

No. 1992-24

AN ACT

SB 3

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for definitions, for title to estates of incapacitated persons, for orphans' court jurisdiction, for venue of decedents', minors' and incapacitated persons' estates, for advertising accounts, for orphans' court division trials, for surviving spouses' election, for interpretation of wills, for family exemptions, for eligibility for letters of administration, for grounds for removing personal representatives, for death or incapacity of fiduciaries, for representation of parties in interest, for foreign personal representatives, for appointment of guardians in conveyances, and for guardians' powers and duties and liabilities; establishing a procedure whereby a person may execute in advance a written declaration indicating to a physician the person's desire for a physician to initiate, continue, withhold or withdraw certain life-sustaining medical treatment in the event the person is incompetent and is determined to be in a terminal condition or to be permanently unconscious; providing for pregnancy; providing penalties; further providing for incapacitated persons in terms of statutory scope, of procedure, of appointment of guardians, of guardians' powers, duties and liabilities, of accounting and distribution and of guardianship support; further providing for implementation of powers of attorney, for durable powers of attorney, for disclaimers by fiduciaries, for trustees' powers, duties and liabilities, for court powers over disposition of real property and for notice in cases of appointment of personal representatives for veterans; adding conforming amendments to Titles 13, 18, 23 and 42; and making technical changes.

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

Section 1. Sections 102, 302, 711(10), 712, 721, 745(b) and 777(b) of Title 20 of the Pennsylvania Consolidated Statutes are amended to read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Clerk." Means the clerk of the orphans' court division of the court of common pleas.

"Court, orphans' court, or orphans' court division." Means the court of common pleas exercising the jurisdiction referred to in this title through its orphans' court division.

"Fiduciary." Includes personal representatives, guardians, and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the orphans' court division.

"First complete advertisement of the grant of letters." In counties having no legal publication, means the first of the three times that the grant of letters is advertised in a newspaper, and, in counties having a legal publication, it means when it has been advertised, on at least one occasion, in both the newspaper and in the legal publication.

“Foreign fiduciary.” Means a personal representative, guardian of a minor or **[incompetent] incapacitated** person, trustee or one performing the functions of any such fiduciary, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

“Foreign guardian.” Means a guardian, or one performing the function of a guardian, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

“General rule or rule of court.” A rule or order promulgated by the governing authority, as defined in 42 Pa.C.S. § 102 (relating to definitions), of the unified judicial system.

“Guardian.” Means a fiduciary who has the care and management of the estate or person of a minor or an **[incompetent] incapacitated** person.

“**[Incompetent] Incapacitated person.**” Means a person determined to be **[incompetent] an incapacitated person** under the provisions of Chapter 55 (relating to **[incompetents] incapacitated persons**).

“Letters.” Means letters testamentary or letters of administration of any description.

“Minor.” Means an individual under the age of 18 years.

“Personal representative.” Means an executor or administrator of any description.

“Register.” Means the register of wills having jurisdiction of granting of letters testamentary or of administration.

“Trust.” Means any trust, whether testamentary or inter vivos, subject to the jurisdiction of the orphans’ court division.

“Will.” Means a written will, codicil or other testamentary writing.

§ 302. Title to real and personal estate of an **[incompetent] incapacitated person.**

Legal title to all real estate and personal property of an **[incompetent] incapacitated person** shall remain in him, subject, however, to all the powers granted to his guardian by this title and lawfully by a governing instrument and to all orders of the court.

§ 711. Mandatory exercise of jurisdiction through orphans’ court division in general.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans’ court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans’ court division:

* * *

(10) **[Incompetents’] Incapacitated persons’** estates.—The administration and distribution of the real and personal property of the estates of **[incompetents] incapacitated persons**, except where jurisdiction thereof was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the estate to be exercised through the orphans’ court division.

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§ 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.

(2) Guardian of person.—The appointment, control and removal of the guardian of the person of any **[incompetent] incapacitated person**.

(3) Other matters.—The disposition of any case where there are substantial questions concerning matters enumerated in section 711 and also matters not enumerated in that section.

(4) Powers of attorney.—All matters pertaining to the exercise of powers by attorneys in fact or agents acting under powers of attorney as provided in Chapter 56 (relating to powers of attorney) when the principal is or may be deceased, disabled or incapacitated.

§ 721. Venue of decedents', minors' and **[incompetents'] incapacitated persons'** estates.

When a Pennsylvania court has jurisdiction of a decedent's, a minor's, or an **[incompetent's] incapacitated person's** estate, except as otherwise provided by law, the venue for all purposes shall be as follows:

(1) Decedents' estates.—In the case of a decedent's estate, in the county where the letters are granted to the personal representative, and in the absence of such letters, then where the decedent had his last family or principal residence, and if the decedent had no domicile in the Commonwealth, then in any county where any of his property is located.

(2) Minors' and **[incompetents'] incapacitated persons'** estates.—In the case of a guardian of a minor or **[incompetent] incapacitated person** appointed by the court, in the county whose court appointed the guardian. In the case of a guardian of a minor or **[incompetent] incapacitated person** not appointed by the court, or when there is a minor's or **[incompetent's] incapacitated person's** estate but no guardian, in the county whose court at the time proceedings are first initiated would have jurisdiction to appoint a guardian of the estate.

§ 745. Advertisement of accounts.

* * *

(b) Manner of advertisement.—The notice shall be advertised at least once a week during the **[four] two** weeks immediately preceding the time for presentation of the accounts to the division:

(1) in the legal publication, if any, designated by rule of court for the publication of legal notices; and

(2) in at least one newspaper of general circulation published within the county, and if no such newspaper is published in that county, then in one such newspaper published nearest to that county.

§ 777. Right to jury trial; discretion of orphans' court division.

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(b) Determination of **[incompetency] incapacity**.—Any person against whom proceedings have been instituted to establish his **[incompetency] incapacity** shall be entitled to a trial of such issue by a jury. The verdict of the jury shall have the same effect as the verdict of a jury in a case at law.

* * *

Section 2. Section 2206 of Title 20 is amended to read:

§ 2206. Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised in whole or in part only during his lifetime by him or by his attorney-in-fact in accordance with section 5603(d) (relating to implementation of power of attorney). In the case of a minor spouse, the right of election may be exercised in whole or in part only by the spouse's guardian; in the case of an **[incompetent] incapacitated** spouse, the right of election may be exercised in whole or in part only by the spouse's guardian or by his attorney-in-fact in accordance with section 5603(d) if the power of attorney qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney); provided, that, in each case, the election shall be exercised only upon order of the court having jurisdiction of the minor's or the **[incompetent's] incapacitated person's** estate, after finding that exercise of the right is advisable.

Section 3. Section 2514(16.1) and (16.2) of Title 20 are amended to read:

§ 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:

* * *

(16.1) Nonademption; **[incompetency] incapacity**.—If property of an adjudicated **[incompetent] incapacitated person** specifically devised or bequeathed is sold or exchanged or if a condemnation award or insurance proceeds are paid to the estate of an **[incompetent] incapacitated person** as a result of condemnation, fire or casualty, the specific legatee or devisee has the right to the net sale price, the property received in exchange, the condemnation award or the insurance proceeds. This paragraph does not apply if subsequent to the sale, exchange, condemnation, or casualty, the testator has been adjudicated **[competent] not to be an incapacitated person** and survives the adjudication by one year.

(16.2) Nonademption; attorney-in-fact.—If an attorney-in-fact, during the time that his principal is **[incompetent] an incapacitated person** within the meaning of section 5501 (relating to meaning of **[incompetent] incapacitated person**), sells or exchanges property of the principal which is specifically devised or bequeathed, the specific legatee or devisee has the right to the net sale price or the property received in exchange. For the purposes of this paragraph, a sale or exchange of property made by an attorney-in-fact shall be deemed to have been made during the time that the

principal is **[incompetent] an incapacitated person**, unless shown to the contrary. This paragraph does not apply if it is shown that for a period of at least one year subsequent to the sale or exchange the principal was not **[incompetent] an incapacitated person** within the meaning of section 5501.

