICES TO GUARDIANS.--GUARDIANSHIP SUPPORT AGENCIES
MAY BE AVAILABLE TO ASSIST GUARDIANS IN FILING REPORTS,
MONITORING INCAPACITATED PERSONS AND OTHERWISE FULFILLING THEIR
DUTIES.

(C) SERVICES TO PETITIONERS AND OTHERS.--GUARDIANSHIP
SUPPORT AGENCIES MAY BE AVAILABLE TO ASSIST IN THE FILING OF
PETITIONS FOR GUARDIANSHIP, TO PROVIDE INFORMATION ON AVAILABLE
ALTERNATIVES TO POTENTIAL PETITIONERS, TO LOCATE AND TRAIN
INDIVIDUALS SKILLED IN PROVIDING FUNCTIONAL EVALUATIONS OF
ALLEGED INCAPACITATED PERSONS AND TO PERFORM SUCH OTHER DUTIES
AS REQUIRED.

§ 5555. COSTS AND COMPENSATION.

(A) CHARGES.--RECIPIENTS OF SERVICE SHALL BE CHARGED FOR

1 SERVICES BASED ON THEIR ABILITY TO PAY.

2 (B) NONSUPPLANTATION.--COMMONWEALTH FUNDING SHALL NOT BE
3 USED TO SUPPLANT ANY EXISTING EFFORTS. GUARDIANSHIP SUPPORT
4 AGENCIES SHALL MAKE EVERY EFFORT TO MINIMIZE COSTS, INCLUDING
5 MINIMIZING PERSONNEL COSTS THROUGH THE USE OF VOLUNTEERS.

6 SECTION 17. SECTIONS 5601, 5603(A), (D) AND (E), 5604(B) AND
7 (C), 5704 AND 6111.1 OF TITLE 20 ARE AMENDED TO READ:

8 § 5601. General provision.

9 In addition to all other powers that may be delegated to an
10 attorney-in-fact, any or all of the powers referred to in
11 section 5602(a) (relating to form of power of attorney) may
12 lawfully be granted in writing and, unless the power of attorney
13 expressly directs to the contrary, shall be construed in
14 accordance with the provisions of this chapter. All powers of
15 attorney shall be signed by the principal in his own
16 handwriting, but, if for any physical reason he is unable to
17 sign his name, the principal may make his mark to which his name
18 shall be subscribed in his presence before or after he makes his
19 mark. The principal shall make his mark in the presence of two
20 witnesses who shall sign their names to the power of attorney in
21 his presence.

22 § 5603. Implementation of power of attorney.

23 (a) Power to make gifts and power to make limited gifts.--

24 (1) A power "to make gifts" shall mean that the
25 attorney-in-fact may make gifts for and on behalf of the
26 principal to any donees (including the attorney-in-fact) and
27 in such amounts as the attorney-in-fact may decide.

28 (2) A power "to make limited gifts" shall mean that the
29 attorney-in-fact may make only gifts for or on behalf of the
30 principal which are limited as follows:

1 (i) The class of permissible donees shall consist
2 solely of the principal's spouse and issue (including the
3 attorney-in-fact if he is a member of such class), or any
4 of them.

5 (ii) During each calendar year, the gifts made to
6 each donee, pursuant to such power, shall have an
7 aggregate value not in excess of, and shall be made in
8 such manner as to qualify in their entirety for, the
9 principal's annual exclusion from the Federal gift tax
10 permitted under section 2503(b) of the Internal Revenue
11 Code, determined without regard to section 2513(a)
12 thereof (or any successor provision to the code).

13 (iii) The attorney-in-fact shall be responsible as
14 equity and justice may require to the extent that any
15 gift made pursuant to a power "to make limited gifts"
16 exceeds the limitations imposed by subparagraph (i) or
17 (ii).

18 (3) A power to make gifts, whether or not limited as
19 aforesaid, shall be construed to empower the attorney-in-fact
20 to make gifts to each donee either outright or in trust; in
21 the case of a gift to a minor, such gifts may be made in
22 trust or in accordance with Chapter 53 (relating to
23 Pennsylvania Uniform [Gifts] Transfers to Minors Act) or
24 section 5155 (relating to order of court). In the case of a
25 gift made in trust, the attorney-in-fact may execute a deed
26 of trust for such purpose, designating one or more persons
27 (including the attorney-in-fact) as original or successor
28 trustees, or may make additions to an existing trust. In
29 making any gifts, the attorney-in-fact need not treat the
30 donees equally or proportionately and may entirely exclude

1 one or more permissible donees, and the pattern followed on
2 the occasion of any gift or gifts need not be followed on the
3 occasion of any other gift or gifts.

4 (4) An attorney-in-fact and the donee of a gift shall be
5 responsible as equity and justice may require to the extent
6 that a gift made by the attorney-in-fact is inconsistent with
7 prudent estate planning or financial management for the
8 principal or with the known or probable intent of the
9 principal with respect to disposition of his estate.

10 (5) No transfer agent, depository or other third party
11 acting in good faith shall have any responsibility to see to
12 the proper discharge by the attorney-in-fact of his duties
13 hereunder.

14 * * *

15 (D) POWER TO CLAIM AN ELECTIVE SHARE.--A POWER "TO CLAIM AN <—
16 ELECTIVE SHARE OF THE ESTATE OF MY DECEASED SPOUSE" SHALL MEAN
17 THAT THE ATTORNEY-IN-FACT MAY ELECT TO TAKE AGAINST THE WILL AND
18 CONVEYANCES OF THE PRINCIPAL'S DECEASED SPOUSE, DISCLAIM ANY
19 INTEREST IN PROPERTY WHICH THE PRINCIPAL IS REQUIRED TO DISCLAIM
20 AS A RESULT OF SUCH ELECTION, RETAIN ANY PROPERTY WHICH THE
21 PRINCIPAL HAS THE RIGHT TO ELECT TO RETAIN, FILE PETITIONS
22 PERTAINING TO THE ELECTION, INCLUDING PETITIONS TO EXTEND THE
23 TIME FOR ELECTING AND PETITIONS FOR ORDERS, DECREES AND
24 JUDGMENTS IN ACCORDANCE WITH SECTION 2211(C) AND (D) (RELATING
25 TO DETERMINATION OF EFFECT OF ELECTION; ENFORCEMENT), AND TAKE
26 ALL OTHER ACTIONS WHICH THE ATTORNEY-IN-FACT DEEMS APPROPRIATE
27 IN ORDER TO EFFECTUATE THE ELECTION: PROVIDED, HOWEVER, THAT THE
28 ELECTION SHALL BE MADE ONLY UPON THE APPROVAL OF THE COURT
29 HAVING JURISDICTION OF THE PRINCIPAL'S ESTATE IN ACCORDANCE WITH
30 SECTION 2206 (RELATING TO RIGHT OF ELECTION PERSONAL TO

1 SURVIVING SPOUSE) IN THE CASE OF A PRINCIPAL WHO HAS BEEN
2 ADJUDICATED AN [INCOMPETENT] INCAPACITATED PERSON, OR UPON THE
3 APPROVAL OF THE COURT HAVING JURISDICTION OF THE DECEASED
4 SPOUSE'S ESTATE IN THE CASE OF A PRINCIPAL WHO HAS NOT BEEN
5 ADJUDICATED AN [INCOMPETENT] INCAPACITATED PERSON.

6 (E) POWER TO DISCLAIM ANY INTEREST IN PROPERTY.--A POWER "TO
7 DISCLAIM ANY INTEREST IN PROPERTY" SHALL MEAN THAT THE ATTORNEY-
8 IN-FACT MAY RELEASE OR DISCLAIM ANY INTEREST IN PROPERTY ON
9 BEHALF OF THE PRINCIPAL IN ACCORDANCE WITH CHAPTER 62 (RELATING
10 TO DISCLAIMERS) OR SECTION 6103 (RELATING TO RELEASE OR
11 DISCLAIMER OF POWERS OR INTERESTS), PROVIDED THAT ANY DISCLAIMER
12 UNDER CHAPTER 62 SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF
13 SECTION 6202 (RELATING TO DISCLAIMERS BY FIDUCIARIES) IN THE
14 CASE OF A PRINCIPAL WHO SHALL HAVE BEEN ADJUDICATED AN
15 [INCOMPETENT] INCAPACITATED PERSON AT THE TIME OF THE EXECUTION
16 OF THE DISCLAIMER.

17 * * *

18 § 5604. Durable powers of attorney.

