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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1104 Session of  
2015

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INTRODUCED BY GREENLEAF, RAFFERTY AND COSTA, JANUARY 13, 2016

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REFERRED TO JUDICIARY, JANUARY 13, 2016

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AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in orphans' court  
3 divisions, further providing for nonmandatory exercise of  
4 jurisdiction through orphans' court division; in wills,  
5 further providing for rules of interpretation; in  
6 dispositions independent of letters, family exemption,  
7 probate of wills and grant of letters, providing for  
8 submission to jurisdiction; in administration and personal  
9 representatives, further providing for continuation of  
10 business and for incorporation of estate's business; in  
11 accounts and distribution, further providing for  
12 determination of title to decedent's interest in real estate;  
13 in health care, further providing for definitions, for  
14 authority of health care agent and for relation of health  
15 care agent to court-appointed guardian and other agents; in  
16 powers of attorney, further providing for general provisions,  
17 for form of power of attorney, for implementation of power of  
18 attorney, for durable powers of attorney and for account;  
19 providing for meaning and effect of power of attorney and for  
20 jurisdiction and venue; in estates, further providing for  
21 release or disclaimer of powers or interests; in estates,  
22 providing for release of powers and interests and disclaimer  
23 of powers; providing for powers of appointment; in trusts,  
24 further providing for nonjudicial settlement agreements - UTC  
25 111, for representation of parties in interest in general,  
26 for division of trusts, for resignation of trustee and filing  
27 resignation, for duty to inform and report, for limitation of  
28 action against trustee and for powers, duties and liabilities  
29 identical with personal representatives; codifying provisions  
30 of the Charitable Instruments Act of 1971; in principal and  
31 income, further providing for charitable trusts; and making a  
32 related repeal.

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Sections 712(1) and 2514(13) of Title 20 of the  
3 Pennsylvania Consolidated Statutes are amended to read:

4 § 712. Nonmandatory exercise of jurisdiction through orphans'  
5 court division.

6 The jurisdiction of the court of common pleas over the  
7 following may be exercised through either its orphans' court  
8 division or other appropriate division:

9 (1) Title to real estate.--The determination of the  
10 persons to whom the title to real estate of a decedent or of  
11 the creator of an estate or trust has passed by devise or  
12 descent or by the terms of the trust instrument where  
13 jurisdiction of such estate or trust is exercised through the  
14 orphans' court division: Provided, That nothing herein shall  
15 be construed to restrict the provisions of section 711  
16 (relating to mandatory exercise of jurisdiction through  
17 orphans' court division in general) relating to distribution  
18 of real estate in an estate or trust. If section 3546  
19 (relating to determination of title to decedent's interest in  
20 real estate) applies, the procedures under that section shall  
21 govern. For other actions to quiet title to real estate, this  
22 section shall govern.

23 \* \* \*

24 § 2514. Rules of interpretation.

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

28 \* \* \*

29 [(13) Power of appointment.--A general devise of the  
30 real estate of the testator, or of the real estate of the

1       testator in any place, or in the occupation of any person  
2       mentioned in his will, or otherwise described in a general  
3       manner, shall be construed to include any real estate, or any  
4       real estate to which such description shall extend, as the  
5       case may be, which he shall have power to appoint in any  
6       manner he shall think proper, and shall operate as an  
7       execution of such power. In like manner, a bequest of the  
8       personal estate of the testator, or any bequest of personal  
9       property described in a general manner, shall be construed to  
10      include any personal estate, or any personal estate to which  
11      such description shall extend, as the case may be, which he  
12      shall have power to appoint in any manner he shall think  
13      proper, and shall operate as an execution of such power. In  
14      like manner, a general pecuniary legacy, when the assets of  
15      the individual estate of the testator are not sufficient for  
16      its payment, shall, to the extent necessary to make possible  
17      the payment of the legacy, be construed to include any estate  
18      which the testator shall have power to appoint in any manner  
19      he shall think proper, and shall to such extent operate as an  
20      execution of such power.]

21               \* \* \*

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

23      § 3163. Submission to jurisdiction.

24      (a) General rule.--By accepting appointment by the register  
25      of wills, the personal representative submits personally to the  
26      jurisdiction of the orphans' court division of the county where  
27      letters testamentary or letters of administration are granted in  
28      all matters involving the performance of the personal  
29      representative's duties as personal representative, and an  
30      action by any interested party seeking an accounting by, or

1 removal of, the personal representative, or alleging breach of  
2 duty by the personal representative, shall be commenced by  
3 notice to the personal representative.

4 (b) Criminal contempt.--Notwithstanding subsection (a), no  
5 personal representative shall be held in criminal contempt of an  
6 order of the orphans' court division without the prior issuance  
7 of a citation and service of process.

8 Section 3. Sections 3314, 3315 and 3546 of Title 20 are  
9 amended to read:

10 § 3314. Continuation of business.

11 [The court,] Giving due regard to the provisions of the  
12 governing instrument and any other factor that the court deems  
13 relevant, and aided by the report of a master if necessary, the  
14 court may authorize the personal representative to continue any  
15 business of the estate for the benefit of the estate [and in  
16 doing so the court, for cause shown, may disregard the  
17 provisions of the governing instrument, if any]. The order may  
18 be with or without notice. If prior notice is not given to all  
19 parties in interest, it shall be given within five days after  
20 the order or within such extended time as the court, for cause  
21 shown, shall allow. Any party in interest may, at any time,  
22 petition the court to revoke or modify the order. The order may  
23 provide:

24 (1) for the conduct of business, by the personal  
25 representative alone or jointly with others, or, unless  
26 restricted by the terms of the governing instrument, as a  
27 corporation, partnership, limited liability company or other  
28 entity to be formed;

29 (2) the extent of the liability of the estate or any  
30 part thereof, or of the personal representative, for

1 obligations incurred in the continuation of the business;

2 (3) whether liabilities incurred in the conduct of the  
3 business are to be chargeable solely to the part of the  
4 estate set aside for use in the business or to the estate as  
5 a whole;

6 (4) the period of time the business may be conducted;  
7 [and]

8 (4.1) for the compensation of a personal representative  
9 actively managing, supervising or engaging in the operation  
10 of an entity or business, from the estate's assets or from  
11 the entity or business, as appropriate, provided that the  
12 compensation is reasonably based upon the actual  
13 responsibilities assumed and performed; and

14 (5) such other regulations, including accountings, as  
15 the court shall deem advisable.

16 § 3315. Incorporation of or formation of entity to operate  
17 estate's business.

18 After notice to all parties in interest, aided by the report  
19 of a master if necessary, and giving due regard to the  
20 provisions of the governing instrument and any other factor that  
21 the court deems relevant, the court[, unless restricted by the  
22 terms of the governing instrument,] may authorize the personal  
23 representative alone or jointly with others, to organize a  
24 corporation, or form a partnership, limited liability company or  
25 other entity, to carry on the business of the estate, whether  
26 the business was owned solely or with others, and may contribute  
27 for stock of the corporation, as capital, or for an interest in  
28 a partnership, limited liability company or other entity, all or  
29 part of the property of the estate which was invested in the  
30 business.

