

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1905 Session of 2011

INTRODUCED BY M. K. KELLER, MARSICO, CALTAGIRONE, AUMENT, BENNINGHOFF, BOYD, BRENNAN, BUXTON, CARROLL, CLYMER, EVERETT, GEIST, GODSHALL, GRELL, HANNA, HARKINS, HARRIS, HELM, KAMPF, KAUFFMAN, KRIEGER, LAWRENCE, LONGIETTI, MANN, METCALFE, MILLARD, MILLER, MOUL, MURT, MUSTIO, OBERLANDER, O'NEILL, PICKETT, PRESTON, PYLE, QUINN, READSHAW, SAYLOR, SCHRODER, SONNEY, STERN, STURLA, TALLMAN, TOEPEL, TOOHL, TURZAI, WATSON, BARBIN, P. COSTA, MAHER, CAUSER, MARSHALL, HICKERNELL, EVANKOVICH AND REED, OCTOBER 19, 2011

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 19, 2011

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 general provisions and for liability; providing for liability
4 for refusal to accept acknowledged power of attorney; and
5 further providing for validity.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Sections 5601(f) and 5608 of Title 20 of the
9 Pennsylvania Consolidated Statutes are amended to read:

10 § 5601. General provisions.

11 * * *

12 (f) [Definition.--As used in this chapter, the term "agent"
13 means a person designated by a principal in a power of attorney
14 to act on behalf of that principal.] Definitions.--The following
15 words and phrases when used in this section shall have the
16 meanings given to them in this subsection unless the context

1 clearly indicates otherwise:

2 "Agent." A person designated by a principal in a power of
3 attorney to act on behalf of that principal.

4 "Good faith." Honesty in fact.

5 § 5608. [Liability.] Acceptance of and reliance upon power of
6 attorney.

7 [(a) Third party liability.--Any person who is given
8 instructions by an agent in accordance with the terms of a power
9 of attorney shall comply with the instructions. Any person who
10 without reasonable cause fails to comply with those instructions
11 shall be subject to civil liability for any damages resulting
12 from noncompliance. Reasonable cause under this subsection shall
13 include, but not be limited to, a good faith report having been
14 made by the third party to the local protective services agency
15 regarding abuse, neglect, exploitation or abandonment pursuant
16 to section 302 of the act of November 6, 1987 (P.L.381, No.79),
17 known as the Older Adults Protective Services Act.

18 (b) Third party immunity.--Any person who acts in good faith
19 reliance on a power of attorney shall incur no liability as a
20 result of acting in accordance with the instructions of the
21 agent.]

22 (c) Genuineness.--A person that in good faith accepts
23 instructions pursuant to an acknowledged power of attorney
24 without actual knowledge that a signature or mark of any of the
25 following are not genuine may, without liability, rely upon the
26 genuineness of the signature or mark:

27 (1) The principal.

28 (2) A person directed by the principal on his or her
29 behalf in the principal's conscious presence to sign the
30 power of attorney.

1 (3) A witness.

2 (d) Immunity.--A person that in good faith accepts a power
3 of attorney without actual knowledge of any of the following
4 may, without liability, rely upon the power of attorney as if
5 the power of attorney were genuine, valid and still in effect,
6 the agent's authority were genuine, valid and still in effect
7 and the agent had not exceeded and had properly exercised the
8 authority:

9 (1) That the power of attorney is void, invalid or
10 terminated.

11 (2) That the purported agent's authority is void,
12 invalid or terminated.

13 (3) That the agent is exceeding or improperly exercising
14 the agent's authority.

15 (e) Request for information.--A person that is asked to
16 accept a power of attorney may request and, without liability,
17 rely upon, without further investigation:

18 (1) An agent's certification under penalty of perjury of
19 any factual matter concerning the principal, agent or power
20 of attorney or an affidavit under section 5606 (relating to
21 proof of continuance of powers of attorney by affidavit).

22 (2) An English translation of the power of attorney if
23 the power of attorney contains, in whole or in part, language
24 other than English.

25 (3) An opinion of counsel as to any matter of law
26 concerning the power of attorney if the person making the
27 request provides in a writing or other record the reason for
28 the request.

29 (f) Additional request for information.--A person that has
30 accepted a power of attorney, whether with or without a

1 certification or opinion of counsel under subsection (e) or an
2 affidavit under section 5606, and has acted upon it by allowing
3 the agent to exercise authority granted under the power of
4 attorney, shall not be precluded from requesting at later times
5 a certification or opinion of counsel under this subsection,
6 subsection (e) or an affidavit under section 5606 with regard to
7 any further exercise of authority by the agent under the power
8 of attorney.

9 (g) English translation.--An English translation or an
10 opinion of counsel requested under this section must be provided
11 at the principal's expense unless the request is made more than
12 seven business days after the power of attorney is presented for
13 acceptance.

14 (h) Activities through employees.--For purposes of this
15 section, a person that conducts activities through employees
16 shall be considered to be without actual knowledge of a fact
17 relating to a power of attorney, a principal or an agent if the
18 employee conducting the transaction involving the power of
19 attorney is without actual knowledge of the fact.

20 (i) Definition.--As used in this section, the term
21 "acknowledged power of attorney" means a power of attorney
22 containing signatures or marks purportedly verified before a
23 notary public or other individual authorized to take
24 acknowledgments.

25 Section 2. Title 20 is amended by adding a section to read:
26 § 5608.1. Liability for refusal to accept acknowledged power of
27 attorney.

