
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1429 Session of
2013

INTRODUCED BY M. K. KELLER, GRELL, AUMENT, BLOOM, CALTAGIRONE,
CLYMER, CUTLER, DENLINGER, EVERETT, FLECK, GODSHALL, HESS,
KNOWLES, LONGIETTI, MATZIE, METCALFE, MILLARD, MILLER,
PICKETT, ROCK, SAYLOR, TURZAI, WATSON, GILLESPIE, GIBBONS,
CARROLL, KORTZ, HARHAI, SCAVELLO, PYLE, CAUSER, TAYLOR, RAPP,
MAHER, GINGRICH, HICKERNELL AND MILNE, JUNE 3, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 3, 2013

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in powers of attorney,
3 further providing for general provisions and for special
4 rules for gifts; providing for agent's duties and for
5 principles of law and equity; further providing for form of
6 power of attorney, for implementation of power of attorney
7 and for liability; providing for liability for refusal to
8 accept power of attorney and for activities through
9 employees; and further providing for validity.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 5601(b), (c), (d), (e), (e.1), (e.2) and
13 (f) of Title 20 of the Pennsylvania Consolidated Statutes are
14 amended to read:

15 § 5601. General provisions.

16 * * *

17 (b) Execution.--

18 (1) A power of attorney shall be dated, and it shall be
19 signed [and dated] by the principal by signature or mark, or

1 by another individual, in the principal's conscious presence,
2 on behalf of and at the direction of the principal.

3 (2) If the power of attorney is executed by mark or by
4 another individual, then it shall be witnessed by two
5 individuals, each of whom is 18 years of age or older. A
6 witness shall not be the individual who signed the power of
7 attorney on behalf of and at the direction of the principal.

8 (3) For a power of attorney executed on or after the
9 effective date of this paragraph, the signature or mark of
10 the principal, or the signature or mark of another individual
11 signing a power of attorney on behalf of the principal, shall
12 be:

13 (i) Acknowledged before a notary public or other
14 individual authorized by law to take acknowledgments.

15 (ii) Witnessed by two individuals, each of whom is
16 at least 18 years of age. A witness shall not be the
17 individual who signed the power of attorney on behalf of
18 and at the direction of the principal.

19 (c) Notice.--All powers of attorney shall include the
20 following notice in capital letters at the beginning of the
21 power of attorney. The notice shall be signed by the principal.
22 In the absence of a signed notice, upon a challenge to the
23 authority of an agent to exercise a power under the power of
24 attorney, the agent shall have the burden of demonstrating that
25 the exercise of this authority is proper.

26 NOTICE

27 The purpose of this power of attorney is to give the
28 person you designate (your "agent") broad powers to handle
29 your property, which may include powers to sell or otherwise
30 dispose of any real or personal property without advance

1 notice to you or approval by you.

2 This power of attorney does not impose a duty on your
3 agent to exercise granted powers, but when powers are
4 exercised, your agent must use due care to act for your
5 benefit and in accordance with this power of attorney.

6 Your agent may exercise the powers given here throughout
7 your lifetime, even after you become incapacitated, unless
8 you expressly limit the duration of these powers or you
9 revoke these powers or a court acting on your behalf
10 terminates your agent's authority.

11 Your agent must keep your funds separate from your
12 agent's funds[.], act in accordance with your reasonable
13 expectations to the extent actually known by your agent and,
14 otherwise, in your best interest, act in good faith and act
15 only within the scope of authority granted by you in the
16 power of attorney.

17 A court can take away the powers of your agent if it
18 finds your agent is not acting properly.

19 The powers and duties of an agent under a power of
20 attorney are explained more fully in 20 Pa.C.S. Ch. 56.

21 If there is anything about this form that you do not
22 understand, you should ask a lawyer of your own choosing to
23 explain it to you.

24 I have read or had explained to me this notice and I
25 understand its contents.

26
27 (Principal) (Date)

28 (d) Acknowledgment executed by agent.--An agent shall have
29 no authority to act as agent under the power of attorney unless
30 the agent has first executed and affixed to the power of

1 attorney an acknowledgment in substantially the following form:

2 I, _____, have read the attached power of
3 attorney and am the person identified as the agent for
4 the principal. I hereby acknowledge that [in the absence
5 of a specific provision to the contrary in the power of
6 attorney or in 20 Pa.C.S.] when I act as agent:

7 I shall [exercise the powers for the benefit of the
8 principal] act in accordance with the principal's
9 reasonable expectations to the extent actually known by
10 me and, otherwise, in the principal's best interest, act
11 in good faith and act only within the scope of authority
12 granted to me by the principal in the power of attorney.