1 § 3546. Determination of title to decedent's interest in real  
2 estate.

3 [When a person shall die leaving an interest in real estate  
4 within the Commonwealth and no letters testamentary or of  
5 administration have been granted on the estate of the decedent  
6 in the Commonwealth, and one year has expired since the  
7 decedent's death, or if a personal representative has been  
8 appointed and has not filed his account within six years of the  
9 death of the decedent, any person claiming an interest in the  
10 real estate as or through an heir or devisee of the decedent may  
11 present a petition to establish title thereto in the orphans'  
12 court division of the county where the letters testamentary or  
13 of administration have been granted, or should no letters have  
14 been granted, then in the orphans' court division of the county  
15 within which was the family or principal residence of the  
16 decedent. If the decedent was a nonresident of the Commonwealth,  
17 the petition may be presented in the orphans' court division of  
18 any county wherein any of the real estate shall lie. The court,  
19 aided if necessary by the report of a master, may enter its  
20 decree nisi adjudging that the title to the decedent's interest  
21 in the real estate is in such person or persons as the court  
22 shall determine. Notice of the decree nisi shall be given to  
23 creditors and other parties in interest, by advertisement and  
24 otherwise, as the court shall direct. If no exception to the  
25 decree is filed within three months, it shall be confirmed  
26 absolutely, free of all decedent's debts not then liens of  
27 record, and regardless of the provisions of any testamentary  
28 writing of the decedent thereafter probated. A certified copy of  
29 the decree shall be recorded in the office of the recorder of  
30 deeds of each county where real estate included in the decree

1 shall lie, shall be indexed by the recorder in the grantor's  
2 index under the name of the decedent and in the grantee's index  
3 under the name of each distributee, and shall be registered in  
4 the survey bureau or with the proper authorities empowered to  
5 keep a register of real estate in the county.]

6 (a) Applicability.--This section shall apply if:

7 (1) A person dies leaving an interest in real estate  
8 within this Commonwealth.

9 (2) Either of the following occurs:

10 (i) No letters testamentary or letters of  
11 administration have been granted on the estate of the  
12 decedent in this Commonwealth and one year has expired  
13 since the decedent's death.

14 (ii) A personal representative has been appointed  
15 but has not filed an account within six years of the  
16 decedent's death.

17 (3) There is a conflict between this section and either  
18 section 2103(6) (relating to shares of others than surviving  
19 spouse) or Article XIII.1 of the act of April 9, 1929  
20 (P.L.343, No.176), known as The Fiscal Code, with respect to  
21 a petition by an entity under subsection (c)(2). The rights  
22 granted under this section shall supersede any right of the  
23 Commonwealth created under section 2103(6) or Article XIII.1  
24 of The Fiscal Code.

25 (b) Subject of petition.--A person or entity authorized by  
26 subsection (c) may present a petition under this section to:

27 (1) terminate an interest in the real estate of other  
28 heirs or devisees of the decedent who, after being given  
29 proper notice under subsection (f); or

30 (2) have declared as void, unenforceable and canceled of

1 record a fraudulent conveyance of the decedent's interest in  
2 the real estate and to the extent otherwise authorized by law  
3 any lien, title, claim or interest arising in the property  
4 by, from or under the fraudulent conveyance, including any  
5 subsequent transfers of property following the fraudulent  
6 conveyance and any liens to the extent that they have  
7 attached to the property as a result of the fraudulent  
8 conveyance, after all interested parties have been given  
9 proper notice under subsection (f).

10 (c) Who may petition.--The following persons and entities  
11 may petition to establish title to the decedent's real estate:

12 (1) A person claiming an interest in the real estate:

13 (i) as an heir or devisee of the decedent;

14 (ii) through the decedent; or

15 (iii) through an heir or devisee of the decedent,

16 when the heir or devisee is deceased or has conveyed all  
17 or part of the heir or devisee's interest in the property  
18 to the person.

19 (2) A nonprofit corporation organized for community  
20 development purposes under section 501(c)(3) of the Internal  
21 Revenue Code (Public Law 99-514, 26 U.S.C. § 1 et seq.), a  
22 municipality in which the real estate is located or a  
23 redevelopment authority created and organized under the act  
24 of May 24, 1945 (P.L.991, No.385), known as the Urban  
25 Redevelopment Law, having jurisdiction in the municipality in  
26 which the real estate is located upon a showing by clear and  
27 convincing evidence to the court that:

28 (i) No heirs or devisees exist or have taken action  
29 with respect to the real estate for at least five years  
30 since the decedent's death.



1           (ii) The real estate is not occupied by a person  
2           claiming rights by adverse possession.

3           (d) Priority of petitions.--Where there are two or more  
4 petitions for the same real estate under subsection (c) (2), the  
5 court shall give priority in entering its order to one of the  
6 petitioners in the following order:

7           (1) The municipality.

8           (2) The redevelopment authority.

9           (3) The nonprofit corporation.

10          (e) Where to petition.--A petition under this section shall  
11 be filed in the orphans' court division of the county where:

12           (1) the letters testamentary or letters of  
13 administration have been granted;

14           (2) the principal residence of the decedent was located,  
15 if no letters testamentary or letters of administration have  
16 been granted; or

17           (3) any of the real estate is located, if the decedent  
18 was a nonresident of this Commonwealth.

19          (f) Notice of petition.--

20           (1) Notice shall be given to all persons reasonably  
21 identifiable as eligible to file a petition under subsection  
22 (c), creditors that do not have liens of record, to the  
23 extent known, and all other persons and parties in interest  
24 reasonably known to hold or claim a lien, title, claim or  
25 other interest in the property in accordance with the  
26 Pennsylvania Orphans' Court Rules. Notice shall also be given  
27 by:

28           (i) publication once a week during three successive  
29 calendar weeks in the legal periodical, if any, and in a  
30 newspaper of general circulation published at or near the

1 location of the real estate;

2 (ii) posting a copy of the petition on the most  
3 public part of the property; and

4 (iii) such other methods, if any, as the court deems  
5 appropriate to give notice.

6 (2) If letters testamentary or letters of administration  
7 have been granted on the estate of the decedent, notice of  
8 the petition under this section shall be given to the  
9 personal representative of the decedent.

10 (3) A lis pendens notice shall be given in each county  
11 where the real estate is located in the same manner and place  
12 as provided in section 3390 (relating to specific performance  
13 of contracts) for an action of specific performance.

14 (g) Order.--

15 (1) Aided if necessary by the report of a master, the  
16 court may enter an order adjudging that the title to the  
17 decedent's interest in the real estate is in the petitioner,  
18 free of all decedent's debts not then liens of record, and  
19 regardless of the provisions of any testamentary writing of  
20 the decedent thereafter probated, or an order directing other  
21 appropriate relief as the court determines.

