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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, R. MILLER, PICKETT, ROCK, SAYLOR, TURZAI, WATSON, GILLESPIE, GIBBONS, CARROLL, KORTZ, HARHAI, SCAVELLO, PYLE, CAUSER, TAYLOR, RAPP, MAHER, GINGRICH, HICKERNELL, MILNE, C. HARRIS, MACKENZIE, REESE, MARSHALL, P. DALEY, STEVENSON, BENNINGHOFF, READSHAW AND WHITE, JUNE 3, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 11, 2013

AN ACT

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

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

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

§ 5601. General provisions.

* * *

(b) Execution.--

<u>(1)</u> A power of attorney shall be <u>dated, and it shall be</u>

signed [and dated] by the principal by signature or mark, or by another individual~~, in the principal's conscious presence,~~ <-- on behalf of and at the direction of the principal.

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

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

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

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

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

NOTICE

The purpose of this power of attorney is to give the person you designate (your "agent") broad powers to handle your property, which may include powers to sell or otherwise

dispose of any real or personal property without advance notice to you or approval by you.

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

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

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

THE LAW PERMITS YOU, IF YOU CHOOSE, TO GRANT BROAD AUTHORITY TO AN AGENT UNDER POWER OF ATTORNEY, INCLUDING THE ABILITY TO GIVE AWAY ALL OF YOUR PROPERTY WHILE YOU ARE ALIVE OR TO SUBSTANTIALLY CHANGE HOW YOUR PROPERTY IS DISTRIBUTED AT YOUR DEATH. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY AT LAW TO MAKE SURE YOU UNDERSTAND IT. <--

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

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

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to

explain it to you.

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

.....

(Principal) (Date)

(d) Acknowledgment executed by agent.--An agent shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially the following form:

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

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

[I shall keep the assets of the principal separate from my assets. **<--**

~~[~~I shall exercise reasonable caution and prudence. **<--**

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

.....

(Agent) (Date)

[(e) Fiduciary relationship.--An agent acting under a power of attorney has a fiduciary relationship with the principal. In

the absence of a specific provision to the contrary in the power of attorney, the fiduciary relationship includes the duty to:

(1) Exercise the powers for the benefit of the principal.

(2) Keep separate the assets of the principal from those of an agent.

(3) Exercise reasonable caution and prudence.

(4) Keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.]

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

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

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

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

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

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

(v) A power given to a dealer as defined by the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, when using the power in conjunction with

a sale, purchase or transfer of a vehicle as authorized by 75 Pa.C.S. § 1119 (relating to application for certificate of title by agent).]

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

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

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

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

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

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

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

(vii) A power created on a form prescribed by a

Commonwealth agency, political subdivision or an authority or instrumentality of the Commonwealth or a political subdivision.

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

(e.2) Limitation on applicability in health care [power] and mental health care powers of attorney.--Subsections (b)(3)(i), (c) and (d) and section 5601.3 (relating to agent's duties) do not apply to a power of attorney which exclusively provides for health care decision making or mental health care decision making.

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

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

"Good faith." Honesty in fact ~~based upon a sincere belief with a proper motive~~. <--

Section 2. Section 5601.2 of Title 20 is repealed:

[§ 5601.2. Special rules for gifts.

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

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

(1) the language quoted in section 5602(a)(1) (relating

to form of power of attorney); or

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

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

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

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

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

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

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

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

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

estate.

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

Section 3. Title 20 is amended by adding sections to read:

§ 5601.3. Agent's duties.

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

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

(2) Act in good faith.

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

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

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

(1.1) KEEP THE AGENT'S FUNDS SEPARATE FROM THE PRINCIPAL'S FUNDS AFTER THE DATE OF EXECUTION OF THE POWER OF ATTORNEY, UNLESS THE FUNDS WERE NOT KEPT SEPARATE AS OF THE DATE OF THE EXECUTION OF THE POWER OF ATTORNEY. <--

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

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

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

(5) Cooperate with a person who has authority to make

health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.

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

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

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

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

(IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR ASSISTANCE UNDER A STATUTE OR REGULATION. <--

(c) Nonliability of agent.--

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

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

(3) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise

must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

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

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

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

(1) Except as otherwise provided in the power of attorney, an agent ~~is not~~ SHALL NOT BE required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, conservator, another fiduciary acting for the principal, ~~government~~ GOVERNMENTAL agency having authority to protect the welfare of the principal~~, government agency that has been requested to provide medical assistance or other benefits to the principal or to a dependent of the principal, or that has provided such benefits,~~ or, upon the death of the principal, the personal representative or successor in interest of the principal's estate. <-- <-- <--

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

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

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

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

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

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

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

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

(2) Make a gift.

(3) Create or change rights of survivorship.

(4) Create or change a beneficiary designation.