19 * * *

20 (b) Durable power of attorney not affected by disability or
21 lapse of time.--All acts done by an attorney-in-fact pursuant to
22 a durable power of attorney during any period of disability or
23 incapacity of the principal have the same effect and inure to
24 the benefit of and bind the principal and his successors in
25 interest as if the principal were competent and not disabled.
26 Unless the power of attorney states a time of termination, it is
27 valid notwithstanding the lapse of time since its execution.

28 * * *

29 (C) RELATION OF ATTORNEY-IN-FACT TO COURT-APPOINTED
30 GUARDIAN.--

1 (1) IF, FOLLOWING EXECUTION OF A DURABLE POWER OF
2 ATTORNEY, THE PRINCIPAL IS ADJUDICATED AN [INCOMPETENT]
3 INCAPACITATED PERSON AND A GUARDIAN IS APPOINTED FOR HIS
4 ESTATE, THE ATTORNEY-IN-FACT IS ACCOUNTABLE TO THE GUARDIAN
5 AS WELL AS TO THE PRINCIPAL. THE GUARDIAN SHALL HAVE THE SAME
6 POWER TO REVOKE OR AMEND THE POWER OF ATTORNEY THAT THE
7 PRINCIPAL WOULD HAVE HAD IF HE WERE NOT [INCOMPETENT] AN
8 INCAPACITATED PERSON.

9 (2) A PRINCIPAL MAY NOMINATE, BY A DURABLE POWER OF
10 ATTORNEY, THE GUARDIAN OF HIS ESTATE OR OF HIS PERSON FOR
11 CONSIDERATION BY THE COURT IF [INCOMPETENCY] INCAPACITY
12 PROCEEDINGS FOR THE PRINCIPAL'S ESTATE OR PERSON ARE
13 THEREAFTER COMMENCED. THE COURT SHALL MAKE ITS APPOINTMENT IN
14 ACCORDANCE WITH THE PRINCIPAL'S MOST RECENT NOMINATION IN A
15 DURABLE POWER OF ATTORNEY EXCEPT FOR GOOD CAUSE OR
16 DISQUALIFICATION.

17 § 5704. Notice to absentee.

18 The court, if satisfied concerning the interest of the
19 petitioner, shall cause to be advertised in a newspaper of
20 general circulation in the county of the absentee's last known
21 residence and in the legal journal, if any, designated by rule
22 of court for publication of legal notices, once a week for four
23 successive weeks or for such shorter period as the court may
24 deem appropriate, and to be otherwise advertised as the court
25 according to the circumstances of the case shall deem advisable,
26 the fact of such application, together with notice that on a
27 specified day, which shall be at least two weeks after the last
28 appearance of any such advertisement, the court, or a master
29 appointed by the court for that purpose, will hear evidence
30 concerning the alleged absence, including the circumstances and

1 duration thereof.

2 § 6111.1. Modification by divorce.

3 If the conveyer is divorced from the bonds of matrimony after
4 making a conveyance, [all provisions] any provision in the
5 conveyance which [were] was revocable by him at the time of his
6 death and which [were] was to take effect at or after his death
7 in favor of or relating to his spouse so divorced shall thereby
8 become ineffective for all purposes unless it appears in the
9 governing instrument that the provision was intended to survive
10 the divorce.

11 Section ~~10~~ 18. Title 20 is amended by adding a section to
12 read:

13 § 6111.2. Effect of divorce on designation of beneficiaries.

14 If a person domiciled in this Commonwealth at the time of his
15 death is divorced from the bonds of matrimony after designating
16 his spouse as beneficiary of a life insurance policy, annuity
17 contract, pension or profit-sharing plan or other contractual
18 arrangement providing for payments to his spouse, any
19 designation in favor of his former spouse which was revocable by
20 him after the divorce shall become ineffective for all purposes
21 unless it appears from the wording of the designation or from
22 either a court order or a written contract between the person
23 and his spouse that the designation was intended to survive the
24 divorce. Unless restrained by court order, no insurance company,
25 pension or profit-sharing plan trustee or other obligor shall be
26 liable for making payments to a former spouse which would have
27 been proper in the absence of this section. Any former spouse to
28 whom payment is made shall be answerable to anyone prejudiced by
29 the payment.

30 Section ~~11~~ 19. Section 6114 of Title 20 is amended by adding

1 a paragraph to read:

2 § 6114. Rules of interpretation.

3 In the absence of a contrary intent appearing therein,
4 conveyances shall be construed, as to real and personal estate,
5 in accordance with the following rules:

6 * * *

7 (8) Corporate fiduciaries.--Provisions authorizing or
8 restricting investment in the securities or common trust
9 funds of a corporate fiduciary or the exercise of voting
10 rights in its securities shall also apply to the securities
11 or common trust funds of any corporation which is an
12 affiliate of the corporate fiduciary within the meaning of
13 section 1504 of the Internal Revenue Code.

14 ~~Section 12. Sections 7188 and 7191 of Title 20 are amended~~ <—
15 ~~to read:~~

16 SECTION 20. SECTIONS 6202, 7133, 7184, 7188, 7191, <—
17 7315.1(B), 8301 AND 8411 OF TITLE 20 ARE AMENDED TO READ:

18 § 6202. DISCLAIMERS BY FIDUCIARIES OR ATTORNEYS-IN-FACT.

19 A DISCLAIMER ON BEHALF OF A DECEDENT, A MINOR OR AN
20 [INCOMPETENT] INCAPACITATED PERSON MAY BE MADE BY HIS PERSONAL
21 REPRESENTATIVE, THE GUARDIAN OF HIS ESTATE OR IN THE CASE OF AN
22 [INCOMPETENT] INCAPACITATED PERSON WHO EXECUTED A POWER OF
23 ATTORNEY WHICH CONFERS THE AUTHORITY TO DISCLAIM UPON HIS
24 ATTORNEY-IN-FACT AND WHICH QUALIFIES AS A DURABLE POWER OF
25 ATTORNEY UNDER SECTION 5604 (RELATING TO DURABLE POWERS OF
26 ATTORNEY) BY SUCH ATTORNEY-IN-FACT, IF, IN EACH CASE, THE COURT
27 HAVING JURISDICTION OF THE ESTATE AUTHORIZES THE DISCLAIMER
28 AFTER FINDING THAT IT IS ADVISABLE AND WILL NOT MATERIALLY
29 PREJUDICE THE RIGHTS OF CREDITORS, HEIRS OR BENEFICIARIES OF THE
30 DECEDENT, THE MINOR OR HIS CREDITORS, OR THE [INCOMPETENT]

1 INCAPACITATED PERSON OR HIS CREDITORS, AS THE CASE MAY BE. A
2 PERSONAL REPRESENTATIVE MAY MAKE A DISCLAIMER ON BEHALF OF HIS
3 DECEDENT WITHOUT COURT AUTHORIZATION IF THE WILL OF THE DECEDENT
4 SO AUTHORIZES HIM.

5 § 7133. POWERS, DUTIES AND LIABILITIES IDENTICAL WITH PERSONAL
6 REPRESENTATIVES.

7 THE PROVISIONS CONCERNING THE POWERS, DUTIES AND LIABILITIES
8 OF A TRUSTEE SHALL BE THE SAME AS THOSE SET FORTH IN THE
9 FOLLOWING PROVISIONS OF THIS TITLE FOR THE ADMINISTRATION OF A
10 DECEDENT'S OR A MINOR'S ESTATE:

11 SECTION 3313 (RELATING TO LIABILITY INSURANCE).

12 SECTION 3314 (RELATING TO CONTINUATION OF BUSINESS).

13 SECTION 3315 (RELATING TO INCORPORATION OF ESTATE'S
14 BUSINESS).

15 SECTION 3317 (RELATING TO CLAIMS AGAINST CO-FIDUCIARY).

16 SECTION 3318 (RELATING TO REVIVAL OF JUDGMENTS AGAINST
17 PERSONAL REPRESENTATIVE).

18 SECTION 3319 (RELATING TO POWER OF ATTORNEY; DELEGATION
19 OF POWER OVER SUBSCRIPTION RIGHTS AND FRACTIONAL SHARES;
20 AUTHORIZED DELEGATIONS).

21 SECTION 3320 (RELATING TO VOTING STOCK BY PROXY).

22 SECTION 3321 (RELATING TO NOMINEE REGISTRATION; CORPORATE
23 FIDUCIARY AS ATTORNEY-IN-FACT; DEPOSIT OF SECURITIES IN A
24 CLEARING CORPORATION; BOOK-ENTRY SECURITIES).