22 (2) A certified copy of the order shall be:

23 (i) Recorded in the office of the recorder of deeds  
24 of each county where real estate included in the decree  
25 or order shall lie.

26 (ii) Indexed by the recorder in the grantor's index  
27 under the name of the decedent and in the grantee's index  
28 under the name of each distributee.

29 (iii) Registered in the survey bureau or with the  
30 proper authorities empowered to keep a register of real

1 estate in the county.

2 (iv) Served by the petitioner upon each party who  
3 has entered an appearance in the proceeding.

4 (h) Parcel number or identifier.--

5 (1) A petition filed under subsection (b) and notice of  
6 petition given under subsection (f) shall include the county  
7 tax parcel number or Uniform Parcel Identifier for each  
8 parcel included. A party alleging any failure to comply with  
9 the requirements of this paragraph must do so in the manner  
10 provided for raising an affirmative defense.

11 (2) An order presented for recording under subsection  
12 (g) shall comply with section 3 of the act of April 24, 1931  
13 (P.L.48, No.40), entitled "An act requiring the recording of  
14 certain written agreements pertaining to real property, and  
15 prescribing the effect thereof as to subsequent purchasers,  
16 mortgages, and judgment creditors of the parties thereto."

17 (i) Definition.--For the purposes of this section,  
18 "fraudulent conveyance" shall mean a transfer of an interest,  
19 lien, title or claim in real estate that occurs as a result of:

20 (1) a forgery of the grantor's signature on a document  
21 purporting to make such transfer;

22 (2) the grantor being induced by fraud,  
23 misrepresentation, duress or coercion to sign a document  
24 purporting to make such transfer; or

25 (3) some other inappropriate means used to obtain the  
26 grantor's signature on the document purporting to make such  
27 transfer, as determined by a court.

28 Section 4. The definition of "health care decision" in  
29 section 5422 of Title 20 is amended by adding paragraphs to  
30 read:

1 § 5422. Definitions.

2 The following words and phrases when used in this chapter  
3 shall have the meanings given to them in this section unless the  
4 context clearly indicates otherwise:

5 \* \* \*

6 "Health care decision." A decision regarding an individual's  
7 health care, including, but not limited to, the following:

8 \* \* \*

9 (4) Admission to a medical, nursing, residential or  
10 similar facility, or entering into agreements for the  
11 individual's care.

12 (5) Making anatomical gifts, or after the death of the  
13 individual, disposing of the remains or consenting to  
14 autopsies.

15 \* \* \*

16 Section 5. Sections 5456(a) and 5460(a) of Title 20 are  
17 amended to read:

18 § 5456. Authority of health care agent.

19 (a) Extent of authority.--Except as expressly provided  
20 otherwise in a health care power of attorney and subject to  
21 subsection (b) and section 5460 (relating to relation of health  
22 care agent to court-appointed guardian and other agents), a  
23 health care agent shall have the authority to make any health  
24 care decision and to exercise any right and power regarding the  
25 principal's care, custody and health care treatment that the  
26 principal could have made and exercised. The foregoing power  
27 shall include the power to authorize admission to a medical,  
28 nursing, residential or similar facility, or to enter into  
29 agreements for the principal's care. The health care agent's  
30 authority may extend beyond the principal's death to make

1 anatomical gifts, dispose of the remains and consent to  
2 autopsies.

3 \* \* \*

4 § 5460. Relation of health care agent to court-appointed  
5 guardian and other agents.

6 (a) Accountability of health care agent.--If a principal who  
7 has executed a health care power of attorney is later  
8 adjudicated an incapacitated person and a guardian of the person  
9 to make health care decisions is appointed by a court, the  
10 health care agent is accountable to the guardian as well as to  
11 the principal. [The guardian shall have the same power to revoke  
12 or amend the appointment of a health care agent that the  
13 principal would have if the principal were not incapacitated but  
14 may not revoke or amend other instructions in an advance health  
15 directive absent judicial authorization.] In its guardianship  
16 order and determination of a person's incapacity, the court  
17 shall determine the extent to which the health care agent's  
18 authority to act remains in effect.

19 \* \* \*

20 Section 6. Sections 5601(b) (3) and 5602(a) of Title 20 are  
21 amended to read:

22 § 5601. General provisions.

23 \* \* \*

24 (b) Execution.--

25 \* \* \*

26 (3) For a power of attorney executed on or after the  
27 effective date of this paragraph, the signature or mark of  
28 the principal, or the signature [or mark] of another  
29 individual signing a power of attorney on behalf of and at  
30 the direction of the principal, shall be:

1 (i) Acknowledged before a notary public or other  
2 individual authorized by law to take acknowledgments. The  
3 notary public or other individual authorized by law to  
4 take acknowledgments shall not be the agent designated in  
5 the power of attorney.

6 (ii) Witnessed by two individuals, each of whom is  
7 18 years of age or older. A witness shall not be the  
8 individual who signed the power of attorney on behalf of  
9 and at the direction of the principal, the agent  
10 designated in the power of attorney or the notary public  
11 or other person authorized by law to take acknowledgments  
12 before whom the power of attorney is acknowledged. For  
13 acknowledgments by an attorney subject to this  
14 subparagraph, the provisions of 57 Pa.C.S. § 316(2.1)  
15 (relating to short form certificates) insofar as they  
16 relate to an attorney as subscribing witness do not  
17 apply.

18 \* \* \*

19 § 5602. Form of power of attorney.

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

26 [(1) "To make limited gifts."]

27 (2) "To create a trust for my benefit."

28 (3) "To make additions to an existing trust for my  
29 benefit."

30 (4) "To claim an elective share of the estate of my

1 deceased spouse."

2 (6) "To renounce fiduciary positions."

3 (7) "To withdraw and receive the income or corpus of a  
4 trust."

5 [(8) "To authorize my admission to a medical, nursing,  
6 residential or similar facility and to enter into agreements  
7 for my care."

8 (9) "To authorize medical and surgical procedures."]

9 (10) "To engage in real property transactions."

10 (11) "To engage in tangible personal property  
11 transactions."

12 (12) "To engage in stock, bond and other securities  
13 transactions."

14 (13) "To engage in commodity and option transactions."

15 (14) "To engage in banking and financial transactions."

16 (15) "To borrow money."

17 (16) "To enter safe deposit boxes."

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

19 (18) "To engage in retirement plan transactions."

20 (19) "To handle interests in estates and trusts."

21 (20) "To pursue claims and litigation."

22 (21) "To receive government benefits."

23 (22) "To pursue tax matters."

24 [(23) "To make an anatomical gift of all or part of my  
25 body."]

26 (24) "To operate a business or entity."

27 (25) "To provide for personal and family maintenance."

28 \* \* \*

29 Section 7. Section 5603(d), (h), (r) and (u.1) of Title 20  
30 are amended and the section is amended by adding subsections to

1 read:

2 § 5603. Implementation of power of attorney.