13 I shall keep the assets of the principal separate
14 from my assets.

15 [I shall exercise reasonable caution and prudence.

16 I shall keep a full and accurate record of all
17 actions, receipts and disbursements on behalf of the
18 principal.]

19

20 (Agent) (Date)

21 [(e) Fiduciary relationship.--An agent acting under a power
22 of attorney has a fiduciary relationship with the principal. In
23 the absence of a specific provision to the contrary in the power
24 of attorney, the fiduciary relationship includes the duty to:

- 25 (1) Exercise the powers for the benefit of the
26 principal.
- 27 (2) Keep separate the assets of the principal from those
28 of an agent.
- 29 (3) Exercise reasonable caution and prudence.
- 30 (4) Keep a full and accurate record of all actions,

1 receipts and disbursements on behalf of the principal.]

2 (e.1) Limitation on applicability in commercial
3 transaction.--

4 [(1) Subsections (c), (d) and (e) do not apply to a
5 power or a power of attorney contained in an instrument used
6 in a commercial transaction which simply authorizes an agency
7 relationship. This paragraph includes the following:

8 (i) A power given to or for the benefit of a
9 creditor in connection with a loan or other credit
10 transaction.

11 (ii) A power exclusively granted to facilitate
12 transfer of stock, bonds and other assets.

13 (iii) A power contained in the governing document
14 for a corporation, partnership or limited liability
15 company or other legal entity by which a director,
16 partner or member authorizes others to do other things on
17 behalf of the entity.

18 (iv) A warrant of attorney conferring authority to
19 confess judgment.

20 (v) A power given to a dealer as defined by the act
21 of December 22, 1983 (P.L.306, No.84), known as the Board
22 of Vehicles Act, when using the power in conjunction with
23 a sale, purchase or transfer of a vehicle as authorized
24 by 75 Pa.C.S. § 1119 (relating to application for
25 certificate of title by agent).]

26 (1.1) Subsections (b) (3) (ii), (c) and (d) do not apply
27 to:

28 (i) A power contained in an instrument used in a
29 commercial transaction which authorizes an agency
30 relationship.

1 (ii) A power to the extent it is coupled with an
2 interest in the subject of the power, including a power
3 given to or for the benefit of a creditor in connection
4 with a loan or other credit transaction.

5 (iii) A power exclusively granted to facilitate
6 transfer of stock, bonds and other assets.

7 (iv) A power contained in the governing document for
8 a corporation, partnership or limited liability company
9 or other legal entity by which a director, partner or
10 member authorizes others to do other things on behalf of
11 the entity or a proxy or other delegation to exercise
12 voting rights or management rights with respect to a
13 legal entity.

14 (v) A warrant of attorney conferring authority to
15 confess judgment.

16 (vi) A power given to a dealer as defined by the act
17 of December 22, 1983 (P.L.306, No.84), known as the Board
18 of Vehicles Act, when using the power in conjunction with
19 a sale, purchase or transfer of a vehicle as authorized
20 by 75 Pa.C.S. § 1119 (relating to application for
21 certificate of title by agent).

22 (vii) A power created on a form prescribed by a
23 Commonwealth agency, political subdivision or an
24 authority or instrumentality of the Commonwealth or a
25 political subdivision.

26 (2) Powers and powers of attorney exempted by this
27 subsection need not be dated.

28 (e.2) Limitation on applicability in health care [power] and
29 mental health care powers of attorney.--Subsections (b) (3) (i),
30 (c) and (d) and section 5601.3 (relating to agent's duties) do

1 not apply to a power of attorney which exclusively provides for
2 health care decision making or mental health care decision
3 making.

4 (f) [Definition.--As used in this chapter, the term "agent"
5 means a person designated by a principal in a power of attorney
6 to act on behalf of that principal.] Definitions.--The following
7 words and phrases when used in this chapter shall have the
8 meanings given to them in this subsection unless the context
9 clearly indicates otherwise:

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

12 "Good faith." Honesty in fact based upon a sincere belief
13 with a proper motive.