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Section 4. Sections 3122(b), 3155(b), 3182, 3324, 3504, 4112, 4121, 5115 and 5144 of Title 20 are amended to read:

§ 3122. Payment or delivery of exemption.

* * *

(b) Property set aside for minors or **[incompetents] incapacitated persons**.—When any spouse, child or parent entitled to all or part of the exemption is a minor or **[incompetent] an incapacitated person**, the guardian of his estate, and if no such guardian has been appointed then the personal representative, without request made to him by anyone, shall select, for the use and benefit of the minor or **[incompetent] incapacitated person**, real or personal property to the full value to which he is entitled, and in so doing the guardian or personal representative shall be governed by the necessities of the minor or **[incompetent] incapacitated person** in the circumstances of each case.

* * *

§ 3155. Persons entitled.

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(b) Letters of administration.—Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

- (1) Those entitled to the residuary estate under the will.
- (2) The surviving spouse.
- (3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.
- (4) The principal creditors of the decedent at the time of his death.
- (5) Other fit persons.
- (6) If anyone of the foregoing shall renounce his right to letters of administration, the register, in his discretion, may appoint a nominee of the person so renouncing in preference to the persons set forth in any succeeding paragraph.

(7) *A guardianship support agency serving as guardian of an incapacitated person who dies during the guardianship administered pursuant to Subchapter F of Chapter 55 (relating to guardianship support).*

* * *

§ 3182. Grounds for removal.

The court shall have exclusive power to remove a personal representative when he:

- (1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or

(2) has been adjudged a lunatic, a habitual drunkard, or a weak-minded person; or]

(3) has become [incompetent] *incapacitated* to discharge the duties of his office because of sickness or physical or mental incapacity and his [incompetency] *incapacity* is likely to continue to the injury of the estate; or

(4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or

(5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

§ 3324. Death or [incompetency] *incapacity* of fiduciary.

The personal representative of the estate of a deceased fiduciary or the guardian of an adjudged [incompetent] *incapacitated* fiduciary by reason of his position shall not succeed to the administration of, or have the right to possess, any asset of an estate which was being administered by the deceased or [incompetent] *incapacitated* fiduciary, except to protect it pending its delivery to the person entitled to it. The account of the deceased or [incompetent] *incapacitated* fiduciary may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or [incompetent] *incapacitated* fiduciary to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

§ 3504. Representation of parties in interest.

Persons interested in the estate as beneficiary, heir, or next of kin, if minors or otherwise legally [incompetent] *incapacitated*, and possible unborn or unascertained persons, when not already represented by a fiduciary, may be represented in an accounting by a guardian or trustee ad litem, if the court deems it necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person legally [incompetent] *incapacitated*, unborn, or unascertained, when there is a living person sui juris having a similar interest or when such person is or would be issue of a living ancestor sui juris and interested in the estate whose interest is not adverse to his. If the whereabouts of any beneficiary or next of kin is unknown, or if there is doubt as to his existence the court shall make such provision for service of notice and representation in the accounting as it deems proper.

§ 4112. To foreign trustee, guardian or committee.

When a share of an estate administered in the Commonwealth is distributable to a nonresident minor, a trustee subject to the jurisdiction of a foreign court, or a nonresident [incompetent] *incapacitated person*, the court may award it to the guardian or committee of the nonresident appointed in the foreign jurisdiction, or to such trustee: Provided, That the court shall be satisfied, in all cases where an applicable will or trust instrument does not direct distribution to the foreign guardian, committee or trustee, that adequate security or other protection has been provided in the domiciliary jurisdiction by the domiciliary law for the protection of the persons beneficially interested in the share so awarded.

§ 4121. Award to foreign guardian when minor or **[incompetent] incapacitated person** becomes a nonresident.

When the minor or **[incompetent] incapacitated person** for whose estate a guardian has been appointed by the court is or becomes a nonresident of the Commonwealth, the court, upon satisfactory proof that it will be for the best interests of the minor or **[incompetent] incapacitated person** and that no rights of a resident of the Commonwealth will be adversely affected and that removal of the property will not conflict with any limitations upon the right of the minor or **[incompetent] incapacitated person** to such property, may direct the locally appointed guardian to transfer the assets of the minor or **[incompetent] incapacitated person** within his control to a duly qualified guardian or guardians in the jurisdiction where the minor or **[incompetent] incapacitated person** resides.

§ 5115. Appointment of guardian in conveyance.

Any person, who makes a deed or gift inter vivos or exercises a right under an insurance or annuity policy to designate the beneficiary to receive the proceeds of such policy, may in such deed or in the instrument creating such gift or designating such beneficiary, appoint a guardian of the estate or interest of each beneficiary named therein who shall be a minor or otherwise **[incompetent] incapacitated**. Payment by an insurance company to the guardian of such beneficiary so appointed shall discharge the insurance company to the extent of such payment to the same effect as payment to an otherwise duly appointed and qualified guardian.

§ 5144. Powers, duties and liabilities identical with personal representatives.

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

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or **[incompetency] incapacity** of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representatives on contracts).

Section 3332 (relating to inherent powers and duties).

Section 5. Title 20 is amended by adding a chapter to read:

**CHAPTER 54
ADVANCE DIRECTIVE FOR HEALTH CARE**

Sec.

- 5401. Short title of chapter.
- 5402. Legislative findings and intent.
- 5403. Definitions.
- 5404. Declaration.
- 5405. When declaration becomes operative.
- 5406. Revocation.
- 5407. Liability.
- 5408. Duty of physician to confirm terminal condition.
- 5409. Unwillingness to comply; transfer of declarant.
- 5410. Effect on suicide and life insurance.
- 5411. Declaration optional.
- 5412. Preservation of existing rights.
- 5413. Emergency medical services.
- 5414. Pregnancy.
- 5415. Penalties.
- 5416. Severability.

§ 5401. Short title of chapter.

This chapter shall be known and may be cited as the Advance Directive for Health Care Act.

§ 5402. Legislative findings and intent.

(a) Findings.—The General Assembly finds that all competent adults have a qualified right to control decisions relating to their own medical care. This right is subject to certain interests of society, such as the maintenance of ethical standards in the medical profession and the preservation and protection of human life. Modern medical technological procedures make possible the prolongation of human life beyond natural limits. The application of some procedures to an individual suffering a difficult and uncomfortable process of dying may cause loss of patient dignity and secure only continuation of a precarious and burdensome prolongation of life.

(b) Intent.—Nothing in this chapter is intended to condone, authorize or approve mercy killing, euthanasia or aided suicide or to permit any affirmative or deliberate act or omission to end life other than as defined in this chapter. Furthermore, this chapter shall create no presumption concerning the intent of any person who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition or a state of permanent unconsciousness.

§ 5403. 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:

“Attending physician.” The physician who has primary responsibility for the treatment and care of the declarant.

“Declarant.” A person who makes a declaration in accordance with this chapter.

“Declaration.” A written document voluntarily executed by the declarant in accordance with this chapter.

“Health care provider.” A person who is licensed or certified by the laws of this Commonwealth to administer health care in the ordinary course of business or practice of a profession. The term includes personnel recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act.

“Incompetent.” The lack of sufficient capacity for a person to make or communicate decisions concerning himself.

“Life-sustaining treatment.” Any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or to maintain the patient in a state of permanent unconsciousness. Life-sustaining treatment shall include nutrition and hydration administered by gastric tube or intravenously or any other artificial or invasive means if the declaration of the qualified patient so specifically provides.

“Medical command physician.” A licensed physician who is authorized to give medical command under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act.

“Permanently unconscious.” A medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

“Person.” An individual, corporation, partnership, association or Federal, State or local government or governmental agency.

“Qualified patient.” A person who has executed a declaration and who has been determined to be in a terminal condition or to be permanently unconscious.

