

## No. 2016-79

## AN ACT

## SB 1104

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in orphans' court divisions, further providing for nonmandatory exercise of jurisdiction through orphans' court division; in wills, further providing for rules of interpretation; in dispositions independent of letters, family exemption, probate of wills and grant of letters, providing for submission to jurisdiction; in administration and personal representatives, further providing for continuation of business and for incorporation of estate's business; in accounts and distribution, further providing for determination of title to decedent's interest in real estate; in health care, further providing for definitions, for when health care power of attorney operative, for authority of health care agent and for relation of health care agent to court-appointed guardian and other agents; in powers of attorney, further providing for general provisions, for authority that requires specific and general grant of authority, for form of power of attorney, for implementation of power of attorney, for durable powers of attorney and for account; providing for meaning and effect of power of attorney and for jurisdiction and venue; in estates, further providing for release or disclaimer of powers or interests; providing for release of powers and interests and disclaimer of powers; providing for powers of appointment; in trusts, further providing for nonjudicial settlement agreements - UTC 111, for representation of parties in interest in general, for division of trusts, for resignation of trustee and filing resignation, for duty to inform and report, for limitation of action against trustee and for powers, duties and liabilities identical with personal representatives; codifying provisions of the Charitable Instruments Act of 1971; in principal and income, further providing for charitable trusts; and making a related repeal.

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

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

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

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

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

\* \* \*

§ 2514. Rules of interpretation.

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

\* \* \*

**[(13) Power of appointment.—A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he shall have power to appoint in any manner he shall think proper, and shall operate as an execution of such power. In like manner, a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he shall have power to appoint in any manner he shall think proper, and shall operate as an execution of such power. In like manner, a general pecuniary legacy, when the assets of the individual estate of the testator are not sufficient for its payment, shall, to the extent necessary to make possible the payment of the legacy, be construed to include any estate which the testator shall have power to appoint in any manner he shall think proper, and shall to such extent operate as an execution of such power.]**

\* \* \*

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

**§ 3163. *Submission to jurisdiction.***

**(a) *General rule.—By accepting appointment by the register of wills, the personal representative submits personally to the jurisdiction of the orphans' court division of the county where letters testamentary or letters of administration are granted in all matters involving the performance of the personal representative's duties as personal representative, and an action by any interested party seeking an accounting by, or removal of, the personal representative, or alleging breach of duty by the personal representative, shall be commenced by notice to the personal representative.***

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

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

**§ 3314. Continuation of business.**

**[The court,] *Giving due regard to the provisions of the governing instrument and any other factor that the court deems relevant, and* aided by the report of a master if necessary, *the court* may authorize the personal representative to continue any business of the estate for the benefit of the estate [and in doing so the court, for cause shown, may disregard the provisions of the governing instrument, if any]. The order may be with or**

without notice. If prior notice is not given to all parties in interest, it shall be given within five days after the order or within such extended time as the court, for cause shown, shall allow. Any party in interest may, at any time, petition the court to revoke or modify the order. The order may provide:

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

(2) the extent of the liability of the estate or any part thereof, or of the personal representative, for obligations incurred in the continuation of the business;

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

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

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

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

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

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

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

**[When a person shall die leaving an interest in real estate within the Commonwealth and no letters testamentary or of administration have been granted on the estate of the decedent in the Commonwealth, and one year has expired since the decedent's death, or if a personal representative has been appointed and has not filed his account within six years of the death of the decedent, any person claiming an interest in the real estate as or through an heir or devisee of the decedent may present a petition to establish title thereto in the orphans' court division of the county where the letters testamentary or of administration have been granted, or should no letters have been granted, then in the orphans' court division of the county within which was the family or principal residence of the decedent. If the decedent was a nonresident of the Commonwealth, the petition may be presented in the orphans' court division of any county wherein any of the real estate shall lie. The court,**

aided if necessary by the report of a master, may enter its decree nisi adjudging that the title to the decedent's interest in the real estate is in such person or persons as the court shall determine. Notice of the decree nisi shall be given to creditors and other parties in interest, by advertisement and otherwise, as the court shall direct. If no exception to the decree is filed within three months, it shall be confirmed absolutely, free of all decedent's debts not then liens of record, and regardless of the provisions of any testamentary writing of the decedent thereafter probated. A certified copy of the decree shall be recorded in the office of the recorder of deeds of each county where real estate included in the decree shall lie, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of each distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county.]