25 SECTION 3322 (RELATING TO ACCEPTANCE OF DEED IN LIEU OF
26 FORECLOSURE).

27 SECTION 3323 (RELATING TO COMPROMISE OF CONTROVERSIES).

28 SECTION 3324 (RELATING TO DEATH OR [INCOMPETENCY]
29 INCAPACITY OF FIDUCIARY).

30 SECTION 3327 (RELATING TO SURVIVING OR REMAINING PERSONAL

1 REPRESENTATIVES).

2 SECTION 3328 (RELATING TO DISAGREEMENT OF PERSONAL
3 REPRESENTATIVES).

4 SECTION 3331 (RELATING TO LIABILITY OF PERSONAL
5 REPRESENTATIVE ON CONTRACTS).

6 SECTION 3332 (RELATING TO INHERENT POWERS AND DUTIES).

7 SECTION 3353 (RELATING TO ORDER OF COURT).

8 SECTION 3354 (RELATING TO POWER GIVEN IN GOVERNING
9 INSTRUMENT).

10 SECTION 3355 (RELATING TO RESTRAINT OF SALE).

11 SECTION 3356 (RELATING TO PURCHASE BY PERSONAL
12 REPRESENTATIVE).

13 SECTION 3358 (RELATING TO COLLATERAL ATTACK).

14 SECTION 3359 (RELATING TO RECORD OF PROCEEDINGS; COUNTY
15 WHERE REAL ESTATE LIES).

16 SECTION 3360 (RELATING TO CONTRACTS, INADEQUACY OF
17 CONSIDERATION OR BETTER OFFER; BROKERS' COMMISSIONS).

18 SECTION 5147 (RELATING TO PROCEEDINGS AGAINST GUARDIAN).

19 § 7184. DISPOSITION OF INCOME.

20 EXCEPT AS OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, THE
21 TRUSTEE WITH THE APPROVAL OF THE COURT, MAY PAY INCOME
22 DISTRIBUTABLE TO A MINOR OR [INCOMPETENT] INCAPACITATED
23 BENEFICIARY FOR WHOSE ESTATE NO GUARDIAN HAS BEEN APPOINTED
24 DIRECTLY TO THE MINOR OR [INCOMPETENT] INCAPACITATED PERSON, OR
25 EXPEND AND APPLY IT FOR HIS MAINTENANCE OR EDUCATION.

26 § 7188. Annexation of account of distributed estate or trust.

27 A trustee who has received property from a personal
28 representative or from another trustee in distribution of an
29 estate or another trust, may annex a copy of an account of the
30 administration of such estate or other trust to an account filed

1 by the trustee covering the administration of the trust under
2 his management. If notice of the annexation of the account of
3 the estate or other trust is given to the persons required to be
4 notified of the filing of the trustee's account of the principal
5 trust, confirmation of the principal account shall relieve both
6 the trustee of the principal trust and the personal
7 representative or trustee of the distributed estate or other
8 trust of all liability to beneficiaries of the principal trust
9 for transactions shown in the account so annexed to the same
10 extent as if the annexed account had been separately filed and
11 confirmed. When the fund covered by the annexed account has
12 itself received property from another source under circumstances
13 that would have permitted annexation of an account under this
14 section or under section 3501.2 (relating to annexation of
15 account of terminated trust, guardianship or agency), accounts
16 for both funds may be annexed.

17 § 7191. Separate trusts.

18 The court, for cause shown [and with the consent of all
19 parties in interest, may divide], may authorize the division of
20 a trust into two or more separate trusts upon such terms and
21 conditions and with such notice as the court shall direct.

22 ~~Section 13. Sections 7315.1(b) and 8301 of Title 20 are~~ <—
23 ~~amended to read:~~

24 § 7315.1. Retention of cash; temporary investments.

25 * * *

26 (b) Temporary investments.--A fiduciary may make temporary
27 investment of funds which he is entitled to hold uninvested
28 [under subsection (a)] or which he wishes to hold in liquid form
29 in short-term interest-bearing obligations or deposits, or other
30 short-term liquid investments, selected in each case in

1 compliance with the standards of section 7302(b) (relating to
2 authorized investments; in general), but without regard to any
3 investment restrictions imposed by the governing instrument and
4 may make a reasonable charge, in addition to all other
5 compensation to which he is entitled, for services rendered in
6 making the temporary investment.

7 § 8301. Powers of court to authorize sale, etc. of real
8 property.

9 The court of common pleas, operating through its appropriate
10 division, may authorize the sale, mortgage, lease or exchange of
11 real property or grant declaratory relief with respect to real
12 property:

13 (1) Where the legal title is held:

14 (i) by a person whose spouse is an [incompetent] <—
15 INCAPACITATED PERSON, or has abandoned him or her for one <—
16 year, or has been absent in circumstances from which the
17 law would presume his or her decease;

18 (ii) by a tenant of an estate by entireties, when
19 the other tenant of such estate has been absent in
20 circumstances from which the law would presume his or her
21 decease;

22 (iii) by corporations of any kind having no capacity
23 to convey, or by any unincorporated association; [or]

24 (iv) by any religious, beneficial, or charitable
25 society or association, incorporated or unincorporated,
26 whose title is subject to forfeiture if real property is
27 held in excess of the amount authorized by law[.]; or

28 (v) by any religious, beneficial or charitable
29 society or association, incorporated or unincorporated,
30 whose title is subject to reversion, possibility of

1 reverter, or right of reentry for condition broken if the
2 real property ceases to be used for a purpose specified
3 in a deed, subject to the following:

4 (A) A petition to declare the real property free
5 from reversion, possibility of reverter, or right of
6 reentry shall contain an affidavit of an officer of
7 the religious, beneficial or charitable society or
8 association, stating in detail what reasonable
9 efforts have been made to locate or contact the
10 grantor or the grantor's heirs, successors or assigns
11 to obtain a conveyance of the reversion, possibility
12 of reverter, or right of reentry, why the real
13 property should be declared free of the reversion,
14 possibility of reverter, or right of reentry, and the
15 use of the funds, if any, to be derived from sale of
16 the real property.

17 (B) The court shall have the power to consider
18 all of the circumstances and to grant such equitable
19 relief as shall be just and proper, and impose such
20 restrictions upon the use of the funds to be derived
21 from the sale of real property as the court shall
22 deem to be appropriate to further the religious,
23 beneficial or charitable purpose reflected in the
24 deed containing the reversion, possibility of
25 reverter, or right of reentry for condition broken.

26 (2) Where the legal title is an estate tail, or is
27 subject to contingent remainders, executory interests, or
28 remainders to a class some or all of whom may not be in being
29 or ascertained at the time of the entry of the decree.

30 (3) Where the legal title is otherwise inalienable.

1 § 8411. NOTICE OF ACTION TO UNITED STATES VETERANS' BUREAU.

2 IN ANY ACTION BROUGHT UNDER ANY LAW OF THIS COMMONWEALTH FOR
3 THE APPOINTMENT OF A COMMITTEE OR GUARDIAN FOR A VETERAN OF ANY
4 WAR, OR A MINOR CHILD, OR [INCOMPETENT] INCAPACITATED DEPENDENT
5 OF A VETERAN OF ANY WAR, ON WHOSE ACCOUNT BENEFITS OF
6 COMPENSATION OR INSURANCE OR OTHER GRATUITY IS PAYABLE BY THE
7 UNITED STATES VETERANS' BUREAU, OR ITS SUCCESSOR, OR UPON THE
8 FILING OF ANY PETITION OR ACCOUNT BY ANY SUCH COMMITTEE OR
9 GUARDIAN OF ANY SUCH PERSON, NOTICE OF SUCH ACTION, OR OF THE
10 FILING OF SUCH PETITION OR ACCOUNT, AND OF THE HEARING THEREON,
11 SHALL BE MAILED THE ATTORNEY OF THE UNITED STATES VETERANS'
12 BUREAU OFFICE HAVING JURISDICTION OVER SUCH PERSON. IN ALL SUCH
13 CASES, THE UNITED STATES VETERANS' BUREAU, OR ITS SUCCESSOR,
14 SHALL BE A PARTY IN INTEREST, AND A CERTIFIED COPY OF EACH
15 ACCOUNT FILED IN THE COURT SHALL BE SUPPLIED THE SAID BUREAU BY
16 THE COMMITTEE OR GUARDIAN.

17 SECTION 21. SECTION 1707 OF TITLE 72 IS AMENDED BY ADDING A
18 SUBSECTION TO READ:

19 § 1707. TRANSFERS SUBJECT TO TAX.

20 * * *

21 (D) TRUSTS AND SIMILAR ARRANGEMENTS FOR SPOUSES.--ALL
22 SUCCEEDING INTERESTS WHICH FOLLOW THE INTEREST OF A SURVIVING
23 SPOUSE IN A TRUST OR SIMILAR ARRANGEMENT, TO THE EXTENT
24 SPECIFIED IN SECTION 1712 (RELATING TO TRUSTS AND SIMILAR
25 ARRANGEMENTS FOR SPOUSES), ARE TRANSFERS SUBJECT TO TAX AS IF
26 THE SURVIVING SPOUSE WERE THE TRANSFEROR.