“Terminal condition.” An incurable and irreversible medical condition in an advanced state caused by injury, disease or physical illness which will, in the opinion of the attending physician, to a reasonable degree of medical certainty, result in death regardless of the continued application of life-sustaining treatment.

§ 5404. Declaration.

(a) Execution.—An individual of sound mind who is 18 years of age or older or who has graduated from high school or has married may execute at any time a declaration governing the initiation, continuation, withholding or withdrawal of life-sustaining treatment. The declaration must be signed by

the declarant, or by another on behalf of and at the direction of the declarant, and must be witnessed by two individuals each of whom is 18 years of age or older. A witness shall not be the person who signed the declaration on behalf of and at the direction of the declarant.

(b) Form.—A declaration may but need not be in the following form and may include other specific directions, including, but not limited to, designation of another person to make the treatment decision for the declarant if the declarant is incompetent and is determined to be in a terminal condition or to be permanently unconscious.

DECLARATION

I, _____, being of sound mind, willfully and voluntarily make this declaration to be followed if I become incompetent. This declaration reflects my firm and settled commitment to refuse life-sustaining treatment under the circumstances indicated below.

I direct my attending physician to withhold or withdraw life-sustaining treatment that serves only to prolong the process of my dying, if I should be in a terminal condition or in a state of permanent unconsciousness.

I direct that treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing life-sustaining treatment.

In addition, if I am in the condition described above, I feel especially strong about the following forms of treatment:

I () do () do not want cardiac resuscitation.

I () do () do not want mechanical respiration.

I () do () do not want tube feeding or any other artificial or invasive form of nutrition (food) or hydration (water).

I () do () do not want blood or blood products.

I () do () do not want any form of surgery or invasive diagnostic tests.

I () do () do not want kidney dialysis.

I () do () do not want antibiotics.

I realize that if I do not specifically indicate my preference regarding any of the forms of treatment listed above, I may receive that form of treatment.

Other instructions:

I () do () do not want to designate another person as my surrogate to make medical treatment decisions for me if I should be incompetent and in a terminal condition or in a state of permanent unconsciousness. Name and address of surrogate (if applicable):

Name and address of substitute surrogate (if surrogate designated above is unable to serve):

I made this declaration on the _____ day of (month, year).

Declarant's signature:

Declarant's address:

The declarant or the person on behalf of and at the direction of the declarant knowingly and voluntarily signed this writing by signature or mark in my presence.

Witness's signature:

Witness's address:

Witness's signature:

Witness's address:

(c) Invalidity of specific direction.—Should any specific direction in the declaration be held to be invalid, the invalidity shall not offset other directions of the declaration which can be effected without the invalid direction.

(d) Medical record.—A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

§ 5405. When declaration becomes operative.

A declaration becomes operative when:

- (1) a copy is provided to the attending physician; and
- (2) the declarant is determined by the attending physician to be incompetent and in a terminal condition or in a state of permanent unconsciousness.

When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer provisions of section 5409 (relating to unwillingness to comply; transfer of declarant).

§ 5406. Revocation.

(a) General rule.—A declaration may be revoked at any time and in any manner by the declarant without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(b) Medical record.—The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

§ 5407. Liability.

(a) General rule.—No physician or other health care provider who, consistent with this chapter, causes or participates in the initiating, continuing, withholding or withdrawal of life-sustaining treatment from a qualified patient who is incompetent shall, as a result thereof, be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct if the attending physician has followed the declarant's wishes as expressed earlier by the declarant in the form of a declaration executed pursuant to this chapter.

(b) Absence of declaration.—The absence of a declaration by a patient shall not give rise to any presumption as to the intent of the patient to consent to or to refuse the initiation, continuation or termination of life-sustaining treatment.

§ 5408. Duty of physician to confirm terminal condition.

For purposes of section 5405 (relating to when declaration becomes operative), an attending physician shall, without delay after the diagnosis that the declarant is in a terminal condition or in a state of permanent unconsciousness, certify in writing that the declarant is in a terminal condition or in a

state of permanent unconsciousness and arrange for the physical examination and confirmation of the terminal condition or state of permanent unconsciousness of the declarant by a second physician.

§ 5409. Unwillingness to comply; transfer of declarant.

(a) Attending physician or health care provider.—If an attending physician or other health care provider cannot in good conscience comply with a declaration or if the policies of the health care provider preclude compliance with a declaration, the attending physician or health care provider shall so inform the declarant, or, if the declarant is incompetent, shall so inform the declarant's surrogate, or, if a surrogate is not named in the declaration, shall so inform the family, guardian or other representative of the declarant. The attending physician or health care provider shall make every reasonable effort to assist in the transfer of the declarant to another physician or health care provider who will comply with the declaration.

(b) Employee or staff member of health care provider.—An employee or staff member of a health care provider shall not be required to participate in the withholding or withdrawal of life-sustaining treatment. It shall be unlawful for an employer to discharge or in any other manner to discriminate against an employee or staff member who informs the employer that he does not wish to participate in the withholding or withdrawal of life-sustaining treatment. The employer may require the employee or staff member to express his wishes in writing.

(c) Liability.—If transfer under subsection (a) is not possible, the provision of life-sustaining treatment to a declarant shall not subject a health care provider to criminal or civil liability or administrative sanction for failure to carry out the provisions of a declaration.

§ 5410. Effect on suicide and life insurance.

(a) Criminal effect.—The withholding or withdrawal of life-sustaining treatment from a qualified patient in accordance with the provisions of this chapter shall not, for any purpose, constitute suicide or homicide.

(b) Life insurance.—The making of or failure to make a declaration in accordance with this chapter shall not affect in any manner the sale, procurement or issuance of any policy of life insurance nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured patient, notwithstanding any term of the policy to the contrary.

§ 5411. Declaration optional.

No physician or other health care provider and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit hospital plan or Federal, State or local government sponsored or operated program shall:

- (1) require any person to execute a declaration as a condition for being insured for or receiving health care services; or
- (2) charge any person a different rate or fee whether or not the person executes or has executed a declaration.

§ 5412. Preservation of existing rights.

The provisions of this chapter shall not impair or supersede any existing rights or responsibilities not addressed in this chapter.

§ 5413. Emergency medical services.

(a) Care given prior to declaration taking effect.—Nothing in this chapter shall be construed to make the provisions of a declaration apply to care given to a patient by emergency medical services personnel prior to the declaration's becoming operative under sections 5405 (relating to when declaration becomes operative) and 5408 (relating to duty of physician to confirm terminal condition).

(b) Care given after declaration takes effect.—The provisions of a declaration shall apply to care given to a patient by emergency medical services personnel after the declaration becomes operative under sections 5405 and 5408 only if:

(1) an original declaration, signed by the declarant or other authorized person, is presented to the emergency medical services personnel. The emergency medical services personnel must immediately notify the medical command physician of the presence of the declaration; or

(2) the medical command physician, based on prior notification by the attending physician or other health care provider that a valid and operative declaration exists, directs the emergency medical service personnel according to the provisions of the declaration.

(c) Uncertainty regarding validity of declaration.—Emergency medical services personnel confronted with any conflicting information regarding the patient's wishes for life-sustaining treatment shall act according to the accepted treatment protocols and standards appropriate to their level of certification.

§ 5414. Pregnancy.

(a) General rule.—Notwithstanding the existence of a declaration or direction to the contrary, life-sustaining treatment, nutrition and hydration must be provided to a pregnant woman who is incompetent and has a terminal condition or who is permanently unconscious unless, to a reasonable degree of medical certainty as certified on the patient's medical record by the attending physician and an obstetrician who has examined the patient, life-sustaining treatment, nutrition and hydration:

(1) will not maintain the pregnant woman in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to the pregnant woman; or

(3) would cause pain to the pregnant woman which cannot be alleviated by medication.

(b) Pregnancy test.—Nothing in this section shall require a physician to perform a pregnancy test unless the physician has reason to believe that the woman may be pregnant.