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

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

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

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

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

(c) Scope of authority.--Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an agent authority to do all acts that a principal is authorized to perform, the agent has the general authority described in section 5602(a).

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

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

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

authority is exercised or the power of attorney is executed in this State.

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

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

§ 5602. Form of power of attorney.

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

* * *

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

* * *

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

* * *

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

§ 5603. Implementation of power of attorney.

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

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

(i) The class of permissible donees under this

paragraph shall consist solely of the principal's spouse, issue and a spouse of the principal's issue (including the agent if a member of any such class), or any of them.

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

(iv) In addition to the gifts authorized by subparagraphs (i) and (ii), a gift made pursuant to such power may be for the tuition or medical care of any permissible donee to the extent that the gift is excluded from the Federal gift tax under section 2503(e) of the Internal Revenue Code of 1986 as a qualified transfer.

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

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

(1) Unless the power of attorney otherwise provides, the power to make limited gifts or other language in a power of attorney granting general authority with respect to gifts

authorizes the agent only to:

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

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

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

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

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

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

(ii) The principal's foreseeable obligations and

need for maintenance.

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

(IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR ASSISTANCE UNDER A STATUTE OR REGULATION. <--

~~(iv)~~ (V) The principal's personal history of making or joining in making gifts. <--

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

~~(4) The class of permissible donees under this subsection shall consist solely of the principal's spouse, principal's issue and a spouse of the principal's issue, including the agent if a member of any such class, or any of them.~~ <--

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

* * *

[(e) Power to disclaim any interest in property.--A power "to disclaim any interest in property" shall mean that the agent may release or disclaim any interest in property on behalf of

the principal in accordance with Chapter 62 (relating to disclaimers) or section 6103 (relating to release or disclaimer of powers or interests), provided that any disclaimer under Chapter 62 shall be in accordance with the provisions of section 6202 (relating to disclaimers by fiduciaries or agents) in the case of a principal who shall have been adjudicated an incapacitated person at the time of the execution of the disclaimer.]

* * *

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

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

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

(3) In general, exercise all powers with respect to insurance and annuities that the principal could if present; [however, the agent cannot designate himself beneficiary of a life insurance policy unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a life insurance policy shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal] provided, however, that the agent shall have no power to create or change a beneficiary designation

unless authorized in accordance with section 5601.4 (relating to authority that requires specific and general grant of authority).

(q) Power to engage in retirement plan transactions.--A power to "engage in retirement plan transactions" shall mean that the agent may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present[. However, the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a retirement plan shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal] provided, however, that the agent shall have no power to create or change a beneficiary designation unless authorized in accordance with section 5601.4.

* * *

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

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

[(a) Third party liability.--Any person who is given instructions by an agent in accordance with the terms of a power

of attorney shall comply with the instructions. Any person who without reasonable cause fails to comply with those instructions shall be subject to civil liability for any damages resulting from noncompliance. Reasonable cause under this subsection shall include, but not be limited to, a good faith report having been made by the third party to the local protective services agency regarding abuse, neglect, exploitation or abandonment pursuant to section 302 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

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

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

(1) The principal.

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

(3) A witness.

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

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

(1) The power of attorney is void, invalid or

terminated.

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

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

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

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

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

(3) An opinion of counsel relating to whether the agent is acting within the scope of the authority granted by the power of attorney, if the person making the request provides in a writing or other record the reason for the request.

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

(g) English translation.--An English translation or an

opinion of counsel requested under this section shall be at the principal's expense, unless the request is made more than seven business days after the power of attorney is presented for acceptance.

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

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

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

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

Section 7. Title 20 is amended by adding sections to read:

§ 5608.1. Liability for refusal to accept power of attorney.

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

(1) A person shall either:

(i) accept a power of attorney; or

(ii) request one of the following:

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

(B) a certification, translation or an opinion of counsel under section 5608(e) (relating to acceptance of and reliance upon power of attorney);

not later than seven business days after presentation of the power of attorney for acceptance.

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

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

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

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

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

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

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

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

(4) The person has actual knowledge of the termination

of the agent's authority or of the power of attorney before exercise of the power.

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

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

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

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

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

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

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

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

(1) a power of attorney subject to the laws of another state or jurisdiction; OR <--

(2) a power of attorney prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose~~; or~~. <--

~~(3) a power of attorney that is not accepted by the Department of Public Welfare in connection with the application for or receipt of medical assistance or other benefits.~~ <--

§ 5608.2. Activities through employees.

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

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

(2) An employee has knowledge of a fact if the employee

has actual knowledge of the fact or acts with conscious disregard or willful ignorance regarding the existence of the fact.

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

§ 5611. Validity.

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

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

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

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

§ 5612. Principles of law and equity.

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

Section 10. The following shall apply:

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

before such respective effective dates.

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

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

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

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

Section 11. This act shall take effect as follows:

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

(2) This section shall take effect immediately.

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