27 SECTION 22. SECTIONS 1708(B) AND 1711(K) AND (M) OF TITLE 72
28 ARE AMENDED TO READ:

29 § 1708. JOINT TENANCY.

30 * * *

(B) HUSBAND AND WIFE.--[EXCEPT AS PROVIDED IN SUBSECTION
(C), THIS] THIS SECTION SHALL NOT APPLY TO PROPERTY AND
INTERESTS IN PROPERTY PASSING BY RIGHT OF SURVIVORSHIP TO THE
SURVIVOR OF HUSBAND AND WIFE.

* * *

§ 1711. TRANSFERS NOT SUBJECT TO TAX.

* * *

(K) PROPERTY SUBJECT TO POWER OF APPOINTMENT.--PROPERTY
SUBJECT TO A POWER OF APPOINTMENT, WHETHER OR NOT THE POWER IS
EXERCISED, AND NOTWITHSTANDING ANY BLENDING OF SUCH PROPERTY
WITH THE PROPERTY OF THE DONEE, IS EXEMPT FROM INHERITANCE TAX
IN THE ESTATE OF THE DONEE OF THE POWER OF APPOINTMENT, EXCEPT
AS PROVIDED IN SECTION 1712 (RELATING TO TRUST AND SIMILAR
ARRANGEMENTS FOR SPOUSES).

* * *

(M) HUSBAND AND WIFE.--TRANSFERS OF PROPERTY TO OR FOR THE
USE OF A HUSBAND OR WIFE OF THE DECEDENT ARE EXEMPT FROM
INHERITANCE TAX, EXCEPT AS OTHERWISE PROVIDED PURSUANT TO
SECTION 1716(A)(2) (RELATING TO INHERITANCE TAX). PROPERTY OWNED
BY HUSBAND AND WIFE WITH RIGHT OF SURVIVORSHIP IS EXEMPT FROM
INHERITANCE TAX. [IF THE OWNERSHIP WAS CREATED WITHIN THE
MEANING OF SECTION 1707(C)(3) THE ENTIRE INTEREST TRANSFERRED
SHALL BE SUBJECT TO TAX UNDER SECTION 1707(C)(3) AS THOUGH A
PART OF THE ESTATE OF THE SPOUSE WHO CREATED THE CO-OWNERSHIP.]

* * *

SECTION 23. TITLE 72 IS AMENDED BY ADDING A SECTION TO READ:
§ 1712. TRUSTS AND SIMILAR ARRANGEMENTS FOR SPOUSES.

IN THE CASE OF A TRANSFER OF PROPERTY FOR THE SOLE USE OF THE
TRANSFEROR'S SURVIVING SPOUSE DURING THE SURVIVING SPOUSE'S
LIFETIME, ALL SUCCEEDING INTERESTS WHICH FOLLOW THE INTEREST OF

1 THE SURVIVING SPOUSE SHALL NOT BE SUBJECT TO TAX AS TRANSFERS BY
2 THE TRANSFEROR, BUT RATHER SHALL BE DEEMED TO BE TRANSFERS
3 SUBJECT TO TAX BY THE SURVIVING SPOUSE OF THE PROPERTY HELD IN
4 THE TRUST OR SIMILAR ARRANGEMENT AT THE DEATH OF THE SURVIVING
5 SPOUSE. SUCH SUCCEEDING INTERESTS SHALL BE VALUED AT THE DEATH
6 OF THE SURVIVING SPOUSE AND TAXED AT THE TAX RATES APPLICABLE TO
7 DISPOSITIONS BY THE SURVIVING SPOUSE. ANY EXEMPTION FROM TAX
8 BASED UPON THE KIND OR LOCATION OF PROPERTY SHALL BE BASED UPON
9 THE KIND OR LOCATION OF PROPERTY HELD IN THE TRUST OR SIMILAR
10 ARRANGEMENT AT THE SURVIVING SPOUSE'S DEATH.

11 SECTION 24. SECTIONS 1716(A) AND (E) AND 1730(1) AND (2) OF
12 TITLE 72 ARE AMENDED TO READ:

13 § 1716. INHERITANCE TAX.

14 (A) RATE OF TAX.--

15 (1) INHERITANCE TAX UPON THE TRANSFER OF PROPERTY
16 PASSING TO OR FOR THE USE OF ANY OF THE FOLLOWING SHALL BE AT
17 THE RATE OF 6%:

18 (I) GRANDFATHER, GRANDMOTHER, FATHER, MOTHER[,
19 HUSBAND, WIFE] AND LINEAL DESCENDANTS.

20 (II) WIFE OR WIDOW AND HUSBAND OR WIDOWER OF A
21 CHILD.

22 (2) INHERITANCE TAX UPON THE TRANSFER OF PROPERTY
23 PASSING TO OR FOR THE USE OF A HUSBAND OR WIFE SHALL BE:

24 (I) AT THE RATE OF 5% FOR ESTATES OF DECEDENTS DYING
25 ON OR AFTER JULY 1, 1991, AND BEFORE JULY 1, 1992.

26 (II) AT THE RATE OF 4% FOR ESTATES OF DECEDENTS
27 DYING ON OR AFTER JULY 1, 1992, AND BEFORE JULY 1, 1993.

28 (III) AT THE RATE OF 3% FOR ESTATES OF DECEDENTS
29 DYING ON OR AFTER JULY 1, 1993, AND BEFORE JULY 1, 1994.

30 (IV) AT THE RATE OF 2% FOR ESTATES OF DECEDENTS

1 DYING ON OR AFTER JULY 1, 1994, AND BEFORE JULY 1, 1995.

2 (V) AT THE RATE OF 1% FOR ESTATES OF DECEDENTS DYING
3 ON OR AFTER JULY 1, 1995, AND BEFORE JULY 1, 1996.

4 [(2)] (3) INHERITANCE TAX UPON THE TRANSFER OF PROPERTY
5 PASSING TO OR FOR THE USE OF ALL PERSONS OTHER THAN THOSE
6 DESIGNATED IN PARAGRAPH (1), (2) OR (3) OR EXEMPT UNDER
7 SECTION 1711(M) (RELATING TO TRANSFERS NOT SUBJECT TO TAX)
8 SHALL BE AT THE RATE OF 15%.

9 [(3)] (4) WHEN PROPERTY PASSES TO OR FOR THE USE OF A
10 HUSBAND AND WIFE WITH RIGHT OF SURVIVORSHIP, ONE OF WHOM IS
11 TAXABLE AT A RATE LOWER THAN THE OTHER, THE LOWER RATE OF TAX
12 SHALL BE APPLIED TO THE ENTIRE INTEREST.

13 * * *

14 (E) COMPROMISE AS TO RATE OF FUTURE INTERESTS.--IF THE RATE
15 OF TAX WHICH WILL BE APPLICABLE WHEN [A FUTURE] AN INTEREST
16 VESTS IN POSSESSION AND ENJOYMENT CANNOT BE ESTABLISHED WITH
17 CERTAINTY, THE DEPARTMENT, AFTER CONSIDERATION OF RELEVANT
18 ACTUARIAL FACTORS, VALUATIONS AND OTHER PERTINENT CIRCUMSTANCES,
19 MAY ENTER INTO AN AGREEMENT WITH THE PERSON RESPONSIBLE FOR
20 PAYMENT TO ESTABLISH A SPECIFIED AMOUNT OF TAX WHICH, WHEN PAID
21 WITHIN 60 DAYS AFTER THE AGREEMENT, SHALL CONSTITUTE FULL
22 PAYMENT OF ALL TAX OTHERWISE DUE UPON SUCH TRANSFER. RIGHTS OF
23 WITHDRAWAL OF A SURVIVING SPOUSE NOT EXERCISED WITHIN NINE
24 MONTHS OF THE TRANSFEROR'S DEATH SHALL BE IGNORED IN MAKING SUCH
25 CALCULATIONS.

26 * * *

27 § 1730. DEDUCTIONS NOT ALLOWED.

28 THE FOLLOWING ARE NOT DEDUCTIBLE:

29 [(1) THE VALUE OF ASSETS CLAIMED FOR THE SPOUSE'S
30 ALLOWANCE UNDER 20 PA.C.S. § 2102 (RELATING TO SHARE OF

1 SURVIVING SPOUSE).]

2 (2) CLAIMS OF A FORMER [OR SURVIVING] SPOUSE, OR OTHERS,
3 UNDER AN AGREEMENT BETWEEN THE FORMER [OR SURVIVING] SPOUSE
4 AND THE DECEDENT, INsofar AS THEY ARISE IN CONSIDERATION OF A
5 RELINQUISHMENT OR PROMISED RELINQUISHMENT OF MARITAL OR
6 SUPPORT RIGHTS.