(c) Payment of expenses by Commonwealth.—

(1) In the event that treatment, nutrition and hydration are provided to a pregnant woman who is incompetent and has a terminal condition or who is permanently unconscious, notwithstanding the existence of a decla-

ration or direction to the contrary, the Commonwealth shall pay all usual, customary and reasonable expenses directly and indirectly incurred by the pregnant woman to whom such treatment, nutrition and hydration are provided.

(2) The Commonwealth shall have the right of subrogation against all moneys paid by any third-party health insurer on behalf of the pregnant woman.

(3) The expenditures incurred on behalf of the pregnant woman shall constitute a grant and no lien shall be placed upon the property of the pregnant woman, her estate or her heirs.

§ 5415. Penalties.

Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without the consent of the declarant commits a felony of the third degree. Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in section 5406 (relating to revocation), with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarant and, because of such an act, directly causes life-sustaining treatment to be withheld or withdrawn and death to be hastened shall be subject to prosecution for criminal homicide as provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide). Any person who willfully, by undue influence, fraud or duress, causes a person to execute a declaration pursuant to this chapter commits a felony of the third degree.

§ 5416. Severability.

The provisions of this chapter are severable, and, if any word, phrase, clause, sentence, section or provision of the chapter is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this chapter. It is hereby declared as the legislative intent that this chapter would have been adopted had such unconstitutional word, phrase, clause, sentence, section or provision thereof not been included herein.

Section 6. The headings of Chapter 55 and Subchapter A of Chapter 55 and section 5501 of Title 20 are amended to read:

CHAPTER 55
[INCOMPETENTS]
INCAPACITATED PERSONS

SUBCHAPTER A
[MEANING OF INCOMPETENT]
GENERAL PROVISIONS

§ 5501. Meaning of [incompetent] *incapacitated person*.

["Incompetent" means a person who, because of 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.]

“Incapacitated person” means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.

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

§ 5502. *Purpose of chapter.*

Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative; and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.

Section 8. Sections 5505, 5511 and 5512 of Title 20 are amended to read:

§ 5505. Provisions similar to small estates of minors.

The provisions concerning small estates of [incompetents] *incapacitated persons* shall be the same as are set forth in the following provisions of this title relating to minors' estates:

Section 5101 (relating to when guardian unnecessary).

Section 5102 (relating to power of natural guardian).

Section 5103 (relating to sequestered deposit).

§ 5511. Petition and hearing; [examination by court-appointed physician] *independent evaluation.*

(a) Resident.—The court, upon petition [and a hearing at which good cause is shown,] *and hearing and upon the presentation of clear and convincing evidence,* may find a person domiciled in the Commonwealth to be [incompetent] *incapacitated* and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged [incompetent's] *incapacitated person's* welfare. The court may dismiss a proceeding where it [finds as a fact] *determines* that the proceeding has not been instituted to aid or benefit the alleged [incompetent. Notice] *incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Written notice* of the petition and hearing shall be given *in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded. The Supreme Court shall establish a uniform citation*

for this purpose. A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the court shall direct [to the alleged incompetent,] to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged [incompetent] incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers. The hearing may be closed to the public and without a jury unless the alleged [incompetent] incapacitated person or his counsel objects. The hearing shall be closed and with or without a jury if the person alleged to be [incompetent] incapacitated or his counsel so requests. The hearing may be held at the residence of the alleged incapacitated person. The alleged [incompetent] incapacitated person shall be present at the hearing unless:

[(i) (1) the court is satisfied, upon the [presentation of positive testimony, that because of] deposition or testimony of or sworn statement by a physician or licensed psychologist, that his physical or mental condition [his welfare would not be promoted] would be harmed by his presence; or

[(ii) (2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged [incompetent] incapacitated person to be represented by a guardian ad litem in the proceeding.

Petitioner shall be required to notify the court at least seven days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person. In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual.

(b) *Nonresident.*—The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be [incompetent] incapacitated and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his [incompetency] incapacity in another jurisdiction. The court shall give preference in its appointment to the foreign guardian of the nonresident [incompetent] incapacitated person, unless it finds that such appointment will not be for the best interests of the [incompetent] incapacitated person.

[(c) *Court-appointed physician.*—Upon the filing of a petition the alleged incompetent may be examined by a physician appointed by the court who shall submit his report in writing to the court and to the parties before the hearing.]

(c) *Payment of certain costs.*—If the alleged incapacitated person is unable to pay for counsel or for the evaluation, the court shall order the

county to pay these costs. These costs shall be reimbursed by the Commonwealth in the following fiscal year.

(d) *Independent evaluation.*—The court, upon its own motion or upon petition by the alleged incapacitated person for cause shown, shall order an independent evaluation which shall meet the requirements of section 5518 (relating to evidence of incapacity). The court shall give due consideration to the appointment of an evaluator nominated by the alleged incapacitated person.

(e) *Petition contents.*—The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.

(f) *Who may be appointed guardian.*—The court may appoint as guardian any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency under Subchapter F (relating to guardianship support) or a county agency. In the case of residents of State facilities, the court may also appoint, only as guardian of the estate, the guardian office at the appropriate State facility. The court shall not appoint a person or entity providing residential services for a fee to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no guardianship support agency or other alternative exists. Any family relationship to such individual shall not, by itself, be considered as an interest adverse to the alleged incapacitated person. If appropriate, the court shall give preference to a nominee of the incapacitated person.

§ 5512. County of appointment; qualifications.

(a) *Resident [incompetent] incapacitated person.*—A guardian of the person or estate of an [incompetent] incapacitated person may be appointed by the court of the county in which the [incompetent] incapacitated person is domiciled, *is a resident or is residing in a long-term care facility.*

(b) *Nonresident [incompetent] incapacitated person.*—A guardian of the estate within the Commonwealth of an [incompetent] incapacitated person domiciled outside of the Commonwealth may be appointed by the court of the judicial district having jurisdiction of a decedent's estate or of a trust in which the [incompetent] incapacitated person has an interest. When the non-

resident **[incompetent's] incapacitated person's** estate is derived otherwise than from a decedent's estate or a trust within the Commonwealth, a guardian may be appointed by the court of any county where an asset of the **[incompetent] incapacitated person** is located.

(c) Exclusiveness of appointment.—When a court has appointed a guardian of **[an incompetent's] the person or estate of an incapacitated person** pursuant to subsection (a) or (b) **[of this section]**, no other court shall appoint a similar guardian for the **[incompetent] incapacitated person** within the Commonwealth.

Section 9. Title 20 is amended by adding sections to read:

§ 5512.1. *Determination of incapacity and appointment of guardian.*

(a) *Determination of incapacity.*—*In all cases, the court shall consider and make specific findings of fact concerning:*

(1) *The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.*

(2) *The extent of the individual's capacity to make and communicate decisions.*

(3) *The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.*

(4) *The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.*

(5) *The duration of the guardianship.*

(6) *The court shall prefer limited guardianship.*

(b) *Limited guardian of the person.*—*Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the person with powers consistent with the court's findings of limitations, which may include:*

(1) *General care, maintenance and custody of the incapacitated person.*

(2) *Designating the place for the incapacitated person to live.*

(3) *Assuring that the incapacitated person receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the incapacitated person in the development of maximum self-reliance and independence.*

(4) *Providing required consents or approvals on behalf of the incapacitated person.*

(c) *Plenary guardian of the person.*—*The court may appoint a plenary guardian of the person only upon a finding that the person is totally incapacitated and in need of plenary guardianship services.*

(d) *Limited guardian of the estate.*—*Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the estate with powers consistent with the court's finding of limitations, which shall specify the portion of assets or income over which the guardian of the estate is assigned powers and duties.*

(e) Plenary guardian of the estate.—A court may appoint a plenary guardian of the estate only upon a finding that the person is ~~totally incapacitated~~ and in need of plenary guardianship services.

(f) No presumption.—No presumption of incapacity shall be raised from the alleged incapacitated person's institutionalization.