28 (a) Acceptance required.--Except as provided under
29 subsections (b) and (d):

30 (1) A person shall either accept an acknowledged power

1 of attorney or request a certification, a translation or an
2 opinion of counsel under section 5608(e) (relating to
3 acceptance of and reliance upon power of attorney) or an
4 affidavit under section 5606 (relating to proof of
5 continuance of powers of attorney by affidavit) no later than
6 seven business days after presentation of the power of
7 attorney for acceptance.

8 (2) If a person requests a certification, a translation,
9 an opinion of counsel under section 5608(e) or an affidavit
10 under section 5606, the person shall accept the power of
11 attorney no later than five business days after receipt of
12 the certification, translation, opinion of counsel or
13 affidavit, unless the information provided by the
14 certification, translation, opinion or counsel or affidavit
15 provides a substantial basis for making a further request
16 under section 5606 or 5608(e).

17 (3) A person may not require an additional or different
18 form of power of attorney for authority granted in the power
19 of attorney presented.

20 (b) Acceptance not required.--A person may not be required
21 to accept an acknowledged power of attorney if any of the
22 following applies:

23 (1) The person is not otherwise required to engage in a
24 transaction with the principal in the same circumstances.

25 (2) Engaging in a transaction with the agent or the
26 principal in the same circumstances would be inconsistent
27 with any provisions of this chapter, including:

28 (i) the failure of a power of attorney to be
29 executed in the manner required under section 5601(b)
30 (relating to general provisions); and

1 (ii) circumstances in which an agent has no
2 authority to act because of the absence of an
3 acknowledgment as provided under section 5601(d), except
4 as provided under section 5601(e.1) or (e.2).

5 (3) Engaging in a transaction with the agent in the same
6 circumstances would be inconsistent with any other law or
7 regulation.

8 (4) The person has actual knowledge of the termination
9 of the agent's authority or of the power of attorney before
10 exercise of the power.

11 (5) A request for a certification, a translation, an
12 opinion of counsel under section 5608(e) or an affidavit
13 under section 5606 is refused, including a certification, an
14 opinion of counsel or an affidavit requested to demonstrate
15 that the exercise of authority pursuant to a power of
16 attorney is proper without the notice provided for under
17 section 5601(c), except as provided under section 5601(e.1)
18 or (e.2).

19 (6) The person in good faith believes that the power of
20 attorney is not valid or that the agent does not have the
21 authority to perform the act requested, whether or not a
22 certification, a translation, an opinion of counsel under
23 section 5608(e) or an affidavit under section 5606 has been
24 requested or provided.

25 (7) The person makes a report to the local protective
26 services agency under section 302 of the act of November 6,
27 1987 (P.L.381, No.79), known as the Older Adults Protective
28 Services Act, stating a good faith belief that a principal
29 may be subject to physical or financial abuse, neglect,
30 exploitation or abandonment by the agent or someone acting

1 for or with the agent.

2 (8) The person has actual knowledge that another person
3 has made a report to the local protective services agency
4 regarding abuse, neglect, exploitation or abandonment under
5 section 302 of the Older Adults Protective Services Act.

6 (c) Violation.--A person that refuses, in violation of this
7 section, to accept an acknowledged power of attorney may be
8 subject to all of the following:

9 (1) A court order mandating acceptance of the power of
10 attorney.

11 (2) Liability for reasonable attorney fees and costs
12 incurred in any action or proceeding that confirms the
13 validity of the power of attorney or mandates acceptance of
14 the power of attorney.

15 (d) Applicability.--The requirements of this section shall
16 not apply to a power of attorney subject to the laws of another
17 state or jurisdiction.

18 (e) Activities through employees.--For purposes of this
19 section, a person that conducts activities through employees
20 shall be considered to be without actual knowledge of a fact
21 relating to a power of attorney, a principal or an agent if the
22 employee conducting the transaction involving the power of
23 attorney is without actual knowledge of the fact.

24 (f) Definition.--As used in this section, the term
25 "acknowledged power of attorney" shall mean a power of attorney
26 containing signatures or marks purportedly verified before a
27 notary public or other individual authorized to take
28 acknowledgments.

29 Section 3. Section 5611 of Title 20 is amended to read:

30 § 5611. Validity.

1 [A power of attorney executed in another state or
2 jurisdiction and in conformity with the laws of that state or
3 jurisdiction shall be considered valid in this Commonwealth,
4 except to the extent that the power of attorney executed in
5 another state or jurisdiction would allow an agent to make a
6 decision inconsistent with the laws of this Commonwealth.]

7 A power of attorney executed in or under the laws of another
8 state or jurisdiction shall be valid in this Commonwealth if,
9 when the power of attorney was executed, the execution complied
10 with:

11 (1) the law of the jurisdiction indicated in the power
12 of attorney and, in the absence of an indication of
13 jurisdiction, the law of the jurisdiction in which the power
14 of attorney was executed; or

15 (2) the requirements for a military power of attorney
16 under 10 U.S.C. § 1044(b) (relating to legal assistance).

17 Section 4. The following shall apply:

18 (1) The amendment or addition of 20 Pa.C.S. §§ 5601(f),
19 5608, 5608.1 and 5611 shall apply to a power of attorney
20 executed at any time.

21 (2) The amendment of 20 Pa.C.S. §§ 5601(f) and 5608
22 shall apply retroactively to acts performed after December
23 15, 1992.

24 (3) In interpreting and applying the amendment or
25 addition of 20 Pa.C.S. §§ 5601(f), 5608, 5608.1 and 5611, a
26 court shall give due consideration of the intent of the
27 General Assembly to reverse the interpretation of 20 Pa.C.S.
28 § 5608 as set forth in *Teresa M. Vine, v. Commonwealth of*
29 *Pennsylvania, State Employees' Retirement Board*, 9 A.3d
30 1150 (Pa. 2010).

1 Section 5. This act shall take effect immediately.