3 \* \* \*

4 (d) Power to claim an elective share.--A power "to claim an  
5 elective share of the estate of my deceased spouse" shall mean  
6 that the agent may elect to take against the will and  
7 conveyances of the principal's deceased spouse, disclaim any  
8 interest in property which the principal is required to disclaim  
9 as a result of such election, retain any property which the  
10 principal has the right to elect to retain, file petitions  
11 pertaining to the election, including petitions to extend the  
12 time for electing and petitions for orders, decrees and  
13 judgments in accordance with section 2211(c) and (d) (relating  
14 to determination of effect of election; enforcement), and take  
15 all other actions which the agent deems appropriate in order to  
16 effectuate the election: Provided, however, That the election  
17 shall be made only upon the approval of the court having  
18 jurisdiction of the principal's estate in accordance with  
19 section 2206 (relating to right of election personal to  
20 surviving spouse) in the case of a principal who [has been  
21 adjudicated] is an incapacitated person, or upon the approval of  
22 the court having jurisdiction of the deceased spouse's estate in  
23 the case of a principal who [has not been adjudicated] is not  
24 an incapacitated person.

25 \* \* \*

26 [(h) Power to authorize admission to medical facility and  
27 power to authorize medical procedures.--

28 (1) A power "to authorize my admission to a medical,  
29 nursing, residential or similar facility, and to enter into  
30 agreements for my care" shall mean that the agent may apply



1 for the admission of the principal to a medical, nursing,  
2 residential or other similar facility, execute any consent or  
3 admission forms required by such facility which are  
4 consistent with this paragraph, and enter into agreements for  
5 the care of the principal by such facility or elsewhere  
6 during his lifetime or for such lesser period of time as the  
7 agent may designate, including the retention of nurses for  
8 the principal.

9 (2) A power "to authorize medical and surgical  
10 procedures" shall mean that the agent may arrange for and  
11 consent to medical, therapeutical and surgical procedures for  
12 the principal, including the administration of drugs.]

13 \* \* \*

14 (r) Power to handle interests in estates and trusts.--A  
15 power to "handle interests in estates and trusts" shall mean  
16 that the agent may receive a bequest, devise, gift or other  
17 transfer of real or personal property to the principal in the  
18 principal's own right or as a fiduciary for another and give  
19 full receipt and acquittance therefor or a refunding bond  
20 therefor; approve accounts of any estate, trust, partnership or  
21 other transaction in which the principal may have an interest;  
22 [and] enter into any compromise and release in regard  
23 thereto[.]; and receive on behalf of the principal all notices  
24 and reports required by section 7780.3 (relating to duty to  
25 inform and report) or permitted by section 7785(a) (relating to  
26 limitation of action against trustee).

27 \* \* \*

28 [(u.1) Power to make anatomical gift.--A power "to make an  
29 anatomical gift of all or part of my body" shall mean that the  
30 agent may arrange and consent, either before or after the death

1 of the principal, to procedures to make an anatomical gift in  
2 accordance with Chapter 86 (relating to anatomical gifts).]

3 (u.2) Power to operate a business or entity.--A power "to  
4 operate a business or entity" shall mean that the agent may:

5 (1) Continue or participate in the operation of any  
6 business or other entity in which the principal holds an  
7 interest, whether alone or with others, by making and  
8 implementing decisions regarding its financing, operations,  
9 employees and all other matters pertinent to the business or  
10 entity.

11 (2) Change the form of ownership of the business or  
12 entity to a corporation, partnership, limited liability  
13 company or other entity, and initiate or take part in a  
14 corporate reorganization, including a merger, consolidation,  
15 dissolution or other change in organizational form.

16 (3) Compensate an agent actively managing, supervising  
17 or engaging in the operation of a business or entity, as  
18 appropriate, from the principal's assets or from the business  
19 or entity, provided that the compensation is reasonably based  
20 upon the actual responsibilities assumed and performed.

21 (4) In general, exercise all powers with respect to  
22 operating a business or entity that the principal could if  
23 present.

24 (u.3) Power to provide for personal and family  
25 maintenance.--

26 (1) A power "to provide for personal and family  
27 maintenance" shall mean that the agent may provide for the  
28 health, education, maintenance and support, in order to  
29 maintain the customary standard of living of the principal's  
30 spouse and the following individuals, whether living when the

1 power of attorney is executed or later born:

2 (i) The principal's minor children.

3 (ii) Other individuals legally entitled to be  
4 supported by the principal.

5 (iii) The individuals whom the principal has  
6 customarily supported and intends to support.

7 (2) In acting under this subsection, the agent shall:

8 (i) Take into account the long-term needs of the  
9 principal.

10 (ii) Consider any independent means available to  
11 those individuals apart from the support provided by the  
12 principal.

13 (3) Authority with respect to personal and family  
14 maintenance is in addition to and not limited by authority  
15 that an agent may or may not have with respect to gifts under  
16 this chapter.

17 (u.4) Implied powers.--Except as provided by a power of  
18 attorney, each of the specific powers listed in this section  
19 included in a power of attorney include the other powers listed  
20 in this section to the extent necessary to exercise the  
21 specifically designated power.

22 Section 8. Section 5604(c)(1) of Title 20 is amended and  
23 subsection (c) is amended by adding a paragraph to read:

24 § 5604. Durable powers of attorney.

25 \* \* \*

26 (c) Relation of agent to court-appointed guardian.--

27 (1) If, following execution of a durable power of  
28 attorney, the principal [is adjudicated] becomes an  
29 incapacitated person and a guardian is appointed for his  
30 estate, the agent is accountable to the guardian as well as

1 to the principal. [The guardian shall have the same power to  
2 revoke or amend the power of attorney that the principal  
3 would have had if he were not an incapacitated person.]

4 \* \* \*

5 (3) In its guardianship order and determination of a  
6 person's incapacity, the court shall determine whether and  
7 the extent to which the incapacitated person's durable power  
8 of attorney remains in effect.

9 \* \* \*

10 Section 9. Section 5610 of Title 20 is amended to read:

11 § 5610. Account.

12 An agent shall file an account of his administration whenever  
13 directed to do so by the court and may file an account at any  
14 other time. All accounts shall be filed in the office of the  
15 clerk in the county where the principal resides. The court may  
16 assess the costs of the accounting proceeding as it deems  
17 appropriate, including the costs of preparing and filing the  
18 account.

19 Section 10. Title 20 is amended by adding sections to read:

20 § 5613. Meaning and effect of power of attorney.

21 The meaning and effect of a power of attorney is determined  
22 by the law of the jurisdiction indicated in the power of  
23 attorney and, in the absence of an indication of jurisdiction,  
24 by the law of the jurisdiction in which the power of attorney is  
25 executed.

26 § 5614. Jurisdiction and venue.

27 (a) County having venue.--Venue of any matter pertaining to  
28 the exercise of a power by an agent acting under a power of  
29 attorney as provided in this chapter shall be in the county in  
30 which the principal is domiciled, a resident or residing in a

1 long-term care facility.