14 Section 2. Section 5601.2 of Title 20 is repealed:

15 [§ 5601.2. Special rules for gifts.

16 (a) General rule.--A principal may empower an agent to make
17 a gift in a power of attorney only as provided in this section.

18 (b) Limited gifts.--A principal may authorize an agent to
19 make a limited gift as defined under section 5603(a) (2)
20 (relating to implementation of power of attorney) by the
21 inclusion of:

22 (1) the language quoted in section 5602(a) (1) (relating
23 to form of power of attorney); or

24 (2) other language showing a similar intent on the part
25 of the principal to empower the agent to make a limited gift.

26 (c) Unlimited gifts.--A principal may authorize an agent to
27 make any other gift only by specifically providing for and
28 defining the agent's authority in the power of attorney.

29 (d) Nature of gifts.--In the absence of a specific provision
30 to the contrary in the power of attorney:

1 (1) A power to make a limited gift shall be construed to
2 empower the agent to make a gift to each donee either
3 outright or in trust.

4 (2) In the case of any gift to a minor, that gift may be
5 made in trust or in accordance with Chapter 53 (relating to
6 Pennsylvania Uniform Transfers to Minors Act) or section 5155
7 (relating to order of court).

8 (3) In the case of any gift made in trust, the agent may
9 execute a deed of trust for such purpose, designating one or
10 more persons, including the agent, as original or successor
11 trustees, or may make an addition to an existing trust.

12 (4) In making any gift, the agent need not treat the
13 donees equally or proportionately and may entirely exclude
14 one or more permissible donees.

15 (5) The pattern followed on the occasion of any gift
16 need not be followed on the occasion of any other gift.

17 (e) Equity.--An agent and the donee of a gift shall be
18 liable as equity and justice may require to the extent that, as
19 determined by the court, a gift made by the agent is
20 inconsistent with prudent estate planning or financial
21 management for the principal or with the known or probable
22 intent of the principal with respect to disposition of the
23 estate.

24 (f) Third party.--No transfer agent, depository or other
25 third party acting in good faith shall have any responsibility
26 to see to the proper discharge of the agent's duty.]

27 Section 3. Title 20 is amended by adding sections to read:
28 § 5601.3. Agent's duties.

29 (a) General rule.--Notwithstanding any provision in the
30 power of attorney, an agent that has accepted appointment shall:

1 (1) Act in accordance with the principal's reasonable
2 expectations to the extent actually known by the agent and,
3 otherwise, in the principal's best interest.

4 (2) Act in good faith.

5 (3) Act only within the scope of authority granted in
6 the power of attorney.

7 (b) Other duties.--Except as otherwise provided in the power
8 of attorney, an agent that has accepted appointment shall:

9 (1) Act loyally for the principal's benefit.

10 (2) Act so as not to create a conflict of interest that
11 impairs the agent's ability to act impartially in the
12 principal's best interest.

13 (3) Act with the care, competence and diligence
14 ordinarily exercised by agents in similar circumstances.

15 (4) Keep separate records and financial institution
16 accounts, including a record of all receipts, disbursements
17 and transactions made on behalf of the principal.

18 (5) Cooperate with a person who has authority to make
19 health care decisions for the principal to carry out the
20 principal's reasonable expectations to the extent actually
21 known by the agent and, otherwise, act in the principal's
22 best interest.

23 (6) Attempt to preserve the principal's estate plan, to
24 the extent actually known by the agent, if preserving the
25 plan is consistent with the principal's best interest based
26 on all relevant factors, including:

27 (i) The value and nature of the principal's
28 property.

29 (ii) The principal's foreseeable obligations and
30 need for maintenance.

1 (iii) Minimization of taxes, including income,
2 estate, inheritance, generation-skipping transfer and
3 gift taxes.

4 (c) Nonliability of agent.--

5 (1) An agent that acts in good faith shall not be liable
6 to a beneficiary of the principal's estate plan for failure
7 to preserve the plan.

8 (2) An agent that acts with care, competence and
9 diligence for the best interest of the principal shall not be
10 liable solely because the agent also benefits from the act or
11 has an individual or conflicting interest in relation to the
12 property or affairs of the principal.

13 (3) If an agent is selected by the principal because of
14 special skills or expertise possessed by the agent or in
15 reliance on the agent's representation that the agent has
16 special skills or expertise, the special skills or expertise
17 must be considered in determining whether the agent has acted
18 with care, competence and diligence under the circumstances.

