

No. 295

AN ACT

SB 782

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further defining the meaning of incompetent and providing that certain powers of attorney shall survive subsequent incompetency.

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

Section 1. Section 5501 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, amended June 30, 1972 (P.L.508, No.164), is amended to read:

§ 5501. Meaning of incompetent.

"Incompetent" means a person who, because of **[mental]** infirmities of old age, mental illness, mental deficiency *or retardation*, drug addiction or inebriety:

(1) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons; *or*

(2) *lacks sufficient capacity to make or communicate responsible decisions concerning his person.*

Section 2. Title 20 of the act is amended by adding a chapter to read:

CHAPTER 56
POWERS OF ATTORNEY

Sec.

5601. When power of attorney not affected by disability.

5602. Other powers of attorney not revoked until notice of death or disability.

§ 5601. When power of attorney not affected by disability.

Whenever a principal appoints another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent shall be exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive shall have the same effect and inure to the benefit of and bind the principal and his heirs, legatees, devisees and personal representative as if the principal were alive, competent and not disabled. If a guardian thereafter is appointed for the estate of the principal, the attorney in fact or agent,

during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian shall have the same power the principal would have had if he were not disabled or the principal would have had if he had not been adjudicated incompetent or had not created the power of attorney or agency. The guardian may either permit the attorney in fact to continue to act or revoke the power of attorney.

§ 5602. Other powers of attorney not revoked until notice of death or disability.

(a) General rule.—The death, disability, or incompetence of any principal who has executed a power of attorney in writing, shall not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith in reliance upon the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, shall bind the principal and his heirs, legatees, devisees, and personal representative.

(b) Affidavit of lack of knowledge of revocation.—An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, shall be, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record shall likewise be recordable.

(c) Construction of section.—This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney or to limit the application of section 5601 of this code (relating to when power of attorney not affected by disability).

Section 3. This act shall take effect immediately.

APPROVED—The 10th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 295.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.