7 * * *

8 SECTION 25. SECTION 1744 OF TITLE 72 IS AMENDED BY ADDING A
9 SUBSECTION TO READ:

10 § 1744. SOURCE OF PAYMENT.

11 * * *

12 (E.1) TRUSTS FOR SPOUSES.--IN THE ABSENCE OF A CONTRARY
13 INTENT APPEARING IN THE INSTRUMENT CREATING THE TRUST OR SIMILAR
14 ARRANGEMENT, AND IN THE ABSENCE OF A CONTRARY DIRECTION BY THE
15 SURVIVING SPOUSE, THE INHERITANCE TAX, INCLUDING INTEREST, DUE
16 AT THE DEATH OF A SURVIVING SPOUSE WITH RESPECT TO A TRUST OR
17 SIMILAR ARRANGEMENT TO WHICH SECTION 1712 (RELATING TO TRUSTS
18 AND SIMILAR ARRANGEMENTS FOR SPOUSES) IS APPLICABLE SHALL BE
19 PAID OUT OF THE PRINCIPAL OF THE TRUST OR SIMILAR ARRANGEMENT.
20 THE PAYMENT SHALL BE MADE BY THE TRUSTEE OR OTHER FIDUCIARY IN
21 POSSESSION OF THE PROPERTY AND, IF NOT SO PAID, SHALL BE MADE BY
22 THE TRANSFEREE OF SUCH PRINCIPAL.

23 * * *

24 SECTION 26. SECTIONS 3307(A), 3508(G), 4405(A) AND 8308(C)
25 OF TITLE 13 ARE AMENDED TO READ:

26 § 3307. BURDEN OF ESTABLISHING SIGNATURES, DEFENSES AND DUE
27 COURSE.

28 (A) PROOF OF EFFECTIVENESS OF SIGNATURE.--UNLESS
29 SPECIFICALLY DENIED IN THE PLEADINGS EACH SIGNATURE ON AN
30 INSTRUMENT IS ADMITTED. WHEN THE EFFECTIVENESS OF A SIGNATURE IS

1 PUT IN ISSUE:

2 (1) THE BURDEN OF ESTABLISHING IT IS ON THE PARTY
3 CLAIMING UNDER THE SIGNATURE; BUT

4 (2) THE SIGNATURE IS PRESUMED TO BE GENUINE OR
5 AUTHORIZED EXCEPT WHERE THE ACTION IS TO ENFORCE THE
6 OBLIGATION OF A PURPORTED SIGNER WHO HAS DIED OR BECOME
7 [INCOMPETENT] AN INCAPACITATED PERSON BEFORE PROOF IS
8 REQUIRED.

9 * * *

10 § 3508. NOTICE OF DISHONOR.

11 * * *

12 (G) NOTICE WHEN PARTY DEAD OR [INCOMPETENT] INCAPACITATED.--
13 WHEN ANY PARTY IS DEAD OR [INCOMPETENT] AN INCAPACITATED PERSON
14 NOTICE MAY BE SENT TO HIS LAST KNOWN ADDRESS OR GIVEN TO HIS
15 PERSONAL REPRESENTATIVE.

16 * * *

17 § 4405. DEATH OR [INCOMPETENCE] INCAPACITY OF CUSTOMER.

18 (A) AUTHORITY OF BANK UNAFFECTED IN ABSENCE OF KNOWLEDGE.--
19 THE AUTHORITY OF A PAYOR OR COLLECTING BANK TO ACCEPT, PAY OR
20 COLLECT AN ITEM OR TO ACCOUNT FOR PROCEEDS OF ITS COLLECTION IF
21 OTHERWISE EFFECTIVE IS NOT RENDERED INEFFECTIVE BY
22 [INCOMPETENCE] INCAPACITY OF A CUSTOMER OF EITHER BANK EXISTING
23 AT THE TIME THE ITEM IS ISSUED OR ITS COLLECTION IS UNDERTAKEN
24 IF THE BANK DOES NOT KNOW OF AN ADJUDICATION OF [INCOMPETENCE]
25 INCAPACITY. NEITHER DEATH NOR [INCOMPETENCE] INCAPACITY OF A
26 CUSTOMER REVOKES SUCH AUTHORITY TO ACCEPT, PAY, COLLECT OR
27 ACCOUNT UNTIL THE BANK KNOWS OF THE FACT OF DEATH OR OF AN
28 ADJUDICATION OF [INCOMPETENCE] INCAPACITY AND HAS REASONABLE
29 OPPORTUNITY TO ACT ON IT.

30 * * *

§ 8308. INDORSEMENT, HOW MADE; SPECIAL INDORSEMENT; INDORSER
NOT A GUARANTOR; PARTIAL ASSIGNMENT.

* * *

(C) DEFINITION OF "APPROPRIATE PERSON".--AN "APPROPRIATE
PERSON" IN SUBSECTION (A) MEANS:

(1) THE PERSON SPECIFIED BY THE SECURITY OR BY SPECIAL
INDORSEMENT TO BE ENTITLED TO THE SECURITY;

(2) WHERE THE PERSON SO SPECIFIED IS DESCRIBED AS A
FIDUCIARY BUT IS NO LONGER SERVING IN THE DESCRIBED
CAPACITY,--EITHER THAT PERSON OR HIS SUCCESSOR;

(3) WHERE THE SECURITY OR INDORSEMENT SO SPECIFIES MORE
THAN ONE PERSON AS FIDUCIARIES AND ONE OR MORE ARE NO LONGER
SERVING IN THE DESCRIBED CAPACITY,--THE REMAINING FIDUCIARY
OR FIDUCIARIES, WHETHER OR NOT A SUCCESSOR HAS BEEN APPOINTED
OR QUALIFIED;

(4) WHERE THE PERSON SO SPECIFIED IS AN INDIVIDUAL AND
IS WITHOUT CAPACITY TO ACT BY VIRTUE OF DEATH, [INCOMPETENCE]
INCAPACITY, INFANCY OR OTHERWISE, --HIS EXECUTOR,
ADMINISTRATOR, GUARDIAN OR LIKE FIDUCIARY;

(5) WHERE THE SECURITY OR INDORSEMENT SO SPECIFIES MORE
THAN ONE PERSON AS TENANTS BY THE ENTIRETY OR WITH RIGHT OF
SURVIVORSHIP AND BY REASON OF DEATH ALL CANNOT SIGN,--THE
SURVIVOR OR SURVIVORS;

(6) A PERSON HAVING POWER TO SIGN UNDER APPLICABLE LAW
OR CONTROLLING INSTRUMENT; OR

(7) TO THE EXTENT THAT ANY OF THE FOREGOING PERSONS MAY
ACT THROUGH AN AGENT,--HIS AUTHORIZED AGENT.

* * *

SECTION 27. SECTIONS 311(C), 509, 2901(B), 2905(B) AND
3206(A), (G) AND (I) OF TITLE 18 ARE AMENDED TO READ:

1 § 311. CONSENT.

2 * * *

3 (C) INEFFECTIVE CONSENT.--UNLESS OTHERWISE PROVIDED BY THIS
4 TITLE OR BY THE LAW DEFINING THE OFFENSE, ASSENT DOES NOT
5 CONSTITUTE CONSENT IF:

6 (1) IT IS GIVEN BY A PERSON WHO IS LEGALLY [INCOMPETENT]
7 INCAPACITATED TO AUTHORIZE THE CONDUCT CHARGED TO CONSTITUTE
8 THE OFFENSE;

9 (2) IT IS GIVEN BY A PERSON WHO BY REASON OF YOUTH,
10 MENTAL DISEASE OR DEFECT OR INTOXICATION IS MANIFESTLY UNABLE
11 OR KNOWN BY THE ACTOR TO BE UNABLE TO MAKE A REASONABLE
12 JUDGMENT AS TO THE NATURE OR HARMFULNESS OF THE CONDUCT
13 CHARGED TO CONSTITUTE THE OFFENSE;

14 (3) IT IS GIVEN BY A PERSON WHOSE IMPROVIDENT CONSENT IS
15 SOUGHT TO BE PREVENTED BY THE LAW DEFINING THE OFFENSE; OR

16 (4) IT IS INDUCED BY FORCE, DURESS OR DECEPTION OF A
17 KIND SOUGHT TO BE PREVENTED BY THE LAW DEFINING THE OFFENSE.