19 (4) Absent a breach of duty to the principal, an agent
20 shall not be liable if the value of the principal's property
21 declines.

22 (5) An agent that exercises authority to delegate to
23 another person the authority granted by the principal or that
24 engages another person on behalf of the principal shall not
25 be liable for an act, error of judgment or default of that
26 person if the agent exercises care, competence and diligence
27 in selecting and monitoring the person.

28 (d) Disclosure of receipts, disbursements or transactions.--

29 (1) Except as otherwise provided in the power of
30 attorney, an agent is not required to disclose receipts,

1 disbursements or transactions conducted on behalf of the
2 principal unless ordered by a court or requested by the
3 principal, a guardian, conservator, another fiduciary acting
4 for the principal, government agency having authority to
5 protect the welfare of the principal, government agency that
6 has been requested to provide medical assistance or other
7 benefits to the principal or to a dependent of the principal,
8 or that has provided such benefits, or, upon the death of the
9 principal, the personal representative or successor in
10 interest of the principal's estate.

11 (2) Within 30 days of the request, the agent shall
12 either comply with the request or provide a writing or other
13 record substantiating the reason additional time is needed,
14 in which case the agent shall comply with the request within
15 an additional 30 days.

16 (e) Liability of agent.--A provision in a power of attorney
17 relieving an agent of liability for breach of duty is binding on
18 the principal and the principal's successors in interest except
19 to the extent the provision:

20 (1) relieves the agent of liability for breach of duty
21 committed dishonestly, with an improper motive or with
22 reckless indifference to the purposes of the power of
23 attorney or the best interest of the principal; or

24 (2) was inserted as a result of an abuse of a
25 confidential or fiduciary relationship with the principal.

26 (f) Estate plan.--Nothing in this section shall authorize an
27 agent to act contrary to an estate plan approved by the court
28 under section 5536 (relating to distributions of income and
29 principal during incapacity).

30 § 5601.4. Authority that requires specific and general grant of

1 authority.

2 (a) General rule.--An agent under a power of attorney may do
3 the following on behalf of the principal or with the principal's
4 property only if the power of attorney expressly grants the
5 agent the authority and exercise of the authority is not
6 otherwise prohibited by another agreement or instrument to which
7 the authority or property is subject:

8 (1) Create, amend, revoke or terminate an inter vivos
9 trust other than as permitted under section 5602(a) (2), (3)
10 and (7) (relating to form of power of attorney).

11 (2) Make a gift.

12 (3) Create or change rights of survivorship.

13 (4) Create or change a beneficiary designation.

14 (5) Delegate authority granted under the power of
15 attorney.

16 (6) Waive the principal's right to be a beneficiary of a
17 joint and survivor annuity, including a survivor benefit
18 under a retirement plan.

19 (7) Exercise fiduciary powers that the principal has
20 authority to delegate.

21 (8) Disclaim property, including a power of appointment.

22 (b) Limitation.--Notwithstanding a grant of authority to do
23 an act described in subsection (a), unless the power of attorney
24 otherwise provides, an agent that is not an ancestor, spouse or
25 descendant of the principal may not exercise authority under a
26 power of attorney to create in the agent, or in an individual to
27 whom the agent owes a legal obligation of support, an interest
28 in the principal's property, whether by gift, right of
29 survivorship, beneficiary designation, disclaimer or otherwise.

30 (c) Scope of authority.--Subject to subsections (a), (b),

1 (d), and (e), if a power of attorney grants to an agent
2 authority to do all acts that a principal is authorized to
3 perform, the agent has the general authority described in
4 section 5602(a).

5 (d) Gifts.--Unless the power of attorney otherwise provides,
6 a grant of authority to make a gift is subject to section
7 5603(a.1) (relating to implementation of power of attorney).

8 (e) Similar or overlapping subjects.--Subject to subsections
9 (a), (b) and (d), if the subjects over which authority is
10 granted in a power of attorney are similar or overlap, the
11 broadest authority controls.

12 (f) Property.--Authority granted in a power of attorney is
13 exercisable with respect to property that the principal has when
14 the power of attorney is executed or acquires later, whether or
15 not the property is located in this State and whether or not the
16 authority is exercised or the power of attorney is executed in
17 this State.

