## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## **HOUSE BILL**

No. 299

Session of 2015

INTRODUCED BY BIZZARRO, COHEN, KOTIK, SCHLOSSBERG, O'BRIEN, McNEILL, FREEMAN, GODSHALL, DAVIDSON, YOUNGBLOOD, MATZIE, DEASY, KORTZ, SNYDER, MURT, PETRI, MULLERY, THOMAS, WATSON, ROZZI, KINSEY, FLYNN, BISHOP, QUINN, D. COSTA, HARKINS, KIM, SONNEY, BROWNLEE, DAVIS, BLOOM, MAHONEY, FABRIZIO AND McCARTER, FEBRUARY 2, 2015

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 2, 2015

## AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in powers of attorney, 2 further providing for general provisions and for durable 3 powers of attorney. 4 5 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: 7 Section 1. Sections 5601(d) and 5604(d) of Title 20 of the 8 Pennsylvania Consolidated Statutes are amended to read: § 5601. General provisions. \* \* \* 10 Acknowledgment executed by agent. -- An agent shall have 11 12 no authority to act as agent under the power of attorney unless 13 the agent has first executed and affixed to the power of 14 attorney an acknowledgment in substantially the following form: 15 , have read the attached power of I, attorney and am the person identified as the agent for 16

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the principal. <u>I understand that if any intentional act</u>

Τ.	or omission on my part as the agent causes harm to the
2	principal, I may be subject to criminal penalties. I
3	hereby acknowledge that when I act as agent:
4	I shall act in accordance with the principal's
5	reasonable expectations to the extent actually known by
6	me and, otherwise, in the principal's best interest, act
7	in good faith and act only within the scope of authority
8	granted to me by the principal in the power of attorney.
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11	(Agent) (Date)
12	* * *
13	§ 5604. Durable powers of attorney.
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15	(d) Discovery of information and records regarding actions
16	of agent
17	(1) If the agency acting pursuant to the act of November
18	6, 1987 (P.L.381, No.79), known as the Older Adults
19	Protective Services Act, is denied access to records
20	necessary for the completion of a proper investigation of a
21	report or a client assessment and service plan or the
22	delivery of needed services in order to prevent further
23	abuse, neglect, exploitation or abandonment of the older
24	adult principal reported to be in need of protective
25	services, the agency may petition the court of common pleas
26	for an order requiring the appropriate access when [either]
27	any of the following conditions [applies] are met:
28	(i) the older adult principal has provided written
29	consent for confidential records to be disclosed and the
3 U	agent denies assess [or]

(ii) the agency can demonstrate that the older adult principal has denied or directed the agent to deny access to the records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment[.]; or

(iii) the agency has a good faith belief that a crime has been committed and alleges that the principal lacks the capacity to provide consent to the release of confidential records.

- (2) This petition may be filed in the county wherein the agent resides or has his principal place of business or, if a nonresident, in the county wherein the older adult principal resides. The court, after reasonable notice to the agent and to the older adult principal, may conduct a hearing on the petition.
- (3) Upon the failure of the agent to provide the requested information, the court may make and enforce such further orders.
- 19 (4) A determination to grant or deny an order, whether
  20 in whole or in part, shall not be considered a finding
  21 regarding the competence, capacity or impairment of the older
  22 adult principal, nor shall the granting or denial of an order
  23 preclude the availability of other remedies involving
  24 protection of the person or estate of the older adult
  25 principal or the rights and duties of the agent.
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27 Section 2. This act shall take effect in 60 days.