2 (b) Declining jurisdiction.--

3 (1) A court having jurisdiction may decline to exercise  
4 jurisdiction if at any time it determines that a court of  
5 another county or state is a more appropriate forum.

6 (2) If a court of this Commonwealth declines to exercise  
7 jurisdiction, it shall either dismiss the proceeding or stay  
8 the proceeding upon condition that a proceeding be promptly  
9 commenced in another county or state. A court may impose any  
10 other condition that it deems appropriate.

11 Section 11. Section 6103 of Title 20 is repealed:

12 [§ 6103. Release or disclaimer of powers or interests.

13 (a) Powers and interests releasable.--Any power of  
14 appointment, or power of consumption, whether general or  
15 special, other than a power in trust which is imperative, and  
16 any interest in, to, or over real or personal property held or  
17 owned outright, or in trust, or in any other manner which is  
18 reserved or given to any person by deed, will or otherwise, and  
19 irrespective of any limitation of such power or interest by  
20 virtue of any restriction in the nature of a so-called  
21 spendthrift trust provision, or similar provision, may be  
22 released or disclaimed, either with or without consideration by  
23 written instrument signed by the person possessing the power or  
24 the interest and delivered as hereinafter provided, but nothing  
25 in this section shall authorize an income beneficiary of a  
26 spendthrift trust to release or disclaim his right to such  
27 income, unless as a result of the release or disclaimer the  
28 released or disclaimed income will pass to one or more of the  
29 beneficiary's descendants. This section shall not apply to an  
30 interest that may be disclaimed under Chapter 62 (relating to

1 disclaimers).

2 (b) Form of release or disclaimer.--A power or interest  
3 which is releasable or disclaimable may be released or  
4 disclaimed either absolutely or conditionally, and may also be  
5 released or disclaimed with respect to the whole or any part of  
6 the property subject to such power or interest, and may also be  
7 released or disclaimed in such manner as to reduce or limit the  
8 persons or objects or classes of persons or objects in whose  
9 favor such power or interest would otherwise be exercisable. No  
10 release or disclaimer of a power or of an interest shall be  
11 deemed to make imperative a power or interest which was not  
12 imperative prior to such release or disclaimer unless the  
13 instrument of release or disclaimer expressly so provides.

14 (c) Delivery of release or disclaimer.--Such release or  
15 disclaimer may be delivered to any one of the following:

16 (1) Any person specified for such purpose in the  
17 instrument creating the power or interest.

18 (2) Any trustee of the property to which the power or  
19 interest relates.

20 (3) The clerk of the court having jurisdiction of the  
21 trust for filing in said court.

22 (4) The recorder of deeds for recording in the county in  
23 which the person possessing the power or interest resides, or  
24 in which the deed, will, or other instrument creating the  
25 power or interest is recorded or filed.

26 (d) Grantee or lienholder.--A release or disclaimer shall be  
27 void as against a bona fide grantee of or holder of a lien on  
28 real estate in any county unless the release or disclaimer or a  
29 duplicate original or certified copy thereof is recorded in the  
30 county where the real estate lies before the recording or

1 entering of the instrument or lien under which such grantee or  
2 lienholder claims.]

3 Section 12. Title 20 is amended by adding a section to read:

4 § 6103.1. Release of powers and interests and disclaimer of  
5 powers.

6 (a) Interests releasable.--

7 (1) Subject to paragraph (2), an interest in property  
8 that has been accepted may be released.

9 (2) An income interest in a spendthrift trust may be  
10 released only if the released income passes to one or more of  
11 the releasor's descendants.

12 (b) Effect of release of interest.--A releasor of an  
13 interest in property shall be treated as having died at the time  
14 of the release for purposes of determining and accelerating the  
15 interests of other parties in the property.

16 (c) Nonfiduciary powers disclaimable or releasable.--A power  
17 of appointment, power of withdrawal or other power held in a  
18 nonfiduciary capacity may be disclaimed prior to its acceptance  
19 or released after its acceptance.

20 (d) Terms of disclaimer or release.--A release of a power or  
21 interest or a disclaimer of a power under this section may:

22 (1) Be absolute or conditional.

23 (2) Be made with respect to the whole or any part of the  
24 property subject to the power or interest.

25 (3) Reduce or limit the persons or objects or classes of  
26 persons or objects in whose favor the power or interest would  
27 otherwise be exercisable.

28 (e) Procedural requirements.--A release and a disclaimer  
29 under this section shall be in writing and filed, delivered and  
30 recorded in a similar manner as a disclaimer under section 6204

1 (relating to filing, delivery and recording).

2 Section 13. Title 20 is amended by adding a chapter to read:

3 CHAPTER 76

4 POWERS OF APPOINTMENT

5 Sec.

6 7601. Definitions.

7 7602. Exercise of powers of appointment.

8 7603. Contract to exercise power.

9 7604. Manner of appointment.

10 7605. Antilapse provision.

11 7606. Partially effective exercise.

12 § 7601. Definitions.

13 The following words and phrases when used in this chapter  
14 shall have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "Broad power of appointment." A power of appointment that  
17 the donee may exercise in favor of any one or more of the  
18 following:

19 (1) One or more persons selected by the donee.

20 (2) The donee.

21 (3) The donee's estate.

22 (4) Every person other than the donee, the donee's  
23 creditors, the donee's estate or the creditors of the donee's  
24 estate.

25 "Limited power of appointment." A power of appointment that  
26 is not a broad power of appointment. The term includes a power  
27 to appoint to the donee's creditors or the creditors of the  
28 donee's estate.

29 § 7602. Exercise of powers of appointment.

30 (a) Broad power of appointment.--Subject to subsection (c),



1 in the absence of a contrary intent appearing in the instrument  
2 creating a broad power of appointment or in the donee's  
3 instrument exercising the power, a broad power of appointment  
4 may be exercised only by the donee's instrument making:

5 (1) specific reference to the power;

6 (2) general reference to any or all powers of  
7 appointment held by the donee;

8 (3) a testamentary or inter vivos gift specifically  
9 describing the appointive property;

10 (4) an insufficiently funded testamentary pecuniary  
11 legacy, to the extent to satisfy the legacy;

12 (5) a general testamentary gift; or

13 (6) a testamentary residuary gift.

14 (b) Limited power of appointment.--

15 (1) Subject to paragraph (2) and subsection (c), in the  
16 absence of a contrary intent appearing in the instrument  
17 creating a limited power of appointment or in the donee's  
18 instrument exercising the power, a limited power of  
19 appointment may be exercised only by the donee's instrument  
20 making:

21 (i) specific reference to the power;

22 (ii) a testamentary or inter vivos gift specifically  
23 describing the appointive property;

24 (iii) a general testamentary gift to all, and only  
25 to all, the objects of the power; or

26 (iv) a testamentary residuary gift to all, and only  
27 to all, the objects of the power.

28 (2) The objects of the power described in paragraph (1)

29 (iii) and (iv) who have a common ancestor shall be only those  
30 descendants of the common ancestor determined on a per

1 stirpes basis.