(g) Legal rights retained.—Except in those areas designated by court order as areas over which the limited guardian has power, a partially incapacitated person shall retain all legal rights.

(h) Information as to rights.—At the conclusion of a proceeding in which the person has been adjudicated incapacitated, the court shall assure that the person is informed of his right to appeal and to petition to modify or terminate the guardianship.

§ 5512.2. Review hearing.

(a) Time of hearing.—The court may set a date for a review hearing in its order establishing the guardianship or hold a review hearing at any time it shall direct. The court shall conduct a review hearing promptly if the incapacitated person, guardian or any interested party petitions the court for a hearing for reason of a significant change in the person's capacity, a change in the need for guardianship services or the guardian's failure to perform his duties in accordance with the law or to act in the best interest of the incapacitated person. The court may dismiss a petition for review hearing if it determines that the petition is frivolous.

(b) Burden of proof and rights.—The incapacitated person shall have all of the rights enumerated in this chapter. Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on the party advocating continuation of guardianship or expansion of areas of incapacity.

§ 5512.3. Annual report.

The court shall annually file with the Supreme Court Administrator's Office on forms furnished by the office a statistical and descriptive report to assist in evaluating the operation and costs of the guardianship system.

Section 10. Sections 5513, 5514, 5515, 5516, 5517 and 5518 of Title 20 are amended to read:

§ 5513. [Temporary] Emergency guardian.

Notwithstanding the provisions of section 5511 (relating to petition and hearing; *independent evaluation*), the court, upon petition and a hearing at which [good cause] *clear and convincing evidence* is shown, may appoint [a temporary] *an emergency* guardian or guardians of the person or estate of a person alleged to be [incompetent] *incapacitated*, when it appears that *the person lacks capacity, is in need of a guardian and* a failure to make such appointment will result in irreparable harm to the person or estate of the alleged [incompetent] *incapacitated person*. The provisions of section 5511, *including those relating to counsel*, shall be applicable to such proceedings, except [that only such notice of the petition and hearing shall be required as shall appear to the court to be] *when the court has found that it is not feasible in the circumstances*, and need not be given at such times or to such persons as would be required by the provisions of section 5511 in a proceed-

ing for the appointment of a guardian. A temporary]. *An emergency guardian so appointed for the person or estate of an alleged [incompetent] incapacitated person shall only have and be subject to such powers, duties and liabilities and serve for such time as the court shall direct in its decree. An emergency order appointing an emergency guardian of the person may be in effect for up to 72 hours. If the emergency continues, then the emergency order may be extended for no more than 20 days from the expiration of the initial emergency order. After expiration of the emergency order or any extension, a full guardianship proceeding must be initiated pursuant to section 5511. The court may also appoint an emergency guardian of the person pursuant to this section for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside of this Commonwealth, regardless of whether the alleged incapacitated person has property in this Commonwealth. An emergency order appointing an emergency guardian of the estate shall not exceed 30 days. After 30 days, a full guardianship proceeding must be initiated pursuant to section 5511.*

§ 5514. To fill vacancy; co-guardian.

The court, after such notice to parties in interest as it shall direct, may *without a hearing* appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of [a person found to be incompetent without a hearing.] *an incapacitated person. Where the vacating guardian was a parent who is now deceased, any testamentary nominee of the parent shall be given preference by the court.*

§ 5515. Provisions similar to other estates.

The provisions relating to a guardian of an [incompetent] *incapacitated person* and his surety shall be the same as are set forth in the following provisions of this title relating to a personal representative or a guardian of a minor and their sureties:

Section 3182 (relating to grounds for removal).

Section 3183 (relating to procedure for and effect of removal).

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

Section 5115 (relating to appointment of guardian in conveyance).

Section 5121 (relating to necessity, form and amount).

Section 5122 (relating to when bond not required).

Section 5123 (relating to requiring or changing amount of bond).

§ 5516. Fiduciary estate.

The court, in its discretion, upon the application of any party in interest, in addition to any bond required for the [incompetent's] *incapacitated person's* individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the court shall consider necessary for the protection of the parties in interest in an estate of which the [incompetent is] *incapacitated person is serving in the capacity as a fiduciary and conditioned in the following form:*

(1) When one guardian.—The condition of this obligation is that, if the said guardian shall well and truly account for property held by the [incompetent] *incapacitated person* as fiduciary according to law, this obligation shall be void; but otherwise it shall remain in force.

(2) When two or more guardians.—The condition of this obligation is that, if the said guardians or any of them shall well and truly account for property held by the [incompetent] *incapacitated person* as fiduciary according to law, this obligation shall be void as to the guardian or guardians who shall so account; but otherwise it shall remain in force.

§ 5517. Adjudication of [competency.] *capacity and modification of existing orders.*

[The court, upon petition and after such notice as it shall direct, may find, after a hearing at which good cause is shown, that a person previously adjudged incompetent has become competent.] *The court, after a hearing under section 5512.2 (relating to review hearing), may order that a person previously adjudged incapacitated is no longer incapacitated or the court may find that the incapacitated person has regained or lost capacity in certain areas in which case the court shall modify the existing guardianship order.*

§ 5518. Evidence of [mental condition] *incapacity.*

[In any hearing relating to the mental condition of a person whose competency is in question, the deposition of, or sworn statement by, a superintendent, manager, physician or psychiatrist of any State-owned mental hospital or veterans' administration hospital or a physician or psychiatrist at any hospital or institution shall be admissible in evidence as to the condition of an inmate of such hospital in lieu of his appearance and testimony, unless by special order, the court directs his appearance and testimony in person.] *To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.*

Section 11. Title 20 is amended by adding a section to read:

§ 5518.1. *Cross-examination of witnesses.*

Testimony as to the capacity of the alleged incapacitated person shall be subject to cross-examination by counsel for the alleged incapacitated person.

Section 12. Sections 5521, 5522, 5524, 5525, 5533, 5534, 5535, 5536 and 5537 of Title 20 are amended to read:

§ 5521. Provisions concerning powers, duties and liabilities.

(a) *Duty of guardian of the person.—It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated person shall be respected to the greatest possible extent. Where appropriate, the guardian*

shall assure and participate in the development of a plan of supportive services to meet the person's needs which explains how services will be obtained. The guardian shall also encourage the incapacitated person to participate to the maximum extent of his abilities in all decisions which affect him, to act on his own behalf whenever he is able to do so and to develop or regain, to the maximum extent possible, his capacity to manage his personal affairs.

(b) Duty of guardian of the estate.—The provisions concerning the powers, duties and liabilities of guardians of **[incompetents'] incapacitated persons'** estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or **[incompetency] incapacity** of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

Section 3332 (relating to inherent powers and duties).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

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

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 3372 (relating to substitution of personal representative in pending action or proceedings).

Section 3374 (relating to death or removal of fiduciary).

Section 3390 (relating to specific performance of contracts).

Section 5141 (relating to possession of real and personal property).

Section 5142 (relating to inventory).

Section 5143 (relating to abandonment of property).

Section 5145 (relating to investments).

Section 5146 (relating to guardian named in conveyance).

Section 5147 (relating to proceedings against guardian).

Section 5151 (relating to power to sell personal property).

Section 5154 (relating to title of purchaser).

Section 5155 (relating to order of court).

(c) Reports.—

(1) Each guardian of an incapacitated person shall file with the court appointing him a report, at least once within the first 12 months of his appointment and at least annually thereafter, attesting to the following:

(i) Guardian of the estate:

(A) current principal and how it is invested;

(B) current income;

(C) expenditures of principal and income since the last report;
and

(D) needs of the incapacitated person for which the guardian has provided since the last report.

(ii) Guardian of the person:

(A) current address and type of placement of the incapacitated person;

(B) major medical or mental problems of the incapacitated person;

(C) a brief description of the incapacitated person's living arrangements and the social, medical, psychological and other support services he is receiving;

(D) the opinion of the guardian as to whether the guardianship should continue or be terminated or modified and the reasons therefor; and

(E) number and length of times the guardian visited the incapacitated person in the past year.