18 § 509. USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR
19 CARE, DISCIPLINE OR SAFETY OF OTHERS.

20 THE USE OF FORCE UPON OR TOWARD THE PERSON OF ANOTHER IS
21 JUSTIFIABLE IF:

22 (1) THE ACTOR IS THE PARENT OR GUARDIAN OR OTHER PERSON
23 SIMILARLY RESPONSIBLE FOR THE GENERAL CARE AND SUPERVISION OF
24 A MINOR OR A PERSON ACTING AT THE REQUEST OF SUCH PARENT,
25 GUARDIAN OR OTHER RESPONSIBLE PERSON AND:

26 (I) THE FORCE IS USED FOR THE PURPOSE OF
27 SAFEGUARDING OR PROMOTING THE WELFARE OF THE MINOR,
28 INCLUDING THE PREVENTING OR PUNISHMENT OF HIS MISCONDUCT;
29 AND

30 (II) THE FORCE USED IS NOT DESIGNED TO CAUSE OR

1 KNOWN TO CREATE A SUBSTANTIAL RISK OF CAUSING DEATH,
2 SERIOUS BODILY INJURY, DISFIGUREMENT, EXTREME PAIN OR
3 MENTAL DISTRESS OR GROSS DEGRADATION.

4 (2) THE ACTOR IS A TEACHER OR PERSON OTHERWISE ENTRUSTED
5 WITH THE CARE OR SUPERVISION FOR A SPECIAL PURPOSE OF A MINOR
6 AND:

7 (I) THE ACTOR BELIEVES THAT THE FORCE USED IS
8 NECESSARY TO FURTHER SUCH SPECIAL PURPOSE, INCLUDING THE
9 MAINTENANCE OF REASONABLE DISCIPLINE IN A SCHOOL, CLASS
10 OR OTHER GROUP, AND THAT THE USE OF SUCH FORCE IS
11 CONSISTENT WITH THE WELFARE OF THE MINOR; AND

12 (II) THE DEGREE OF FORCE, IF IT HAD BEEN USED BY THE
13 PARENT OR GUARDIAN OF THE MINOR, WOULD NOT BE
14 UNJUSTIFIABLE UNDER PARAGRAPH (1)(II).

15 (3) THE ACTOR IS THE GUARDIAN OR OTHER PERSON SIMILARLY
16 RESPONSIBLE FOR THE GENERAL CARE AND SUPERVISION OF AN
17 [INCOMPETENT] INCAPACITATED, MENTALLY ILL OR MENTALLY
18 RETARDED PERSON; AND:

19 (I) THE FORCE IS USED FOR THE PURPOSE OF
20 SAFEGUARDING OR PROMOTING THE WELFARE OF THE
21 [INCOMPETENT] INCAPACITATED, MENTALLY ILL OR MENTALLY
22 RETARDED PERSON, INCLUDING THE PREVENTION OF HIS
23 MISCONDUCT, AND THERE IS NO REASONABLE ALTERNATIVE TO THE
24 USE OF SUCH FORCE; AND

25 (II) THE FORCE USED IS NOT DESIGNED TO CAUSE OR
26 KNOWN TO CREATE A SUBSTANTIAL RISK OF CAUSING DEATH,
27 BODILY INJURY, DISFIGUREMENT, UNNECESSARY PAIN, MENTAL
28 DISTRESS, OR HUMILIATION.

29 (4) THE ACTOR IS A DOCTOR OR OTHER THERAPIST OR A PERSON
30 ASSISTING HIM AT HIS DIRECTION; AND:

1 (I) THE FORCE IS USED FOR THE PURPOSE OF
2 ADMINISTERING A RECOGNIZED FORM OF TREATMENT NOT
3 PROHIBITED BY LAW OF THIS COMMONWEALTH WHICH THE ACTOR
4 BELIEVES TO BE ADAPTED TO PROMOTING THE PHYSICAL OR
5 MENTAL HEALTH OF THE PATIENT; AND

6 (II) THE TREATMENT IS ADMINISTERED WITH THE CONSENT
7 OF THE PATIENT, OR, IF THE PATIENT IS A MINOR OR AN
8 [INCOMPETENT] INCAPACITATED PERSON WITH THE CONSENT OF
9 HIS PARENT OR GUARDIAN OR OTHER PERSON LEGALLY COMPETENT
10 TO CONSENT IN HIS BEHALF, OR THE TREATMENT IS
11 ADMINISTERED IN AN EMERGENCY WHEN THE ACTOR BELIEVES THAT
12 NO ONE COMPETENT TO CONSENT CAN BE CONSULTED AND THAT A
13 REASONABLE PERSON, WISHING TO SAFEGUARD THE WELFARE OF
14 THE PATIENT, WOULD CONSENT.

15 (5) THE ACTOR IS A WARDEN OR OTHER AUTHORIZED OFFICIAL
16 OF A CORRECTIONAL INSTITUTION; AND:

17 (I) HE BELIEVES THAT THE FORCE USED IS NECESSARY FOR
18 THE PURPOSE OF ENFORCING THE LAWFUL RULES OR PROCEDURES
19 OF THE INSTITUTION, UNLESS HIS BELIEF IN THE LAWFULNESS
20 OF THE RULE OR PROCEDURE SOUGHT TO BE ENFORCED IS
21 ERRONEOUS AND HIS ERROR IS DUE TO IGNORANCE OR MISTAKE AS
22 TO THE PROVISIONS OF THIS TITLE, ANY OTHER PROVISION OF
23 THE CRIMINAL LAW OR THE LAW GOVERNING THE ADMINISTRATION
24 OF THE INSTITUTION;

25 (II) THE NATURE OR DEGREE OF FORCE USED IS NOT
26 FORBIDDEN BY LAW; AND

27 (III) IF DEADLY FORCE IS USED, ITS USE IS OTHERWISE
28 JUSTIFIABLE UNDER THIS CHAPTER.

29 (6) THE ACTOR IS A PERSON RESPONSIBLE FOR THE SAFETY OF
30 A VESSEL OR AN AIRCRAFT OR A PERSON ACTING AT HIS DIRECTION;

1 AND:

2 (I) HE BELIEVES THAT THE FORCE USED IS NECESSARY TO
3 PREVENT INTERFERENCE WITH THE OPERATION OF THE VESSEL OR
4 AIRCRAFT OR OBSTRUCTION OF THE EXECUTION OF A LAWFUL
5 ORDER, UNLESS HIS BELIEF IN THE LAWFULNESS OF THE ORDER
6 IS ERRONEOUS AND HIS ERROR IS DUE TO IGNORANCE OR MISTAKE
7 AS TO THE LAW DEFINING HIS AUTHORITY; AND

8 (II) IF DEADLY FORCE IS USED, ITS USE IS OTHERWISE
9 JUSTIFIABLE UNDER THIS CHAPTER.

10 (7) THE ACTOR IS A PERSON WHO IS AUTHORIZED OR REQUIRED
11 BY LAW TO MAINTAIN ORDER OR DECORUM IN A VEHICLE, TRAIN OR
12 OTHER CARRIER OR IN A PLACE WHERE OTHERS ARE ASSEMBLED; AND:

13 (I) HE BELIEVES THAT THE FORCE USED IS NECESSARY FOR
14 SUCH PURPOSE; AND

15 (II) THE FORCE USED IS NOT DESIGNED TO CAUSE DEATH,
16 OR KNOWN TO CREATE A SUBSTANTIAL RISK OF CAUSING DEATH,
17 BODILY INJURY, OR EXTREME MENTAL DISTRESS.

18 § 2901. KIDNAPPING.

19 * * *

20 (B) GRADING.--KIDNAPPING IS A FELONY OF THE FIRST DEGREE. A
21 REMOVAL OR CONFINEMENT IS UNLAWFUL WITHIN THE MEANING OF THIS
22 SECTION IF IT IS ACCOMPLISHED BY FORCE, THREAT OR DECEPTION, OR,
23 IN THE CASE OF A PERSON WHO IS UNDER THE AGE OF 14 YEARS OR
24 [INCOMPETENT] AN INCAPACITATED PERSON, IF IT IS ACCOMPLISHED
25 WITHOUT THE CONSENT OF A PARENT, GUARDIAN OR OTHER PERSON
26 RESPONSIBLE FOR GENERAL SUPERVISION OF HIS WELFARE.

27 § 2905. INTERFERENCE WITH CUSTODY OF COMMITTED PERSONS.