2 (c) Necessity of donee's specific reference to power.--A  
3 power of appointment may be exercised only by specific reference  
4 to the power if the instrument creating the power so requires.

5 (d) Exercise before testamentary power granted.--In the  
6 absence of a contrary intent appearing in the instrument  
7 creating a power of appointment exercisable at the donee's death  
8 or in the donee's instrument exercising the power, the donee's  
9 instrument may exercise a power of appointment existing at the  
10 donee's death even though the power was granted after the date  
11 of the donee's instrument.

12 (e) Testamentary powers.--

13 (1) Notwithstanding any contrary provision in an  
14 instrument creating a power of appointment, a testamentary  
15 power of appointment shall not be exercisable in favor of the  
16 donee or the donee's creditors.

17 (2) A grant of a testamentary power to appoint to the  
18 donee's creditors shall be construed as a power to appoint to  
19 the creditors of the donee's estate.

20 (3) An attempted exercise of a testamentary power of  
21 appointment in favor of the donee's creditors shall be  
22 construed as an exercise in favor of those creditors of the  
23 donee's estate who were also creditors of the donee at the  
24 time of the donee's death.

25 (4) If the donee is an issue of the donor, a  
26 testamentary power of appointment to appoint to the donor's  
27 issue shall not be exercisable in favor of the donee or the  
28 donee's estate.

29 § 7603. Contract to exercise power.

30 (a) Contract prohibited.--Unless the donor and donee are the

1 same person, the donee of a power of appointment that is not  
2 presently exercisable may not contract to exercise the power.

3 (b) Actions for recovery.--A prohibited contract under  
4 subsection (a), if made, may not be the basis of an action for  
5 specific performance or damages, but the promisee can obtain  
6 restitution from the donee of the value given for the promise,  
7 unless the donee has exercised the power pursuant to the  
8 contract.

9 (c) No limitation on disclaimer or release.--This section  
10 does not limit the power of a donee to disclaim or release a  
11 power of appointment in whole or in part.

12 § 7604. Manner of appointment.

13 (a) Outright or in trust.--Subject to section 7602(e)  
14 (relating to exercise of powers of appointment), unless  
15 expressly prohibited by the instrument creating a power of  
16 appointment, a donee may exercise a power by appointing in any  
17 manner, including, but not limited to:

18 (1) Appointing outright to one or more objects of the  
19 power.

20 (2) Appointing to one or more trustees to hold the  
21 appointive property in trust for the benefit of one or more  
22 objects of the power and specifying the terms and  
23 administrative provisions of the trust and the powers and  
24 duties of the trustees, even if the trustees themselves are  
25 not objects of the power.

26 (3) Creating a broad or limited power of appointment  
27 exercisable by any one or more objects of the original power  
28 to whom the donee could have appointed outright, even if some  
29 of the objects of the new power are not among the objects of  
30 the original power, provided that if the original power is a

1 limited power, other than a power to appoint to the donee's  
2 creditors or the creditors of the donee's estate:

3 (i) All the objects of the original power are among  
4 the objects of the new power.

5 (ii) All the takers in default of exercise of the  
6 new power are among the objects of the original power.

7 (b) Exclusive and nonexclusive powers.--Unless the  
8 instrument creating a power of appointment expressly specifies a  
9 minimum share of, a minimum pecuniary amount of or a particular  
10 item of appointive property to be appointed to an object of the  
11 power, the donee may exclude any object of the power as the  
12 donee deems appropriate.

13 § 7605. Antilapse provision.

14 (a) General rule.--

15 (1) Subject to paragraphs (2) and (3), in the absence of  
16 a contrary intent appearing in the instrument creating a  
17 power of appointment or, in the donee's instrument,  
18 exercising the power, an exercise of the power of appointment  
19 in favor of any of the following, whether designated by name  
20 or as one of a class, shall not fail if the appointee is not  
21 living at the time the appointment becomes effective:

22 (i) A child or other issue of the donee.

23 (ii) A brother or sister of the donee.

24 (iii) A child of a brother or sister of the donee.

25 (2) Paragraph (1) applies if:

26 (i) One or more issues of the appointee are living  
27 at the time the appointment becomes effective.

28 (ii) The issue under subparagraph (i), per stirpes,  
29 are objects of the power.

30 (3) The property appointed to the deceased appointee

1 shall pass per stirpes to the appointee's issue living at the  
2 time the appointment becomes effective, but the appointment  
3 to a brother or sister or child of a brother or sister of the  
4 donee shall fail to the extent the property would pass to the  
5 spouse or issue of the donee if the appointment were to  
6 lapse.

7 (b) Lapsed share of residue.--In the absence of a contrary  
8 intent appearing in the donee's instrument exercising a power of  
9 appointment, if an appointment of an amount or share of the  
10 residue of the property subject to the power fails, the amount  
11 or share shall pass to the other appointees of the residue of  
12 the property subject to the power, if any, in proportion to  
13 their shares in the residue of the property subject to the  
14 power.

15 § 7606. Partially effective exercise.

16 In the absence of a contrary intent appearing in the  
17 instrument creating a power of appointment or in the donee's  
18 instrument exercising the power, a partially ineffective  
19 exercise of a power of appointment shall not make ineffective  
20 any otherwise effective portion of the exercise, unless the  
21 appointment regarded as a whole constitutes such an integrated  
22 plan that the parts cannot be separated without defeating the  
23 plan.

24 Section 14. Sections 7710.1(c), 7722 and 7740.7(b) of Title  
25 20 are amended to read:

26 § 7710.1. Nonjudicial settlement agreements - UTC 111.

27 \* \* \*

28 (c) Exception.--A nonjudicial settlement agreement is valid  
29 only to the extent it [does not violate] is not inconsistent  
30 with a material purpose of the trust and includes terms and

1 conditions that could be properly approved by the court under  
2 this chapter or other applicable law.

3 \* \* \*

4 § 7722. Representation of parties in interest in general.

5 (a) Judicial proceeding.--In a judicial proceeding involving  
6 a trust matter, an order or decree of the court that binds the  
7 representative [or representatives] is binding upon a person,  
8 class of persons or both represented in accordance with section  
9 7723 (relating to representatives and persons represented) if:

10 (1) the trustee notifies the [representatives]  
11 representative in writing whom [they represent, they do] he  
12 represents and the representative does not decline the  
13 representation as provided in section 7725 (relating to  
14 notice of representation) [and they act in good faith.];

15 (2) a petitioner, whether or not a trustee, avers the  
16 representation in a petition before the court, the  
17 representative is the petitioner or a respondent over whom  
18 the court has jurisdiction and, if a respondent, the  
19 representative does not decline the representation in a  
20 responsive pleading filed and served as required by law; or

21 (3) the representative has signed a certification of  
22 representation described in subsection (d) and has not  
23 rescinded the certification on the court's records by the  
24 time the court acts upon the petition.