18 (g) Legal effect of agent's actions.--An act performed by an
19 agent pursuant to a power of attorney has the same effect and
20 inures to the benefit of and binds the principal and the
21 principal's successors in interest as if the principal had
22 performed the act.

23 Section 4. Section 5602(a)(5) and (17) of Title 20 are
24 amended to read:

25 § 5602. Form of power of attorney.

26 (a) Specification of powers.--A principal may, by inclusion
27 of the language quoted in any of the following paragraphs or by
28 inclusion of other language showing a similar intent on the part
29 of the principal, empower an agent to do any or all of the
30 following, each of which is defined in section 5603 (relating to

1 implementation of power of attorney):

2 * * *

3 [(5) "To disclaim any interest in property."]

4 * * *

5 (17) "To engage in insurance and annuity transactions."

6 * * *

7 Section 5. Section 5603(a), (e), (p) and (q) of Title 20 are
8 amended and the section is amended by adding a subsection to
9 read:

10 § 5603. Implementation of power of attorney.

11 [(a) Power to make limited gifts.--

12 (2) A power "to make limited gifts" shall mean that the
13 agent may make only gifts for or on behalf of the principal
14 which are limited as follows:

15 (i) The class of permissible donees under this
16 paragraph shall consist solely of the principal's spouse,
17 issue and a spouse of the principal's issue (including
18 the agent if a member of any such class), or any of them.

19 (ii) During each calendar year, the gifts made to
20 any permissible donee, pursuant to such power, shall have
21 an aggregate value not in excess of, and shall be made in
22 such manner as to qualify in their entirety for, the
23 annual exclusion from the Federal gift tax permitted
24 under section 2503(b) of the Internal Revenue Code of
25 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the
26 principal and, if applicable, the principal's spouse.

27 (iv) In addition to the gifts authorized by
28 subparagraphs (i) and (ii), a gift made pursuant to such
29 power may be for the tuition or medical care of any
30 permissible donee to the extent that the gift is excluded

1 from the Federal gift tax under section 2503(e) of the
2 Internal Revenue Code of 1986 as a qualified transfer.

3 (v) The agent may consent, pursuant to section
4 2513(a) of the Internal Revenue Code of 1986, to the
5 splitting of gifts made by the principal's spouse to the
6 principal's issue or a spouse of the principal's issue in
7 any amount and to the splitting of gifts made by the
8 principal's spouse to any other person in amounts not
9 exceeding the aggregate annual gift tax exclusions for
10 both spouses under section 2503(b) of the Internal
11 Revenue Code of 1986.]

12 (a.1) Power to make limited gifts.--

13 (1) Unless the power of attorney otherwise provides, the
14 power to make limited gifts or other language in a power of
15 attorney granting general authority with respect to gifts
16 authorizes the agent only to:

17 (i) Make outright to or for the benefit of a person,
18 a gift of any of the principal's property, including by
19 the exercise of a presently exercisable general power of
20 appointment held by the principal:

21 (A) in an amount per donee not to exceed the
22 annual dollar limits of the Federal gift tax
23 exclusion under section 2503(b) of the Internal
24 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
25 2503(b)), without regard to whether the Federal gift
26 tax exclusion applies to the gift; or

27 (B) if the principal's spouse agrees to consent
28 to a split gift pursuant to section 2513 of the
29 Internal Revenue Code of 1986 (26 U.S.C. § 2513), in
30 an amount per donee not to exceed twice the annual

1 Federal gift tax exclusion limit.

2 (ii) Consent, pursuant to section 2513 of the
3 Internal Revenue Code of 1986, to the splitting of a gift
4 made by the principal's spouse in an amount per donee not
5 to exceed the aggregate annual gift tax exclusions for
6 both spouses.

7 (2) An agent may make a gift of the principal's property
8 only as the agent determines is consistent with the
9 principal's objectives if actually known by the agent and, if
10 unknown, as the agent determines is consistent with the
11 principal's best interest based on all relevant factors,
12 including:

13 (i) The value and nature of the principal's
14 property.

15 (ii) The principal's foreseeable obligations and
16 need for maintenance.

17 (iii) Minimization of taxes, including income,
18 estate, inheritance, generation-skipping transfer and
19 gift taxes.

20 (iv) The principal's personal history of making or
21 joining in making gifts.