(2) Within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian shall file a final report with the court.

(d) Powers and duties only granted by court.—Unless specifically included in the guardianship order after specific findings of fact or otherwise ordered after a subsequent hearing with specific findings of fact, a guardian or emergency guardian shall not have the power and duty to:

(1) Consent on behalf of the incapacitated person to an abortion, sterilization, psychosurgery, electroconvulsive therapy or removal of a healthy body organ.

(2) Prohibit the marriage or consent to the divorce of the incapacitated person.

(3) Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

(e) Knowledge of objection.—In a hearing to determine whether a guardian shall be ordered to consent to a specific act or omission, if the guardian

knows or has reason to know of the incapacitated person's objection to the action or omission, whether such objection had been expressed prior or subsequent to the determination of incapacity, the guardian shall report to the court such knowledge or information.

(f) Powers and duties not granted to guardian.—The court may not grant to a guardian powers controlled by other statute, including, but not limited to, the power:

(1) To admit the incapacitated person to an inpatient psychiatric facility or State center for the mentally retarded.

(2) To consent, on behalf of the incapacitated person, to the relinquishment of the person's parental rights.

(g) Criminal and civil immunity.—In the absence of gross negligence, recklessness or intentional misconduct, a unit of local government, nonprofit corporation or guardianship support agency under Subchapter F (relating to guardianship support) appointed as a guardian shall not be criminally liable or civilly liable for damages for performing duties as a guardian of the person, as authorized under this chapter.

§ 5522. Power to lease.

A guardian may lease any real or personal property of the **[incompetent] incapacitated person** for a term not exceeding five years after its execution.

§ 5524. Effect of determination of **[incompetency] incapacity**.

[An incompetent] *A partially incapacitated person* shall be incapable of making any contract or gift or any instrument in writing **[after he is adjudged incompetent and before he is adjudged to have regained his competency]** *in those specific areas in which the person has been found to be incapacitated. A totally incapacitated person shall be incapable of making any contract or gift or any instrument in writing.* This section shall not impair the interest in real estate acquired by a bona fide grantee of, or a bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the **[incompetency] incapacity** is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims.

§ 5525. Notice to Commonwealth and political subdivisions.

When the Commonwealth or a political subdivision thereof has a claim for maintaining an **[incompetent] incapacitated person** in an institution, the guardian, within three months of his appointment, shall give notice thereof to the Department of **[Revenue] Public Welfare** or the proper officer of such political subdivision, as the case may be.

§ 5533. Notice, audits, reviews and distribution.

The provisions concerning accounts, audits, reviews, distribution and rights of distributees in an **[incompetent's] incapacitated person's** estate shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or minor's estate:

Section 3503 (relating to notice to parties in interest).

Section 3504 (relating to representation of parties in interest).

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3532(c) (relating to record of risk distributions).

Section 3533 (relating to award upon final confirmation of account).

Section 3534 (relating to distribution in kind).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3544 (relating to liability of personal representative for interest).

Section 3545 (relating to transcripts of balances due by personal representative).

Section 5167 (relating to failure to present claim at audit).

§ 5534. Recognition of claims.

Upon the audit of the account of the guardian of a person who has died during **[incompetency] incapacity**, the auditing judge or auditor passing on the account shall not pass upon any claims against the estate of the **[incompetent] incapacitated person** other than necessary administration expenses, including compensation of the guardian and his attorney. All claims remaining unpaid at the **[incompetent's] incapacitated person's** death shall be presented to the personal representative.

§ 5535. Disposition of trust income.

Except as otherwise provided by the trust instrument, the trustee of an inter vivos or testamentary trust, with the approval of the court having jurisdiction of the trust, may pay income distributable to **[an incompetent beneficiary] a beneficiary who is an incapacitated person** for whose estate no guardian has been appointed directly to the **[incompetent] incapacitated person**, or expend and apply it for his care and maintenance or the care, maintenance and education of his dependents.

§ 5536. Distributions of income and principal during **[incompetency] incapacity**.

(a) In general.—All income received by a guardian of the estate of an **[incompetent] incapacitated person**, including (subject to the requirements of Federal law relating thereto) all funds received from the Veterans' Administration, Social Security Administration and other periodic retirement or disability payments under private or governmental plans, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the **[incompetent] incapacitated person**, without the necessity of court approval. The court, for cause shown and with only such notice as it considers appropriate in the circumstances, may authorize or direct the payment or application of any or all of the income or principal of the estate of an **[incompetent] incapacitated person** for the care, maintenance or education of the **[incompe-**

tent] *incapacitated person*, his spouse, children or those for whom he was making such provision before his [incompetency] *incapacity*, or for the reasonable funeral expenses of the [incompetent's] *incapacitated person's* spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the [incompetent] *incapacitated person* 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] *incapacitated person* with respect to the estate and affairs of the [incompetent] *incapacitated person* for the benefit of the [incompetent] *incapacitated person*, 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, release or disclaim 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 or disclaim his powers as trustee, personal representative, custodian for minors, or guardian.

(4) Exercise, release or disclaim his powers as donee of a power of appointment.

(5) Enter into contracts.

(6) Create for the benefit of the [incompetent] *incapacitated person* or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.

(7) Exercise options of the [incompetent] *incapacitated person* 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.

(10) Change the [incompetent's] *incapacitated person's* residence or domicile.

In the exercise of its judgment for that of the [incompetent] *incapacitated person*, the court, first being satisfied that assets exist which are not required for the maintenance, support and well-being of the [incompetent] *incapacitated person*, may adopt a plan of gifts which results 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] *shall* consider the testamentary and inter vivos intentions of the [incompetent] *incapacitated person* insofar as they can be ascertained.

§ 5537. Reserve for funeral.

(a) In general.—The court may authorize the guardian to retain such assets [not exceeding \$1,200 in value] as are deemed appropriate for the

anticipated expense of the [incompetent's] *incapacitated person's* funeral, including the cost of a burial lot or other resting place, which shall be exempt from all claims including claims of the Commonwealth. The court with notice thereof to the institution or person having custody of the [incompetent] *incapacitated person* may also authorize the guardian or another person to set aside such assets in the form of a savings account in a financial institution which account shall not be subject to escheat during the lifetime of the [incompetent] *incapacitated person*. Such assets may be disbursed by the guardian or person who set aside such assets or by the financial institution for such funeral expenses without further authorization or accounting. Any part of such assets not so disbursed shall constitute a part of the deceased [incompetent's] *incapacitated person's* estate. Should the [incompetent become competent] *incapacitated person become capacitated* or should such assets become excessive, the court, upon petition of any party in interest, may make such order as the circumstances shall require.

(b) Definition.—As used in this section, “financial institution” includes a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a savings bank, a private bank and a national bank.

Section 13. Chapter 55 of Title 20 is amended by adding a subchapter to read:

SUBCHAPTER F GUARDIANSHIP SUPPORT

Sec.

- 5551. Guardianship support agencies; legislative intent.
- 5552. Services to individuals whose decision-making ability is impaired.
- 5553. Guardianship services.
- 5554. Services to courts, guardians and others.
- 5555. Costs and compensation.

§ 5551. Guardianship support agencies; legislative intent.

The General Assembly finds that there is a need for agencies to provide services, as an alternative to guardianship, to individuals whose decision-making ability is impaired, to serve as guardian when an individual is found to need a guardian and no other person is willing and qualified to serve and to provide services to courts, guardians and others.

§ 5552. Services to individuals whose decision-making ability is impaired.

Guardianship support agencies shall provide guardianship services under this chapter. Such services shall include, but not be limited to:

- (1) Assistance to individuals in decision making, including financial management training.
- (2) Assistance to individuals in securing and maintaining benefits and services.
- (3) Recruiting, training and maintaining a group of individuals to serve as representative payees or similar fiduciaries established by benefit-

issuing agencies, attorneys-in-fact pursuant to a power of attorney, and trustees.