25 (b) Nonjudicial resolution.--In a nonjudicial resolution of  
26 a trust matter, notice to, the consent or approval of or the  
27 waiver or release by the representative [or representatives] is  
28 binding upon a person, class of persons or both represented in  
29 accordance with section 7723 if:

30 (1) the trustee notifies the [representatives]

1 representative in writing whom [they represent, they do] he  
2 represents and the representative does not decline the  
3 representation as provided in section 7725 [and they act in  
4 good faith.]; or

5 (2) the representative has signed a certification of  
6 representation described in subsection (d) and has not  
7 rescinded the certification in a writing received by the  
8 trustee by the time of the nonjudicial settlement.

9 (c) Permissible consideration.--In making decisions, a  
10 representative may consider the general benefit accruing to the  
11 living members of the family of the person represented.

12 (d) Certification of representation.--

13 (1) A certification signed by the representative  
14 describing his representation of another person, class of  
15 persons or both in accordance with section 7723 may be filed  
16 with:

17 (i) the court, in the case of a judicial proceeding;

18 or

19 (ii) the trustee, in the case of a nonjudicial  
20 resolution of a trust matter.

21 (2) Subject to paragraph (3), a certification of  
22 representation may be rescinded in a writing signed by the  
23 representative and filed with:

24 (i) the court at any time before the court acts in  
25 reliance upon the certification, in the case of a  
26 judicial proceeding; or

27 (ii) the trustee before a trust matter is resolved  
28 without application to the court.

29 (3) A representative's rescission of a certification of  
30 representation shall have no effect upon actions taken by a

1 trustee in good faith reliance upon the certification.

2 § 7740.7. Division of trusts.

3 \* \* \*

4 (b) With court approval.--The court, for cause shown, may  
5 authorize the division of a trust into [two] separate trusts  
6 upon such terms and conditions and with notice as the court  
7 shall direct.

8 \* \* \*

9 Section 15. Section 7765(a), (b) and (c) of Title 20 are  
10 amended and the section is amended by adding a subsection to  
11 read:

12 § 7765. Resignation of trustee; filing resignation.

13 [(a) Court approval.--A trustee may resign with court  
14 approval.

15 (b) Without court approval if authorized by trust  
16 instrument.--A trustee may resign without court approval if  
17 authorized to resign by the trust instrument.

18 (c) Without court approval and without authorization in  
19 trust instrument.--

20 (1) Unless expressly provided to the contrary in the  
21 trust instrument, an individual trustee may resign without  
22 court approval and without authorization in the trust  
23 instrument if:

24 (i) there is at least one cotrustee and all  
25 cotrustees consent in writing to the resignation; and

26 (ii) all the qualified beneficiaries consent in  
27 writing to the resignation.

28 (2) This subsection shall not authorize the sole trustee  
29 of a trust to resign unless the trust instrument names a  
30 successor trustee or provides a method for appointing a



1 successor trustee, and in either case the resignation shall  
2 not be effective until the successor trustee accepts the  
3 appointment in writing.]

4 (a.1) General rule.--A trustee may resign:

5 (1) with court approval;

6 (2) without court approval if authorized to resign by  
7 the trust instrument; or

8 (3) pursuant to a nonjudicial settlement agreement  
9 described in section 7710.1 (relating to nonjudicial  
10 settlement agreements - UTC 111).

11 \* \* \*

12 Section 16. Section 7780.3 of Title 20 is amended by adding  
13 subsections to read:

14 § 7780.3. Duty to inform and report.

15 \* \* \*

16 (k.1) Nomination by current beneficiary.--In a writing given  
17 to the trustee, a current beneficiary of a trust may nominate  
18 another person to receive, on behalf of the current beneficiary,  
19 the notices required by this section. By giving the notices  
20 required by this section to the nominee of the current  
21 beneficiary, the trustee satisfies the trustee's duty to give to  
22 the current beneficiary the notices required by this section if:

23 (1) the trustee notifies the nominee that the notice is  
24 being given to the nominee as representative of the current  
25 beneficiary and that future notices required by this section  
26 will be given to the nominee in the same capacity; and

27 (2) the nominee does not decline to receive the notices  
28 on behalf of the current beneficiary in a writing given to  
29 the trustee no later than 60 days after receipt of the notice  
30 described in paragraph (1).

1 (k.2) Reliance on nomination.--The trustee may rely upon the  
2 current beneficiary's nomination of another person to receive  
3 the notices required by this section on behalf of the current  
4 beneficiary and the nominee's presumed acceptance of that  
5 representation under subsection (k.1)(2) until the trustee  
6 receives a written rescission of the nomination from the current  
7 beneficiary or a written declination to receive further notices  
8 from the nominee. No such rescission or declination shall render  
9 ineffective any notice given by the trustee to the nominee  
10 before the trustee received the rescission or declination.

11 \* \* \*

12 Section 17. Section 7785(a) of Title 20 is amended by adding  
13 paragraphs to read:

14 § 7785. Limitation of action against trustee.

15 (a) Imposed by trustee's written reports.--

16 \* \* \*

17 (3) In a writing given to the trustee, a beneficiary of  
18 a trust may nominate another person to receive, on behalf of  
19 the beneficiary, the reports required by this section. By  
20 giving the reports required by this section to the nominee of  
21 the beneficiary, the trustee satisfies the trustee's duty to  
22 give the beneficiary the reports required by this section if:

23 (i) the trustee notifies the nominee that the report  
24 and future reports required by this section are being  
25 given to the nominee as representative of the  
26 beneficiary; and

27 (ii) the nominee does not decline to receive reports  
28 on behalf of the beneficiary in a writing given to the  
29 trustee no later than 60 days after receipt of the notice  
30 described in this subsection.

1           (4) The trustee may rely upon the beneficiary's  
2           nomination of another person to receive the reports required  
3           by this section on behalf of the beneficiary and the  
4           nominee's presumed acceptance of that representation under  
5           this subsection until the trustee receives a written  
6           rescission of the nomination from the beneficiary or a  
7           written declination to receive further reports from the  
8           nominee. No such rescission or declination shall render  
9           ineffective any report given by the trustee to the nominee  
10           before the trustee received the rescission or declination.

11           \* \* \*

12           Section 18. Section 7792 of Title 20 is amended to read:

13           § 7792. Powers, duties and liabilities identical with personal  
14                           representatives.

15           The provisions concerning the powers, duties and liabilities  
16           of a trustee shall be the same as those set forth in the  
17           following provisions of this title for the administration of a  
18           decedent's or a minor's estate:

19           Section 3184 (relating to discharge of personal  
20           representative and surety).

21           Section 3321(d) and (e) (relating to nominee registration;  
22           corporate fiduciary as agent; deposit of securities in a  
23           clearing corporation; book-entry securities).