*(a) Applicability.—This section shall apply if:*

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

*(2) Either of the following occurs:*

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

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

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

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

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

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

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

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

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

*(ii) through the decedent; or*

(iii) through an heir or devisee of the decedent, when the heir or devisee is deceased or has conveyed all or part of the heir or devisee's interest in the property to the person.

(2) A nonprofit corporation organized for community development purposes under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), a municipality in which the real estate is located or a redevelopment authority created and organized under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, having jurisdiction in the municipality in which the real estate is located upon a showing by clear and convincing evidence to the court that:

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

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

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

(1) The municipality.

(2) The redevelopment authority.

(3) The nonprofit corporation.

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

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

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

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

(f) Notice of petition.—

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

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

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

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

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

(3) A lis pendens notice shall be given in each county where the real estate is located in the same manner and place as provided in

*section 3390 (relating to specific performance of contracts) for an action of specific performance.*

*(g) Order.—*

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

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

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

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

*(iii) Registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county.*

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

*(h) Parcel number or identifier.—*

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

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

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

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

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

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

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

§ 5422. Definitions.

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

\* \* \*

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

\* \* \*

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

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

\* \* \*

Section 5. Sections 5454(d), 5456(a) and 5460(a) of Title 20 are amended to read:

§ 5454. When health care power of attorney operative.

\* \* \*

(d) Duration.—Unless the health care power of attorney states a time of termination, [it is valid until revoked by the principal or the principal's guardian of the person, notwithstanding the lapse of time since its execution.] *notwithstanding the lapse of time since the health care power of attorney was executed, the health care power of attorney is valid until revoked by any of the following:*

*(1) The principal.*

*(2) The court.*

*(3) If authorized by the court, the principal's guardian of the person.*

\* \* \*

§ 5456. Authority of health care agent.

(a) Extent of authority.—Except as expressly provided otherwise in a health care power of attorney and subject to subsection (b) and section 5460 (relating to relation of health care agent to court-appointed guardian and other agents), a health care agent shall have the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised. *The foregoing power shall include the power to authorize admission to a medical, nursing, residential or similar facility, or to enter into agreements for the principal's care.* The health care agent's authority may extend beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies.

\* \* \*

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

(a) Accountability of health care agent.—If a principal who has executed a health care power of attorney is later adjudicated an incapacitated person and a guardian of the person to make health care decisions is appointed by a court, the health care agent is accountable to the guardian as well as to the principal. [The guardian shall have the same power to revoke or amend the appointment of a health care agent that the principal would have if the principal were not incapacitated but may not revoke or amend other instructions in an advance health directive absent judicial authorization.] *In its guardianship order and determination of a person's*

*incapacity, the court shall determine the extent to which the health care agent's authority to act remains in effect.*

\* \* \*

Section 6. Section 5601(b)(3) of Title 20 is amended to read:  
§ 5601. General provisions.

\* \* \*

(b) Execution.—

\* \* \*

(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 and at the direction of the principal, shall be:

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

(ii) 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, the agent designated in the power of attorney or the notary public or other person authorized by law to take acknowledgments before whom the power of attorney is acknowledged.

\* \* \*

Section 6.1. Section 5601.4(c), (d) and (e) of Title 20 are amended and the section is amended by adding a subsection to read:  
§ 5601.4. Authority that requires specific and general grant of authority.

\* \* \*

(c) Scope of authority.—Subject to subsections (a), (b), (d), **(d.1)** 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 all of the powers which may be incorporated by reference pursuant to section 5602(a).

(d) Gifts.—

**(1) 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).] *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.*

*(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).*

*(d.1) Disclaimers.—*

*(1) Unless the power of attorney otherwise provides, the grant of the power to disclaim any interest in property or a grant of general authority with disclaimers authorizes the agent to release or disclaim any interest in property on behalf of the principal in accordance with Chapter 62 (relating to disclaimers) or section 6103.1 (relating to release of powers and interests and disclaimer of powers), 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 is an incapacitated person at the time of the execution of the disclaimer.*

*(2) An agent may make a disclaimer 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.*

*(v) The principal's personal history of making or joining in making gifts.*

(e) Similar or overlapping subjects.—Subject to subsections (a), (b) [and], (d) *and (d.1)*, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

\* \* \*

Section 6.2. Section 5602(a) of Title 20 is 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):

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

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

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

(4) "To claim an elective share of the estate of my deceased spouse."