22 (3) As used in this subsection, the phrase "a gift for
23 the benefit of a person" includes a gift to a trust, an
24 account under Chapter 53 (relating to Pennsylvania Uniform
25 Transfers to Minors Act) and a tuition savings account or
26 prepaid tuition plan as defined under section 529 of the
27 Internal Revenue Code of 1986 (26 U.S.C. § 529).

28 (4) The class of permissible donees under this
29 subsection shall consist solely of the principal's spouse,
30 principal's issue and a spouse of the principal's issue,

1 including the agent if a member of any such class, or any of
2 them.

3 (5) An agent and the donee of a gift shall be liable as
4 equity and justice may require to the extent that, as
5 determined by the court, a gift made by the agent is
6 inconsistent with prudent estate planning or financial
7 management for the principal or with the known or probable
8 intent of the principal with respect to disposition of the
9 estate.

10 * * *

11 [(e) Power to disclaim any interest in property.--A power
12 "to disclaim any interest in property" shall mean that the agent
13 may release or disclaim any interest in property on behalf of
14 the principal in accordance with Chapter 62 (relating to
15 disclaimers) or section 6103 (relating to release or disclaimer
16 of powers or interests), provided that any disclaimer under
17 Chapter 62 shall be in accordance with the provisions of section
18 6202 (relating to disclaimers by fiduciaries or agents) in the
19 case of a principal who shall have been adjudicated an
20 incapacitated person at the time of the execution of the
21 disclaimer.]

22 * * *

23 (p) Power to engage in insurance and annuity transactions.--
24 A power to "engage in insurance and annuity transactions" shall
25 mean that the agent may:

26 (1) Purchase, continue, renew, convert or terminate any
27 type of insurance (including, but not limited to, life,
28 accident, health, disability or liability insurance) or
29 annuity and pay premiums and collect benefits and proceeds
30 under insurance policies and annuity contracts.

1 (2) Exercise nonforfeiture provisions under insurance
2 policies and annuity contracts.

3 (3) In general, exercise all powers with respect to
4 insurance and annuities that the principal could if present;
5 [however, the agent cannot designate himself beneficiary of a
6 life insurance policy unless the agent is the spouse, child,
7 grandchild, parent, brother or sister of the principal. An
8 agent and a beneficiary of a life insurance policy shall be
9 liable as equity and justice may require to the extent that,
10 as determined by the court, a beneficiary designation made by
11 the agent is inconsistent with the known or probable intent
12 of the principal] provided, however, that the agent shall
13 have no power to create or change a beneficiary designation
14 unless authorized in accordance with section 5601.4 (relating
15 to authority that requires specific and general grant of
16 authority).

17 (q) Power to engage in retirement plan transactions.--A
18 power to "engage in retirement plan transactions" shall mean
19 that the agent may contribute to, withdraw from and deposit
20 funds in any type of retirement plan (including, but not limited
21 to, any tax qualified or nonqualified pension, profit sharing,
22 stock bonus, employee savings and retirement plan, deferred
23 compensation plan or individual retirement account), select and
24 change payment options for the principal, make roll-over
25 contributions from any retirement plan to other retirement plans
26 and, in general, exercise all powers with respect to retirement
27 plans that the principal could if present[. However, the agent
28 cannot designate himself beneficiary of a retirement plan unless
29 the agent is the spouse, child, grandchild, parent, brother or
30 sister of the principal. An agent and a beneficiary of a

1 retirement plan shall be liable as equity and justice may
2 require to the extent that, as determined by the court, a
3 beneficiary designation made by the agent is inconsistent with
4 the known or probable intent of the principal] provided,
5 however, that the agent shall have no power to create or change
6 a beneficiary designation unless authorized in accordance with
7 section 5601.4.

8 * * *

9 Section 6. Section 5608 of Title 20 is amended to read:

10 § 5608. [Liability] Acceptance of and reliance upon power of
11 attorney.

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

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

27 (c) Genuineness.--A person who in good faith accepts a power
28 of attorney without actual knowledge that a signature or mark of
29 any of the following are not genuine may, without liability,
30 rely upon the genuineness of the signature or mark of:

1 (1) The principal.

2 (2) A person who signed the power of attorney on behalf
3 of the principal and at the direction of the principal.

4 (3) A witness.

5 (4) A notary public or other person authorized by law to
6 take acknowledgments.

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

13 (1) The power of attorney is void, invalid or
14 terminated.

