

No. 144

AN ACT

SB 1147

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for estate planning in incompetents' estates.

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

Section 1. Section 5536 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added June 30, 1972 (P.L.508, No.164), is amended to read:

§ 5536. Distributions of income and principal during incompetency.

(a) In general.—All income received by a guardian of the estate of an incompetent, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incompetent, without the necessity of court approval. The court, for cause shown, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incompetent for the care, maintenance or education of the incompetent, his spouse, children or those for whom he was making such provision before his incompetency, or for the reasonable funeral expenses of the incompetent's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incompetent for his maintenance or for incidental expenses and may ratify payments made for these purposes.

(b) Estate plan.—*The court, upon petition and with notice to all parties in interest, shall have the power to substitute its judgment for that of the incompetent with respect to the estate and affairs of the incompetent for the benefit of the incompetent, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:*

- (1) make gifts, outright or in trust;*
- (2) convey or release his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;*
- (3) release his powers as trustee, personal representative, custodian for minors, or guardian;*
- (4) exercise or release his powers as donee of a power of appointment;*
- (5) enter into contracts;*
- (6) create for the benefit of the incompetent or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life;*

(7) exercise options of the incompetent to purchase or exchange securities or other property;

(8) exercise his rights to elect options and change beneficiaries under insurance and annuity policies or surrender the policies for their cash value;

(9) exercise his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer; and

(10) change the incompetent's residence or domicile.

In the exercise of its judgment for that of the incompetent, the court first being satisfied that assets exist which are not required for the maintenance, support and well-being of the incompetent, may adopt a plan of gifts which result in minimizing current or prospective income, estate or inheritance taxes, or which carries out a lifetime giving pattern. The court in exercising its judgment may consider the testamentary and inter vivos intentions of the incompetent in so far as they can be ascertained.

Section 2. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1976.

MILTON J. SHAPP