(6) "To renounce fiduciary positions."

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

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

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

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

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

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

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

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

(15) "To borrow money."

(16) "To enter safe deposit boxes."

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

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

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

(20) "To pursue claims and litigation."

(21) "To receive government benefits."

(22) "To pursue tax matters."

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

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

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

\* \* \*

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

§ 5603. Implementation of power of attorney.

**[(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.

(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).]

\* \* \*

(d) Power to claim an elective share.—A power "to claim an elective share of the estate of my deceased spouse" shall mean that the agent may elect to take against the will and conveyances of the principal's deceased spouse, disclaim any interest in property which the principal is required to disclaim as a result of such election, retain any property which the principal has the right to elect to retain, file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments in accordance with section 2211(c) and (d) (relating to determination of effect of election; enforcement), and take all other actions which the agent deems appropriate in order to effectuate the election: Provided, however, That the election shall be made only upon the approval of the court having jurisdiction of the principal's estate in accordance with section 2206 (relating to right of election personal to surviving spouse) in the case of a principal who [has been adjudicated] is an incapacitated person, or upon the approval of the court having jurisdiction of the deceased spouse's

estate in the case of a principal who [has not been adjudicated] *is not* an incapacitated person.

\* \* \*

**[(h) Power to authorize admission to medical facility and power to authorize medical procedures.—**

(1) A power "to authorize my admission to a medical, nursing, residential or similar facility, and to enter into agreements for my care" shall mean that the agent may apply for the admission of the principal to a medical, nursing, residential or other similar facility, execute any consent or admission forms required by such facility which are consistent with this paragraph, and enter into agreements for the care of the principal by such facility or elsewhere during his lifetime or for such lesser period of time as the agent may designate, including the retention of nurses for the principal.

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

\* \* \*

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

\* \* \*

**[(u.1) Power to make anatomical gift.—A power "to make an anatomical gift of all or part of my body" shall mean that the agent may arrange and consent, either before or after the death of the principal, to procedures to make an anatomical gift in accordance with Chapter 86 (relating to anatomical gifts).]**

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

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

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

*(3) Compensate an agent actively managing, supervising or engaging in the operation of a business or entity, as appropriate, from*

*the principal's assets or from the business or entity, provided that the compensation is reasonably based upon the actual responsibilities assumed and performed.*

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

*(u.3) Power to provide for personal and family maintenance.—*

*(1) A power "to provide for personal and family maintenance" shall mean that the agent may provide for the health, education, maintenance and support, in order to maintain the customary standard of living of the principal's spouse and the following individuals, whether living when the power of attorney is executed or later born:*

*(i) The principal's minor children.*

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

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

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

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

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

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

**\*\*\***

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

§ 5604. Durable powers of attorney.

**\*\*\***

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

(1) If, following execution of a durable power of attorney, the principal [is adjudicated] *becomes* an incapacitated person and a guardian is appointed for his estate, the agent is accountable to the guardian as well as to the principal. [The guardian shall have the same power to revoke or amend the power of attorney that the principal would have had if he were not an incapacitated person.]

**\*\*\***

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

**\*\*\***

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

§ 5610. Account.

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

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

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

*The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney is executed.*

**§ 5614. Jurisdiction and venue.**

*(a) County having venue.—Venue of any matter pertaining to the exercise of a power by an agent acting under a power of attorney as provided in this chapter shall be in the county in which the principal is domiciled, a resident or residing in a long-term care facility.*

*(b) Declining jurisdiction.—*

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

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

Section 11. Section 6103 of Title 20 is repealed:

**§ 6103. Release or disclaimer of powers or interests.**

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

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

(c) **Delivery of release or disclaimer.**—Such release or disclaimer may be delivered to any one of the following:

- (1) Any person specified for such purpose in the instrument creating the power or interest.
- (2) Any trustee of the property to which the power or interest relates.
- (3) The clerk of the court having jurisdiction of the trust for filing in said court.
- (4) The recorder of deeds for recording in the county in which the person possessing the power or interest resides, or in which the deed, will, or other instrument creating the power or interest is recorded or filed.