15 (2) The purported agent's authority is void, invalid or
16 terminated.

17 (3) The agent is exceeding or improperly exercising the
18 agent's authority.

19 (e) Request for information.--A person who is asked to
20 accept a power of attorney may request and, without liability,
21 rely upon without further investigation:

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

26 (2) An English translation of the power of attorney, if
27 the power of attorney contains, in whole or in part, language
28 other than English.

29 (3) An opinion of counsel relating to whether the agent
30 is acting within the scope of the authority granted by the

1 power of attorney, if the person making the request provides
2 in a writing or other record the reason for the request.

3 (f) Additional request for information.--A person who has
4 accepted a power of attorney, whether or not the person has a
5 certification or opinion of counsel under subsection (e) or an
6 affidavit under section 5606, and has acted upon it by allowing
7 the agent to exercise authority granted under the power of
8 attorney, shall not be precluded from requesting at later times
9 a certification or opinion of counsel under this subsection,
10 subsection (e) or an affidavit under section 5606 with regard to
11 any further exercise of authority by the agent under the power
12 of attorney.

13 (g) English translation.--An English translation or an
14 opinion of counsel requested under this section shall be at the
15 principal's expense, unless the request is made more than seven
16 business days after the power of attorney is presented for
17 acceptance.

18 (h) Limitations.--Except as otherwise provided by law,
19 nothing in this section shall in itself:

20 (1) validate a forged instrument conveying an interest
21 in real property;

22 (2) provide that the recording of a forged instrument
23 gives constructive notice of a conveyance of an interest in
24 real property; or

25 (3) limit the liability of an insurer, indemnitor or
26 guarantor of contractual obligations to indemnify, hold
27 harmless or defend a person who accepts or relies upon a
28 power of attorney.

29 Section 7. Title 20 is amended by adding sections to read:
30 § 5608.1. Liability for refusal to accept power of attorney.

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

3 (1) A person shall either:

4 (i) accept a power of attorney; or

5 (ii) request one of the following:

6 (A) an affidavit under section 5606 (relating to
7 proof of continuance of powers of attorney by
8 affidavit); or

9 (B) a certification, translation or an opinion
10 of counsel under section 5608(e) (relating to
11 acceptance of and reliance upon power of attorney);
12 not later than seven business days after presentation of
13 the power of attorney for acceptance.

14 (2) If a person requests a certification, a translation,
15 an affidavit under section 5606 or an opinion of counsel
16 under section 5608(e), the person shall accept the power of
17 attorney not later than five business days after receipt of
18 the certification, translation, affidavit or opinion of
19 counsel or, unless the information provided by the
20 certification, translation, affidavit or opinion of counsel
21 provides a substantial basis for making a further request
22 under section 5606 or 5608(e).

23 (3) A person may not require an additional or different
24 form of power of attorney for authority granted in the power
25 of attorney presented.

26 (b) Acceptance not required.--A person may not be required
27 to accept a power of attorney if any of the following applies:

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

30 (2) Engaging in a transaction with the agent or the

1 principal in the same circumstances would be inconsistent
2 with any provisions of this chapter, including:

3 (i) the failure of the power of attorney to be
4 executed in the manner required under section 5601(b)
5 (relating to general provisions); and

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

10 (3) Engaging in a transaction with the agent in the same
11 circumstances would be inconsistent with any other law or
12 regulation.

13 (4) The person has actual knowledge of the termination
14 of the agent's authority or of the power of attorney before
15 exercise of the power.

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

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

30 (7) The person makes a report to the local protective

1 services agency under section 302 of the act of November 6,
2 1987 (P.L.381, No.79), known as the Older Adults Protective
3 Services Act, stating a good faith belief that the principal
4 may be subject to physical or financial abuse, neglect,
5 exploitation or abandonment by the agent or someone acting
6 for or with the agent.

7 (8) The person has actual knowledge that another person
8 has made a report to the local protective services agency
9 under section 302 of the Older Adults Protective Services
10 Act, stating a good faith belief that the principal may be
11 subject to physical or financial abuse, neglect, exploitation
12 or abandonment by the agent or someone acting for or with the
13 agent.

14 (c) Violation.--A person who refuses, in violation of this
15 section, to accept a power of attorney shall be subject to:

16 (1) Civil liability for pecuniary harm to the economic
17 interests of the principal proximately caused by the person's
18 refusal to comply with the instructions of the agent
19 designated in the power of attorney.