24           Section 3323 (relating to compromise of controversies).

25           Section 3324 (relating to death or incapacity of fiduciary).

26           Section 3332 (relating to inherent powers and duties).

27           Section 3353 (relating to order of court).

28           Section 3354 (relating to power given in governing  
29           instrument).

30           Section 3355 (relating to restraint of sale).

1 Section 3356 (relating to purchase by personal  
2 representative).

3 Section 3358 (relating to collateral attack).

4 Section 3359 (relating to record of proceedings; county where  
5 real estate lies).

6 Section 3532(c) (relating to at risk of personal  
7 representative).

8 Section 19. Title 20 is amended by adding a chapter to read:

9 CHAPTER 79

10 CHARITABLE INSTRUMENTS

11 Sec.

12 7901. Short title of chapter.

13 7902. Definitions.

14 7903. Deemed provisions of governing instrument.

15 7904. Power to amend governing instrument.

16 7905. Court authority.

17 7906. Applicability.

18 § 7901. Short title of chapter.

19 This chapter shall be known and may be cited as the  
20 Charitable Instruments Act.

21 § 7902. Definitions.

22 The following words and phrases when used in this chapter  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Charitable organization." A corporation, trust or other  
26 instrumentality governed by Pennsylvania law, including:

27 (1) A trust described in section 4947(a)(1) or (2) of  
28 the Internal Revenue Code of 1986 (Public Law 99-514, 26  
29 U.S.C. § 4947(a)(1) or (2)), which is or is treated as a  
30 private foundation under section 509 of the Internal Revenue

1 Code of 1986 (26 U.S.C. § 509).

2 (2) A trust governed by Pennsylvania law that is or is  
3 treated as a pooled income fund under section 642(c)(5) of  
4 the Internal Revenue Code of 1986 (26 U.S.C. § 642(c)(5)).  
5 § 7903. Deemed provisions of governing instrument.

6 (a) Effect of deemed provisions.--The governing instrument  
7 of a charitable organization is deemed to include provisions,  
8 the effects of which are to:

9 (1) Require distributions for each taxable year in such  
10 amounts and at such times and in such manner as not to  
11 subject the organization to tax under section 4942 of the  
12 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
13 4942).

14 (2) Prohibit the organization from:

15 (i) Engaging in an act of self-dealing, as defined  
16 in section 4941(d) of the Internal Revenue Code of 1986  
17 (26 U.S.C. § 4941(d)).

18 (ii) Retaining excess business holdings, as defined  
19 in section 4943(c) of the Internal Revenue Code of 1986  
20 (26 U.S.C. § 4943(c)).

21 (iii) Making an investment in such manner as to  
22 subject the organization to tax under section 4944 of the  
23 Internal Revenue Code of 1986 (26 U.S.C. § 4944).

24 (iv) Making a taxable expenditure, as defined in  
25 section 4945(d) of the Internal Revenue Code of 1986 (26  
26 U.S.C. § 4945(d)).

27 (b) Effect of contrary provision.--The deemed provisions  
28 under subsection (a) supersede any contrary provision of the  
29 governing instrument.

30 (c) Applicability.--This section applies only to the extent

1 that the charitable organization is subject to one or more of  
2 the sections of the Internal Revenue Code of 1986 set forth in  
3 subsection (a).

4 § 7904. Power to amend governing instrument.

5 The trustees or directors of every charitable organization  
6 have the power, acting alone, without the approval of a member,  
7 court, donor or beneficiary, to amend the instrument governing  
8 the charitable organization in any manner required for the sole  
9 purpose of ensuring that:

10 (1) Gifts and bequests to the charitable organization  
11 qualify for charitable deductions available for Federal  
12 income, gift and estate tax purposes.

13 (2) The charitable organization qualifies for tax  
14 exemptions available for Federal income tax purposes.

15 § 7905. Court authority.

16 Nothing in this chapter precludes a court of competent  
17 jurisdiction from authorizing a deviation from the express terms  
18 of an instrument governing a charitable organization.

19 § 7906. Applicability.

20 This chapter shall apply to:

21 (1) A charitable organization created after December 31,  
22 1969.

23 (2) A charitable organization created before January 1,  
24 1970, unless a court of competent jurisdiction in a  
25 proceeding instituted before January 1, 1972, explicitly  
26 decided that the operation of this chapter would  
27 substantially impair the accomplishment of the purposes of  
28 the charitable organization involved in that proceeding.

29 Section 20. Section 8113(f) of Title 20 is amended to read:

30 § 8113. Charitable trusts.

1 \* \* \*

2 (f) Charitable organizations.--For a charitable organization  
3 defined under [the act of June 17, 1971 (P.L.181, No.23), known  
4 as the Charitable Instruments Act of 1971,] Chapter 79 (relating  
5 to charitable instruments) the provisions of [that act] Chapter  
6 79 shall supersede subsection (c) if necessary to comply with  
7 the minimum investment return requirements.

8 Section 21. This act shall apply as follows:

9 (1) Except as set forth in paragraphs (2) and (3), this  
10 act shall apply to all powers of attorney executed on or  
11 after the effective date of this paragraph.

12 (2) (i) Nothing in this act shall be construed to limit  
13 the effectiveness of powers of attorney in effect prior  
14 to the effective date of this paragraph.

15 (ii) The amendment or addition of 20 Pa.C.S. §§  
16 5603(r) and (u.4), 5610, 5613 and 5614 shall apply to all  
17 powers of attorney executed before, on or after the  
18 effective date of this paragraph.

19 (3) The addition of 20 Pa.C.S. Ch. 76 shall apply to all  
20 powers of appointment created before, on or after the  
21 effective date of that chapter.

22 (4) The addition of 20 Pa.C.S. Ch. 79 is a continuation  
23 of the act of June 17, 1971 (P.L.181, No.23), known as the  
24 Charitable Instruments Act of 1971. The following apply:

25 (i) All activities initiated under the Charitable  
26 Instruments Act of 1971 shall continue and remain in full  
27 force and effect and may be completed under 20 Pa.C.S.  
28 Ch. 79. Resolutions, orders, regulations, rules and  
29 decisions which were made under the Charitable  
30 Instruments Act of 1971 and which are in effect on the

1 effective date of this paragraph shall remain in full  
2 force and effect until revoked, vacated or modified under  
3 20 Pa.C.S. Ch. 79. Contracts, obligations and agreements  
4 entered into under the Charitable Instruments Act of 1971  
5 are not affected nor impaired by the repeal of the  
6 Charitable Instruments Act of 1971.

7 (ii) Any difference in language between 20 Pa.C.S.  
8 Ch. 79 and the Charitable Instruments Act of 1971 is  
9 intended only to conform to the style of the Pennsylvania  
10 Consolidated Statutes and is not intended to change or  
11 affect the legislative intent, judicial construction or  
12 administrative interpretation and implementation of the  
13 Charitable Instruments Act of 1971.

14 Section 22. Repeals are as follows:

15 (1) The General Assembly declares that the repeal under  
16 paragraph (2) is necessary to effectuate the addition of 20  
17 Pa.C.S. Ch. 79.

18 (2) The act of June 17, 1971 (P.L.181, No.23), known as  
19 the Charitable Instruments Act of 1971, is repealed.

20 Section 23. This act shall take effect immediately.