§ 5553. Guardianship services.

(a) In general.—The guardianship support agency shall be available to serve as guardian of the estate or of the person, or both, of an incapacitated person when no less restrictive alternative will meet the needs of the individual and when no other person is willing and qualified to become guardian. The agency itself may be appointed guardian and no individual need be specified by the court. If appointed, the guardianship support agency shall have all of the powers and duties of a corporate fiduciary and shall not be required to post bond.

(b) Powers and duties.—The guardianship support agency shall be treated the same as all other guardians in regard to appointment as guardian or successor or co-guardian, reporting, powers and duties, compensation and in all other respects. In addition to section 5521 (relating to provisions concerning powers, duties, and liabilities), a guardianship support agency shall have the power and duty to:

(1) Invest the principal and income of incapacitated persons for whom it is the guardian of the estate. For this purpose, it may pool the principal and income, but shall maintain an individual account for each incapacitated person reflecting the person's participation therein.

(2) Expend and, if necessary, advance costs necessary to administer guardianships for which it has been appointed guardian.

(3) Apply for letters or otherwise administer the estate of any incapacitated person for whom it has been appointed guardian who dies during the guardianship when no one else is willing and qualified to serve.

§ 5554. Services to courts, guardians and others.

(a) Services to courts.—Guardianship support agencies may be available to assist courts on request with reviewing petitions for appointment of a guardian, recommending alternatives to guardianship, investigating petitions, explaining petitions to respondents or reviewing reports and monitoring guardianship arrangements.

(b) Services to guardians.—Guardianship support agencies may be available to assist guardians in filing reports, monitoring incapacitated persons and otherwise fulfilling their duties.

(c) Services to petitioners and others.—Guardianship support agencies may be available to assist in the filing of petitions for guardianship, to provide information on available alternatives to potential petitioners, to locate and train individuals skilled in providing functional evaluations of alleged incapacitated persons and to perform such other duties as required.

§ 5555. Costs and compensation.

Recipients of service shall be charged for services based on their ability to pay. Guardianship support agencies shall make every effort to minimize costs, including minimizing personnel costs through the use of volunteers.

Section 14. Sections 5603(d) and (e) and 5604(c) of Title 20 are amended to read:

§ 5603. Implementation of power of attorney.

* * *

(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 attorney-in-fact 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 attorney-in-fact 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 an **[incompetent] 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 an **[incompetent] incapacitated person**.

(e) Power to disclaim any interest in property.—A power “to disclaim any interest in property” shall mean that the attorney-in-fact may release or disclaim any interest in property on behalf of the principal in accordance with Chapter 62 (relating to disclaimers) or section 6103 (relating to release or disclaimer of powers or interests), provided that any disclaimer under Chapter 62 shall be in accordance with the provisions of section 6202 (relating to disclaimers by fiduciaries *or attorneys-in-fact*) in the case of a principal who shall have been adjudicated an **[incompetent] incapacitated person** at the time of the execution of the disclaimer.

* * *

§ 5604. Durable powers of attorney.

* * *

(c) Relation of attorney-in-fact to court-appointed guardian.—

(1) If, following execution of a durable power of attorney, the principal is adjudicated an **[incompetent] incapacitated person** and a guardian is appointed for his estate, the attorney-in-fact 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 **[incompetent] an incapacitated person**.

(2) A principal may nominate, by a durable power of attorney, the guardian of his estate or of his person for consideration by the court if **[incompetency] incapacity** proceedings for the principal’s estate or person are thereafter commenced. The court shall make its appointment in accordance with the principal’s most recent nomination in a durable power of attorney except for good cause or disqualification.

Section 15. Sections 6202, 7133, 8301 and 8411 of Title 20 are amended to read:

§ 6202. Disclaimers by fiduciaries or attorneys-in-fact.

A disclaimer on behalf of a decedent, a minor or an **[incompetent] incapacitated person** may be made by his personal representative, the guardian of his estate or in the case of an **[incompetent] incapacitated person** who executed a power of attorney which confers the authority to disclaim upon his attorney-in-fact and which qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney) by such attorney-in-fact, if, in each case, the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent, the minor or his creditors, or the **[incompetent] incapacitated person** or his creditors, as the case may be. A personal representative may make a disclaimer on behalf of his decedent without court authorization if the will of the decedent so authorizes him.

§ 7133. 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 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or **[incompetency] incapacity** of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

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 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 5147 (relating to proceedings against guardian).

§ 8301. Powers of court to authorize sale, etc. of real property.

The court of common pleas, operating through its appropriate division, may authorize the sale, mortgage, lease or exchange of real property:

(1) Where the legal title is held:

(i) by a person whose spouse is an **[incompetent] incapacitated person**, or has abandoned him or her for one year, or has been absent in circumstances from which the law would presume his or her decease;

(ii) by a tenant of an estate by entireties, when the other tenant of such estate has been absent in circumstances from which the law would presume his or her decease;

(iii) by corporations of any kind having no capacity to convey, or by any unincorporated association; or

(iv) by any religious, beneficial, or charitable society or association, incorporated or unincorporated, whose title is subject to forfeiture if real property is held in excess of the amount authorized by law.

(2) Where the legal title is an estate tail, or is subject to contingent remainders, executory interests, or remainders to a class some or all of whom may not be in being or ascertained at the time of the entry of the decree.

(3) Where the legal title is otherwise inalienable.

§ 8411. Notice of action to United States Veterans' Bureau.

In any action brought under any law of this Commonwealth for the appointment of a committee or guardian for a veteran of any war, or a minor child, or **[incompetent] incapacitated** dependent of a veteran of any war, on whose account benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Bureau, or its successor, or upon the filing of any petition or account by any such committee or guardian of any such person, notice of such action, or of the filing of such petition or account, and of the hearing thereon, shall be mailed the attorney of the United States Veterans' Bureau office having jurisdiction over such person. In all such cases, the United States Veterans' Bureau, or its successor, shall be a party in interest, and a certified copy of each account filed in the court shall be supplied the said bureau by the committee or guardian.

Section 16. Sections 3307(a), 3508(g), 4405 heading and (a) and 8308(c) of Title 13 are amended to read:

§ 3307. Burden of establishing signatures, defenses and due course.

(a) Proof of effectiveness of signature.—Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(1) the burden of establishing it is on the party claiming under the signature; but

(2) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become **[incompetent] an incapacitated person** before proof is required.

* * *

§ 3508. Notice of dishonor.

* * *

(g) Notice when party dead or **[incompetent] incapacitated**.—When any party is dead or **[incompetent] an incapacitated person**, notice may be sent to his last known address or given to his personal representative.

21* * *

§ 4405. Death or **[incompetence] incapacity** of customer.

(a) Authority of bank unaffected in absence of knowledge.—The authority of a payor or collecting bank to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by **[incompetence] incapacity** of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of **[incompetence] incapacity**. Neither death nor **[incompetence] incapacity** of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of **[incompetence] incapacity** and has reasonable opportunity to act on it.

* * *

§ 8308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.

* * *

(c) Definition of “appropriate person”.—An “appropriate person” in subsection (a) means:

(1) the person specified by the security or by special indorsement to be entitled to the security;

(2) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor;

(3) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(4) where the person so specified is an individual and is without capacity to act by virtue of death, **[incompetence] incapacity**, infancy or otherwise,—his executor, administrator, guardian or like fiduciary;

(5) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors;

(6) a person having power to sign under applicable law or controlling instrument; or

(7) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

* * *

Section 17. Sections 311(c), 509, 2901(b), 2905(b) and 3206(a), (g) and (i) of Title 18 are amended to read:

§ 311. Consent.

* * *

(c) Ineffective consent.—Unless otherwise provided by this title or by the law defining the offense, assent does not constitute consent if:

(1) it is given by a person who is legally **[incompetent] incapacitated** to authorize the conduct charged to constitute the offense;

(2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(3) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

§ 509. Use of force by persons with special responsibility for care, discipline or safety of others.