(d) **Grantee or lienholder.**—A release or disclaimer shall be void as against a bona fide grantee of or holder of a lien on real estate in any county unless the release or disclaimer or a duplicate original or certified copy thereof is recorded in the county where the real estate lies before the recording or entering of the instrument or lien under which such grantee or lienholder claims.]

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

§ 6103.1. *Release of powers and interests and disclaimer of powers.*

(a) *Interests releasable.*—

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

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

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

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

(d) *Terms of disclaimer or release.*—*A release of a power or interest or a disclaimer of a power under this section may:*

(1) *Be absolute or conditional.*

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

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

(e) *Procedural requirements.*—*A release and a disclaimer under this section shall be in writing and filed, delivered and recorded in a similar manner as a disclaimer under section 6204 (relating to filing, delivery and recording).*

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

**CHAPTER 76**  
**POWERS OF APPOINTMENT**

*Sec.*

**7601. Definitions.**

**7602. Exercise of powers of appointment.**

**7603. Contract to exercise power.**

**7604. Manner of appointment.**

**7605. Antilapse provision.**

**7606. Partially effective exercise.**

**§ 7601. Definitions.**

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

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

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

*(2) The donee.*

*(3) The donee's estate.*

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

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

**§ 7602. Exercise of powers of appointment.**

*(a) Broad power of appointment.—Subject to subsection (c), in the absence of a contrary intent appearing in the instrument creating a broad power of appointment or in the donee's instrument exercising the power, a broad power of appointment may be exercised only by the donee's instrument making:*

*(1) specific reference to the power;*

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

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

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

*(5) a general testamentary gift; or*

*(6) a testamentary residuary gift.*

*(b) Limited power of appointment.—*

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

*(i) specific reference to the power;*

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

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

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



(2) *The objects of the power described in paragraph (1)(iii) and (iv) who have a common ancestor shall be only those descendants of the common ancestor determined on a per stirpes basis.*

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

(d) *Exercise before testamentary power granted.—In the absence of a contrary intent appearing in the instrument creating a power of appointment exercisable at the donee's death or in the donee's instrument exercising the power, the donee's instrument may exercise a power of appointment existing at the donee's death even though the power was granted after the date of the donee's instrument.*

(e) *Testamentary powers.—*

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

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

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

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

#### § 7603. *Contract to exercise power.*

(a) *Contract prohibited.—Unless the donor and donee are the same person, the donee of a power of appointment that is not presently exercisable may not contract to exercise the power.*

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

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

#### § 7604. *Manner of appointment.*

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

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

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

(3) *Creating a broad or limited power of appointment exercisable by any one or more objects of the original power to whom the donee could have appointed outright, even if some of the objects of the new power are not among the objects of the original power, provided that if the original power is a limited power, other than a power to appoint to the donee's creditors or the creditors of the donee's estate:*

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

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

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

§ 7605. *Antilapse provision.*

(a) *General rule.—*

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

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

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

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

(2) *Paragraph (1) applies if:*

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

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

(3) *The property appointed to the deceased appointee shall pass per stirpes to the appointee's issue living at the time the appointment becomes effective, but the appointment to a brother or sister or child of a brother or sister of the donee shall fail to the extent the property would pass to the spouse or issue of the donee if the appointment were to lapse.*

(b) *Lapsed share of residue.—In the absence of a contrary intent appearing in the donee's instrument exercising a power of appointment, if an appointment of an amount or share of the residue of the property subject to the power fails, the amount or share shall pass to the other appointees of the residue of the property subject to the power, if any, in proportion to their shares in the residue of the property subject to the power.*

§ 7606. *Partially effective exercise.*

*In the absence of a contrary intent appearing in the instrument creating a power of appointment or in the donee's instrument exercising the power, a partially ineffective exercise of a power of appointment shall not make ineffective any otherwise effective portion of the exercise, unless the*

*appointment regarded as a whole constitutes such an integrated plan that the parts cannot be separated without defeating the plan.*

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

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

\* \* \*

(c) Exception.—A nonjudicial settlement agreement is valid only to the extent it **[does not violate]** *is not inconsistent with* a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

\* \* \*

§ 7722. Representation of parties in interest in general.