20 (2) A court order mandating acceptance of the power of
21 attorney.

22 (d) Nonapplicability.--The requirements and penalties of
23 this section shall not apply to:

24 (1) a power of attorney subject to the laws of another
25 state or jurisdiction;

26 (2) a power of attorney prescribed by a government or
27 governmental subdivision, agency or instrumentality for a
28 governmental purpose; or

29 (3) a power of attorney that is not accepted by the
30 Department of Public Welfare in connection with the

1 application for or receipt of medical assistance or other
2 benefits.

3 § 5608.2. Activities through employees.

4 For the purposes of sections 5608 (relating to acceptance of
5 and reliance upon power of attorney) and 5608.1 (relating to
6 liability for refusal to accept power of attorney), the
7 following shall apply:

8 (1) A person who conducts activities through employees
9 shall be considered to be without actual knowledge of a fact
10 relating to a power of attorney, a principal or an agent, if
11 the employee conducting the transaction involving the power
12 of attorney is without knowledge of the fact.

13 (2) An employee has knowledge of a fact if the employee
14 has actual knowledge of the fact or acts with conscious
15 disregard or willful ignorance regarding the existence of the
16 fact.

17 Section 8. Section 5611 of Title 20 is amended to read:

18 § 5611. Validity.

19 A power of attorney executed in [another state or
20 jurisdiction and in conformity with the laws of that state or
21 jurisdiction shall be considered valid in this Commonwealth,
22 except to the extent that the power of attorney executed in
23 another state or jurisdiction would allow an agent to make a
24 decision inconsistent with the laws of this Commonwealth.] or
25 under the laws of another state or jurisdiction shall be valid
26 in this Commonwealth if, when the power of attorney was
27 executed, the execution complied with:

28 (1) the law of the jurisdiction indicated in the power
29 of attorney and, in the absence of an indication of
30 jurisdiction, the law of the jurisdiction in which the power

1 of attorney was executed; or

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

4 Section 9. Title 20 is amended by adding a section read:

5 § 5612. Principles of law and equity.

6 Unless displaced by a provision of this chapter, the
7 principles of law and equity supplement this chapter.

8 Section 10. The following shall apply:

9 (1) Except as provided by this section, the provisions
10 of this act apply to powers of attorney created before, on or
11 after the respective effective dates of such provisions, but
12 do not apply to the acts or omissions of agents, or third
13 parties presented with instructions by agents, that occur
14 before such respective effective dates.

15 (2) Except as provided by this section, the provisions
16 of this act apply to judicial proceedings concerning a power
17 of attorney commenced before, on or after the respective
18 effective dates of such provisions, unless the court finds
19 that application of a provision of this act would
20 substantially interfere with the effective conduct of the
21 judicial proceeding or prejudice the rights of a party, in
22 which case that provision does not apply and the superseded
23 law applies.

24 (3) The amendment, addition or repeal of 20 Pa.C.S. §§
25 5601(b), (c), (d) and (e.2), 5601.2, 5601.4, 5602(a)(5) and
26 (17) and 5603 apply only to powers of attorney created on or
27 after the effective dates of those provisions.

28 (4) The amendment of 20 Pa.C.S. §§ 5601(f) and 5608
29 shall apply retroactively to acts performed after December
30 15, 1992, and to judicial proceedings commenced prior to the

1 effective dates of those provisions.

2 (5) In interpreting and applying the amendment or
3 addition of 20 Pa.C.S. §§ 5601(f), 5608, 5608.1, 5608.2 and
4 5611, a court shall give due consideration of the intent of
5 the General Assembly to reverse the interpretation of 20
6 Pa.C.S. § 5608 as set forth in *Teresa M. Vine v. Commonwealth*
7 *of Pennsylvania, State Employees' Retirement Board*, 9 A.3d
8 1150 (Pa. 2010).

9 Section 11. This act shall take effect as follows:

10 (1) The amendment or addition of 20 Pa.C.S. §§ 5601(f),
11 5608, 5608.1, 5608.2, 5611 and 5612 shall take effect
12 immediately.

13 (2) This section shall take effect immediately.

14 (3) The remainder of this act shall take effect on the
15 first July 1 or January 1 which occurs five months or more
16 after the date of enactment of this act.