28 * * *

29 (B) DEFINITION.--AS USED IN THIS SECTION THE TERM "COMMITTED
30 PERSON" MEANS, IN ADDITION TO ANYONE COMMITTED UNDER JUDICIAL

1 WARRANT, ANY ORPHAN, NEGLECTED OR DELINQUENT CHILD, MENTALLY
2 DEFECTIVE OR INSANE PERSON, OR OTHER DEPENDENT OR [INCOMPETENT]
3 INCAPACITATED PERSON ENTRUSTED TO THE CUSTODY OF ANOTHER BY OR
4 THROUGH A RECOGNIZED SOCIAL AGENCY OR OTHERWISE BY AUTHORITY OF
5 LAW.

6 § 3206. PARENTAL CONSENT.

7 (A) GENERAL RULE.--EXCEPT IN THE CASE OF A MEDICAL
8 EMERGENCY, OR EXCEPT AS PROVIDED IN THIS SECTION, IF A PREGNANT
9 WOMAN IS LESS THAN 18 YEARS OF AGE AND NOT EMANCIPATED, OR IF
10 SHE HAS BEEN ADJUDGED AN [INCOMPETENT] INCAPACITATED PERSON
11 UNDER 20 PA.C.S. § 5511 (RELATING TO PETITION AND HEARING;
12 EXAMINATION BY COURT-APPOINTED PHYSICIAN), A PHYSICIAN SHALL NOT
13 PERFORM AN ABORTION UPON HER UNLESS, IN THE CASE OF A WOMAN WHO
14 IS LESS THAN 18 YEARS OF AGE, HE FIRST OBTAINS THE INFORMED
15 CONSENT BOTH OF THE PREGNANT WOMAN AND OF ONE OF HER PARENTS;
16 OR, IN THE CASE OF A WOMAN WHO IS [INCOMPETENT] AN INCAPACITATED
17 PERSON, HE FIRST OBTAINS THE INFORMED CONSENT OF HER GUARDIAN.
18 IN DECIDING WHETHER TO GRANT SUCH CONSENT, A PREGNANT WOMAN'S
19 PARENT OR GUARDIAN SHALL CONSIDER ONLY THEIR CHILD'S OR WARD'S
20 BEST INTERESTS. IN THE CASE OF A PREGNANCY THAT IS THE RESULT OF
21 INCEST WHERE THE FATHER IS A PARTY TO THE INCESTUOUS ACT, THE
22 PREGNANT WOMAN NEED ONLY OBTAIN THE CONSENT OF HER MOTHER.

23 * * *

24 (G) COERCION PROHIBITED.--EXCEPT IN A MEDICAL EMERGENCY, NO
25 PARENT, GUARDIAN OR OTHER PERSON STANDING IN LOCO PARENTIS SHALL
26 COERCE A MINOR OR [INCOMPETENT] INCAPACITATED WOMAN TO UNDERGO
27 AN ABORTION. ANY MINOR OR [INCOMPETENT] INCAPACITATED WOMAN WHO
28 IS THREATENED WITH SUCH COERCION MAY APPLY TO A COURT OF COMMON
29 PLEAS FOR RELIEF. THE COURT SHALL PROVIDE THE MINOR OR
30 [INCOMPETENT] INCAPACITATED WOMAN WITH COUNSEL, GIVE THE MATTER

1 EXPEDITED CONSIDERATION AND GRANT SUCH RELIEF AS MAY BE
2 NECESSARY TO PREVENT SUCH COERCION. SHOULD A MINOR BE DENIED THE
3 FINANCIAL SUPPORT OF HER PARENTS BY REASON OF HER REFUSAL TO
4 UNDERGO ABORTION, SHE SHALL BE CONSIDERED EMANCIPATED FOR
5 PURPOSES OF ELIGIBILITY FOR ASSISTANCE BENEFITS.

6 * * *

7 (I) PENALTY.--ANY PERSON WHO PERFORMS AN ABORTION UPON A
8 WOMAN WHO IS AN UNEMANCIPATED MINOR OR [INCOMPETENT]
9 INCAPACITATED PERSON TO WHOM THIS SECTION APPLIES EITHER WITH
10 KNOWLEDGE THAT SHE IS A MINOR OR [INCOMPETENT] INCAPACITATED
11 PERSON TO WHOM THIS SECTION APPLIES, OR WITH RECKLESS DISREGARD
12 OR NEGLIGENCE AS TO WHETHER SHE IS A MINOR OR [INCOMPETENT]
13 INCAPACITATED PERSON TO WHOM THIS SECTION APPLIES, AND WHO
14 INTENTIONALLY, KNOWINGLY OR RECKLESSLY FAILS TO CONFORM TO ANY
15 REQUIREMENT OF THIS SECTION IS GUILTY OF "UNPROFESSIONAL
16 CONDUCT" AND HIS LICENSE FOR THE PRACTICE OF MEDICINE AND
17 SURGERY SHALL BE SUSPENDED IN ACCORDANCE WITH PROCEDURES
18 PROVIDED UNDER THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
19 KNOWN AS THE OSTEOPATHIC MEDICAL PRACTICE ACT, THE ACT OF
20 DECEMBER 20, 1985 (P.L.457, NO.112), KNOWN AS THE MEDICAL
21 PRACTICE ACT OF 1985, OR THEIR SUCCESSOR ACTS, FOR A PERIOD OF
22 AT LEAST THREE MONTHS. FAILURE TO COMPLY WITH THE REQUIREMENTS
23 OF THIS SECTION IS PRIMA FACIE EVIDENCE OF FAILURE TO OBTAIN
24 INFORMED CONSENT AND OF INTERFERENCE WITH FAMILY RELATIONS IN
25 APPROPRIATE CIVIL ACTIONS. THE LAW OF THIS COMMONWEALTH SHALL
26 NOT BE CONSTRUED TO PRECLUDE THE AWARD OF EXEMPLARY DAMAGES OR
27 DAMAGES FOR EMOTIONAL DISTRESS EVEN IF UNACCOMPANIED BY PHYSICAL
28 COMPLICATIONS IN ANY APPROPRIATE CIVIL ACTION RELEVANT TO
29 VIOLATIONS OF THIS SECTION. NOTHING IN THIS SECTION SHALL BE
30 CONSTRUED TO LIMIT THE COMMON LAW RIGHTS OF PARENTS.

1 SECTION 28. SECTION 2711(A) OF TITLE 23 IS AMENDED TO READ:

2 § 2711. CONSENTS NECESSARY TO ADOPTION.

3 (A) GENERAL RULE.--EXCEPT AS OTHERWISE PROVIDED IN THIS
4 PART, CONSENT TO AN ADOPTION SHALL BE REQUIRED OF THE FOLLOWING:

5 (1) THE ADOPTEE, IF OVER 12 YEARS OF AGE.

6 (2) THE SPOUSE OF THE ADOPTING PARENT, UNLESS THEY JOIN
7 IN THE ADOPTION PETITION.

8 (3) THE PARENTS OR SURVIVING PARENT OF AN ADOPTEE WHO
9 HAS NOT REACHED THE AGE OF 18 YEARS.

10 (4) THE GUARDIAN OF AN [INCOMPETENT] INCAPACITATED
11 ADOPTEE.

12 (5) THE GUARDIAN OF THE PERSON OF AN ADOPTEE UNDER THE
13 AGE OF 18 YEARS, IF ANY THERE BE, OR OF THE PERSON OR PERSONS
14 HAVING THE CUSTODY OF THE ADOPTEE, IF ANY SUCH PERSON CAN BE
15 FOUND, WHENEVER THE ADOPTEE HAS NO PARENT WHOSE CONSENT IS
16 REQUIRED.

17 * * *

18 SECTION 29. SECTION 5322(A) OF TITLE 42 IS AMENDED TO READ:

19 § 5322. BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE
20 THIS COMMONWEALTH.

21 (A) GENERAL RULE.--A TRIBUNAL OF THIS COMMONWEALTH MAY
22 EXERCISE PERSONAL JURISDICTION OVER A PERSON (OR THE PERSONAL
23 REPRESENTATIVE OF A DECEASED INDIVIDUAL WHO WOULD BE SUBJECT TO
24 JURISDICTION UNDER THIS SUBSECTION IF NOT DECEASED) WHO ACTS
25 DIRECTLY OR BY AN AGENT, AS TO A CAUSE OF ACTION OR OTHER MATTER
26 ARISING FROM SUCH PERSON:

27 (1) TRANSACTING ANY BUSINESS IN THIS COMMONWEALTH.