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

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

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

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

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

(1) the trustee notifies the **[representatives]** *representative* in writing whom **[they represent, they do]** *he represents and the representative does* not decline the representation as provided in section 7725 **[and they act in good faith.]; or**

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

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

(d) *Certification of representation.—*

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

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

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

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

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

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

*(3) A representative's rescission of a certification of representation shall have no effect upon actions taken by a trustee in good faith reliance upon the certification.*

§ 7740.7. Division of trusts.

\*\*\*

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

\*\*\*

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

§ 7765. Resignation of trustee; filing resignation.

**[(a) Court approval.—A trustee may resign with court approval.**

**(b) Without court approval if authorized by trust instrument.—A trustee may resign without court approval if authorized to resign by the trust instrument.**

**(c) Without court approval and without authorization in trust instrument.—**

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

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

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

**(2) This subsection shall not authorize the sole trustee of a trust to resign unless the trust instrument names a successor trustee or provides a method for appointing a successor trustee, and in either case the resignation shall not be effective until the successor trustee accepts the appointment in writing.]**

**(a.1) General rule.—A trustee may resign:**

**(1) with court approval;**

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

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

\*\*\*

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

§ 7780.3. Duty to inform and report.

\* \* \*

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

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

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

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

\* \* \*

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

§ 7785. Limitation of action against trustee.

(a) Imposed by trustee's written reports.—

\* \* \*

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

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

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

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

*trustee to the nominee before the trustee received the rescission or declination.*

\* \* \*

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

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

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

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

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

Section 3323 (relating to compromise of controversies).

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

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

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

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

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

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

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

## **CHAPTER 79 CHARITABLE INSTRUMENTS**

*Sec.*

**7901. Short title of chapter.**

**7902. Definitions.**

**7903. Deemed provisions of governing instrument.**

**7904. Power to amend governing instrument.**

**7905. Court authority.**

**7906. Applicability.**

§ 7901. *Short title of chapter.*

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

§ 7902. *Definitions.*

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

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

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

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

§ 7903. *Deemed provisions of governing instrument.*

(a) *Effect of deemed provisions.—The governing instrument of a charitable organization is deemed to include provisions, the effects of which are to:*

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

(2) *Prohibit the organization from:*

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

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

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

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

(b) *Effect of contrary provision.—The deemed provisions under subsection (a) supersede any contrary provision of the governing instrument.*

(c) *Applicability.—This section applies only to the extent that the charitable organization is subject to one or more of the sections of the Internal Revenue Code of 1986 set forth in subsection (a).*

§ 7904. *Power to amend governing instrument.*

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

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

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

§ 7905. *Court authority.*

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

§ 7906. *Applicability.*

*This chapter shall apply to:*

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

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

Section 20. Section 8113(f) of Title 20 is amended to read:  
§ 8113. Charitable trusts.

\* \* \*

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

Section 21. This act shall apply as follows:

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

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

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

(iii) Any provision in a power of attorney incorporating by reference a power under 20 Pa.C.S. § 5602(a)(8), (9) or (23) prior to the repeal of 20 Pa.C.S. § 5602(a)(8), (9) or (23) shall be governed by the respective paragraph of § 5602(a) as if no repeal occurred.

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

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

(i) All activities initiated under the Charitable Instruments Act of 1971 shall continue and remain in full force and effect and may be completed under 20 Pa.C.S. Ch. 79. Resolutions, orders, regulations, rules and decisions which were made under the Charitable Instruments Act of 1971 and which are in effect on the effective date of this paragraph shall remain in full force and effect until revoked, vacated or modified under 20 Pa.C.S. Ch. 79. Contracts, obligations and agreements entered into under the Charitable Instruments Act of 1971 are not affected nor impaired by the repeal of the Charitable Instruments Act of 1971.

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

Section 22. Repeals are as follows:

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

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



Section 23. This act shall take effect as follows:

- (1) The amendment of 20 Pa.C.S. § 5454(d) shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect January 1, 2017.

APPROVED—The 8th day of July, A.D. 2016

TOM WOLF