The use of force upon or toward the person of another is justifiable if:

(1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and:

(i) the force is used for the purpose of safeguarding or promoting the welfare of the minor, including the preventing or punishment of his misconduct; and

(ii) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation.

(2) The actor is a teacher or person otherwise entrusted with the care or supervision for a special purpose of a minor and:

(i) the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

(ii) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (1)(ii).

(3) The actor is the guardian or other person similarly responsible for the general care and supervision of an **[incompetent] incapacitated, mentally ill or mentally retarded person**; and:

(i) the force is used for the purpose of safeguarding or promoting the welfare of the **[incompetent] incapacitated, mentally ill or mentally retarded person**, including the prevention of his misconduct, and there is no reasonable alternative to the use of such force; and

(ii) the force used is not designed to cause or known to create a substantial risk of causing death, bodily injury, disfigurement, unnecessary pain, mental distress, or humiliation.

(4) The actor is a doctor or other therapist or a person assisting him at his direction; and:

(i) the force is used for the purpose of administering a recognized form of treatment not prohibited by law of this Commonwealth which the actor believes to be adapted to promoting the physical or mental health of the patient; and

(ii) the treatment is administered with the consent of the patient, or, if the patient is a minor or an **[incompetent] incapacitated** person with the consent of his parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

(5) The actor is a warden or other authorized official of a correctional institution; and:

(i) he believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his error is due to ignorance or mistake as to the provisions of this title, any other provision of the criminal law or the law governing the administration of the institution;

(ii) the nature or degree of force used is not forbidden by law; and

(iii) if deadly force is used, its use is otherwise justifiable under this chapter.

(6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his direction; and:

(i) he believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless his belief in the lawfulness of the order is erroneous and his error is due to ignorance or mistake as to the law defining his authority; and

(ii) if deadly force is used, its use is otherwise justifiable under this chapter.

(7) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled; and:

(i) he believes that the force used is necessary for such purpose; and

(ii) the force used is not designed to cause death, or known to create a substantial risk of causing death, bodily injury, or extreme mental distress.

§ 2901. Kidnapping.

* * *

(b) Grading.—Kidnapping is a felony of the first degree. A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 years or **[incompetent] an incapacitated person**, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

§ 2905. Interference with custody of committed persons.

* * *

(b) Definition.—As used in this section, the term “committed person” means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally [**defective or insane**] *disabled* person, or other dependent or [**incompetent**] *incapacitated* person entrusted to the custody of another by or through a recognized social agency or otherwise by authority of law.

§ 3206. Parental consent.

(a) General rule.—Except in the case of a medical emergency, or except as provided in this section, if a pregnant woman is less than 18 years of age and not emancipated, or if she has been adjudged an [**incompetent**] *incapacitated person* under 20 Pa.C.S. § 5511 (relating to petition and hearing; [**examination by court-appointed physician**] *independent evaluation*), a physician shall not perform an abortion upon her unless, in the case of a woman who is less than 18 years of age, he first obtains the informed consent both of the pregnant woman and of one of her parents; or, in the case of a woman who is [**incompetent**] *an incapacitated person*, he first obtains the informed consent of her guardian. In deciding whether to grant such consent, a pregnant woman’s parent or guardian shall consider only their child’s or ward’s best interests. In the case of a pregnancy that is the result of incest where the father is a party to the incestuous act, the pregnant woman need only obtain the consent of her mother.

* * *

(g) Coercion prohibited.—Except in a medical emergency, no parent, guardian or other person standing in loco parentis shall coerce a minor or [**incompetent**] *incapacitated* woman to undergo an abortion. Any minor or [**incompetent**] *incapacitated* woman who is threatened with such coercion may apply to a court of common pleas for relief. The court shall provide the minor or [**incompetent**] *incapacitated* woman with counsel, give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion. Should a minor be denied the financial support of her parents by reason of her refusal to undergo abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

* * *

(i) Penalty.—Any person who performs an abortion upon a woman who is an unemancipated minor or [**incompetent**] *incapacitated person* to whom this section applies either with knowledge that she is a minor or [**incompetent**] *incapacitated person* to whom this section applies, or with reckless disregard or negligence as to whether she is a minor or [**incompetent**] *incapacitated person* to whom this section applies, and who intentionally, knowingly or recklessly fails to conform to any requirement of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be suspended in accordance with procedures provided under the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or their successor acts, for a

period of at least three months. Failure to comply with the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of exemplary damages or damages for emotional distress even if unaccompanied by physical complications in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

Section 18. Section 2711(a) of Title 23 is amended to read:

§ 2711. Consents necessary to adoption.

(a) General rule.—Except as otherwise provided in this part, consent to an adoption shall be required of the following:

(1) The adoptee, if over 12 years of age.

(2) The spouse of the adopting parent, unless they join in the adoption petition.

(3) The parents or surviving parent of an adoptee who has not reached the age of 18 years.

(4) The guardian of an [incompetent] *incapacitated* adoptee.

(5) The guardian of the person of an adoptee under the age of 18 years, if any there be, or of the person or persons having the custody of the adoptee, if any such person can be found, whenever the adoptee has no parent whose consent is required.

* * *

Section 19. Section 5322(a) of Title 42 is amended to read:

§ 5322. Bases of personal jurisdiction over persons outside this Commonwealth.

(a) General rule.—A tribunal of this Commonwealth may exercise personal jurisdiction over a person (or the personal representative of a deceased individual who would be subject to jurisdiction under this subsection if not deceased) who acts directly or by an agent, as to a cause of action or other matter arising from such person:

(1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph:

(i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

(ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

(iii) The shipping of merchandise directly or indirectly into or through this Commonwealth.

(iv) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by any government unit of this Commonwealth.

- (v) The ownership, use or possession of any real property situate within this Commonwealth.
- (2) Contracting to supply services or things in this Commonwealth.
- (3) Causing harm or tortious injury by an act or omission in this Commonwealth.
- (4) Causing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth.
- (5) Having an interest in, using, or possessing real property in this Commonwealth.
- (6) (i) Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting.
(ii) Being a person who controls, or who is a director, officer, employee or agent of a person who controls, an insurance company incorporated in this Commonwealth or an alien insurer domiciled in this Commonwealth.
(iii) Engaging in conduct described in section 504 of the act of May 17, 1921 (P.L. 789, No. 285), known as [“]The Insurance Department Act of 1921.[”]
- (7) Accepting election or appointment or exercising powers under the authority of this Commonwealth as a:
 - (i) Personal representative of a decedent.
 - (ii) Guardian of a minor or **[incompetent] incapacitated person**.
 - (iii) Trustee or other fiduciary.
 - (iv) Director or officer of a corporation.
- (8) Executing any bond of any of the persons specified in paragraph (7).
- (9) Making application to any government unit for any certificate, license, permit, registration or similar instrument or authorization or exercising any such instrument or authorization.
- (10) Committing any violation within the jurisdiction of this Commonwealth of any statute, home rule charter, local ordinance or resolution, or rule or regulation promulgated thereunder by any government unit or of any order of court or other government unit.

* * *

Section 20. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 21. Except for the addition of 20 Pa.C.S. Ch. 54, the amendment of 20 Pa.C.S. shall apply to all guardianship proceedings in which petitions for the appointment of a guardian are filed subsequent to the effective date of this section. Where a petition has been filed prior to the effective date of this section but where a guardian has not yet been appointed, the procedures of the amendment of 20 Pa.C.S., except for the addition of 20 Pa.C.S. Ch. 54, shall apply. Existing guardianship may be modified by the court in accordance with the amendment of 20 Pa.C.S., except for the addition of 20 Pa.C.S. Ch. 54, upon petition of any interested party.

Section 22. This act shall take effect as follows:

- (1) The addition of 20 Pa.C.S. Ch. 54 shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 16th day of April, A. D. 1992.

ROBERT P. CASEY