28 WITHOUT EXCLUDING OTHER ACTS WHICH MAY CONSTITUTE TRANSACTING
29 BUSINESS IN THIS COMMONWEALTH, ANY OF THE FOLLOWING SHALL
30 CONSTITUTE TRANSACTING BUSINESS FOR THE PURPOSE OF THIS

1 PARAGRAPH:

2 (I) THE DOING BY ANY PERSON IN THIS COMMONWEALTH OF
3 A SERIES OF SIMILAR ACTS FOR THE PURPOSE OF THEREBY
4 REALIZING PECUNIARY BENEFIT OR OTHERWISE ACCOMPLISHING AN
5 OBJECT.

6 (II) THE DOING OF A SINGLE ACT IN THIS COMMONWEALTH
7 FOR THE PURPOSE OF THEREBY REALIZING PECUNIARY BENEFIT OR
8 OTHERWISE ACCOMPLISHING AN OBJECT WITH THE INTENTION OF
9 INITIATING A SERIES OF SUCH ACTS.

10 (III) THE SHIPPING OF MERCHANDISE DIRECTLY OR
11 INDIRECTLY INTO OR THROUGH THIS COMMONWEALTH.

12 (IV) THE ENGAGING IN ANY BUSINESS OR PROFESSION
13 WITHIN THIS COMMONWEALTH, WHETHER OR NOT SUCH BUSINESS
14 REQUIRES LICENSE OR APPROVAL BY ANY GOVERNMENT UNIT OF
15 THIS COMMONWEALTH.

16 (V) THE OWNERSHIP, USE OR POSSESSION OF ANY REAL
17 PROPERTY SITUATE WITHIN THIS COMMONWEALTH.

18 (2) CONTRACTING TO SUPPLY SERVICES OR THINGS IN THIS
19 COMMONWEALTH.

20 (3) CAUSING HARM OR TORTIOUS INJURY BY AN ACT OR
21 OMISSION IN THIS COMMONWEALTH.

22 (4) CAUSING HARM OR TORTIOUS INJURY IN THIS COMMONWEALTH
23 BY AN ACT OR OMISSION OUTSIDE THIS COMMONWEALTH.

24 (5) HAVING AN INTEREST IN, USING, OR POSSESSING REAL
25 PROPERTY IN THIS COMMONWEALTH.

26 (6) (I) CONTRACTING TO INSURE ANY PERSON, PROPERTY, OR
27 RISK LOCATED WITHIN THIS COMMONWEALTH AT THE TIME OF
28 CONTRACTING.

29 (II) BEING A PERSON WHO CONTROLS, OR WHO IS A
30 DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF A PERSON WHO

1 CONTROLS, AN INSURANCE COMPANY INCORPORATED IN THIS
2 COMMONWEALTH OR AN ALIEN INSURER DOMICILED IN THIS
3 COMMONWEALTH.

4 (III) ENGAGING IN CONDUCT DESCRIBED IN SECTION 504
5 OF THE ACT OF MAY 17, 1921 (P.L.789, NO.285), KNOWN AS
6 "THE INSURANCE DEPARTMENT ACT OF 1921."

7 (7) ACCEPTING ELECTION OR APPOINTMENT OR EXERCISING
8 POWERS UNDER THE AUTHORITY OF THIS COMMONWEALTH AS A:

9 (I) PERSONAL REPRESENTATIVE OF A DECEDENT.

10 (II) GUARDIAN OF A MINOR OR [INCOMPETENT]
11 INCAPACITATED PERSON.

12 (III) TRUSTEE OR OTHER FIDUCIARY.

13 (IV) DIRECTOR OR OFFICER OF A CORPORATION.

14 (8) EXECUTING ANY BOND OF ANY OF THE PERSONS SPECIFIED
15 IN PARAGRAPH (7).

16 (9) MAKING APPLICATION TO ANY GOVERNMENT UNIT FOR ANY
17 CERTIFICATE, LICENSE, PERMIT, REGISTRATION OR SIMILAR
18 INSTRUMENT OR AUTHORIZATION OR EXERCISING ANY SUCH INSTRUMENT
19 OR AUTHORIZATION.

20 (10) COMMITTING ANY VIOLATION WITHIN THE JURISDICTION OF
21 THIS COMMONWEALTH OF ANY STATUTE, HOME RULE CHARTER, LOCAL
22 ORDINANCE OR RESOLUTION, OR RULE OR REGULATION PROMULGATED
23 THEREUNDER BY ANY GOVERNMENT UNIT OR OF ANY ORDER OF COURT OR
24 OTHER GOVERNMENT UNIT.

25 * * *

26 Section ~~14~~ 30. (a) The provisions of 20 Pa.C.S. Ch. 53
27 (relating to Pennsylvania Uniform Transfers to Minors Act),
28 added by this amendatory act, shall apply to a transfer within
29 the scope of 20 Pa.C.S. § 5303 (relating to scope and
30 jurisdiction) made after the effective date of this act if:

<—

1 (1) the transfer purports to have been made under the
2 Pennsylvania Uniform Gifts to Minors Act repealed by this
3 act; or

4 (2) the instrument by which the transfer purports to
5 have been made uses in substance the designation "as
6 custodian under the Pennsylvania Uniform Gifts to Minors Act"
7 or "as custodian under the Uniform Transfers to Minors Act"
8 of any other state, and the application of 20 Pa.C.S. Ch. 53
9 is necessary to validate the transfer.

10 (b) Any transfer of custodial property now defined in 20
11 Pa.C.S. § 5302 (relating to definitions) made before the
12 effective date of this act shall be validated notwithstanding
13 that there was no specific authority in the Pennsylvania Uniform
14 Gifts to Minors Act for the coverage of custodial property of
15 that kind or for a transfer from that source at the time the
16 transfer was made.

17 (c) The provisions of 20 Pa.C.S. Ch. 53, added by this
18 amendatory act, shall apply to all transfers made before the
19 effective date of this act in a manner and form prescribed in
20 the Pennsylvania Uniform Gifts to Minors Act, except insofar as
21 the application impairs constitutionally vested rights or
22 extends the duration of custodianships in existence on the
23 effective date of this act.

24 Section ~~15~~ 31. (a) The provisions of 20 Pa.C.S. Ch. 27
25 (relating to contractual arrangements relating to succession)
26 shall apply to contracts made on or after January 1 of the
27 calendar year following the year of enactment.

28 (b) The amendments to 20 Pa.C.S. §§ 2514 (relating to rules
29 of interpretation), 3316 (relating to investment of funds),
30 5604(b) (relating to durable powers of attorney), 6114 (relating

<—

1 to rules of interpretation), 7315.1 (relating to retention of
2 cash; temporary investments) and 8301 (relating to powers of
3 court to authorize sale, etc. of real property) shall apply to
4 instruments, trusts and the estates of decedents whether the
5 instrument was executed, the trust was created or the decedent
6 died before, on or after the effective date of this act.

7 (c) The remainder of this act shall apply to the estates of
8 all decedents dying on or after its effective date.

9 ~~Section 16. This act shall take effect immediately.~~ <—

10 SECTION 32. (A) THIS ACT SHALL APPLY TO ALL GUARDIANSHIP <—
11 PROCEEDINGS IN WHICH PETITIONS FOR THE APPOINTMENT OF A GUARDIAN
12 ARE FILED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS ACT.

13 PROCEEDINGS FOR THE APPOINTMENT OF A GUARDIAN, WHICH ARE FILED
14 PRIOR TO THE EFFECTIVE DATE OF THIS ACT, BUT WHICH ARE STILL IN
15 PROGRESS, MAY BE AMENDED WITH LEAVE OF COURT TO CONFORM TO THIS
16 ACT. EXISTING GUARDIANSHIP MAY BE MODIFIED BY THE COURT IN
17 ACCORDANCE WITH THIS ACT UPON PETITION OF ANY INTERESTED PARTY.

18 (B) (1) THE AMENDMENT TO SECTION 24 (72 PA.C.S. 1716(A))
19 SHALL APPLY TO THE ESTATES OF ALL DECEDENTS DYING ON OR AFTER
20 JULY 1, 1991, AND TO INTER VIVOS TRANSFERS MADE BY DECEDENTS
21 DYING ON OR AFTER JULY 1, 1991, REGARDLESS OF THE DATE OF THE
22 TRANSFER.

23 (2) THE REMAINDER OF THE AMENDMENTS TO TITLE 72 SHALL
24 APPLY TO THE ESTATES OF DECEDENTS DYING ON OR AFTER JULY 1,
25 1996, AND TO INTER VIVOS TRANSFERS MADE BY DECEDENTS DYING ON
26 OR AFTER JULY 1, 1996, REGARDLESS OF THE DATE OF THE
27 TRANSFER.

28 SECTION 33. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

29 (1) SECTIONS 16, 21, 22, 23, 24 AND 25 OF THIS ACT SHALL
30 TAKE EFFECT JULY 1, 1991.

1 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
2 DAYS.