INTRODUCED BY DIAMOND, COX, METCALFE, ROWE, RYAN, ZIMMERMAN, MALONEY, STRUZZI, BOROWICZ, KEEFER, HERSHEY, RADER, NELSON, KAUFFMAN, ECKER, GLEIM, GREGORY, KNOWLES, DUSH, JONES, SCHEMEL, TOBASH, RAPP, MUSTELLO, PUSKARIC, WARNER, STAATS, MENTZER, TOPPER, BERNSTINE, DOWLING, RIGBY, GREINER, GROVE, LEWIS, GAYDOS, ROAE AND PYLE, APRIL 3, 2020

AS AMENDED, IN SENATE, JUNE 9, 2020

A CONCURRENT RESOLUTION

Terminating in part the March 6, 2020, Proclamation of Disaster Emergency issued under the hand and Seal of the Governor, Thomas Westerman Wolf.

WHEREAS, A novel coronavirus, known as COVID-19, entered the United States in late January 2020 and has spread through the states, including this Commonwealth, and

WHEREAS, On March 6, 2020, Governor Thomas Westerman Wolf issued a Proclamation of Disaster Emergency, published at 50 Pa.B. 1644 (March 21, 2020), citing a threat of imminent disaster that was projected to be of such a magnitude and severity as to necessitate extraordinary measures to protect the health, safety and life of this Commonwealth's citizens; and

WHEREAS, Since the issuance of the Proclamation of Disaster Emergency, the Governor and his administration have issued executive orders intended to mitigate the spread of COVID-19,
directly resulting in severe disruption to the Commonwealth and its political subdivisions and which have and continue to produce critical and in some cases irreversible short-term and long-term negative economic consequences; and

WHEREAS, Under the provisions of the Commonwealth's Emergency Management Code, specifically 35 Pa.C.S. § 7101 et seq., the General Assembly authorized the Governor to make a temporary proclamation or declaration of a disaster emergency by executive order for a period not to exceed 90 days if the health, safety or welfare of the citizens of this Commonwealth is threatened; and

WHEREAS, On March 19, 2020, the Governor proclaimed by executive order that certain business operations (termed non-life-sustaining) would be immediately closed for an indefinite period of time while other business operations (termed life-sustaining) could remain open to the public provided that the business operation adhered to "social distancing practices and other mitigation measures defined by the Centers for Disease Control and Prevention to protect workers and patrons"; and

WHEREAS, Since the Governor's March 19, 2020, business closure order, those business operations in this Commonwealth that were forced to close have experienced significant loss, massive layoffs, catastrophic economic injury and other unsustainable damage, some of which will never financially recover or reopen as a direct result; and

WHEREAS, Since the Governor's March 19, 2020, business closure order, more than 1.8 million Pennsylvanians have filed for unemployment benefits, or 27% of the workforce, rivaling the unemployment experienced during the Great Depression; and

WHEREAS, In an effort to more effectively manage the
mitigation of the spread of COVID-19 while safely permitting
critical businesses to reopen and allowing citizens to work, the-
General Assembly passed Senate Bill No. 613, Printer's No. 1636,
which provided for a COVID-19 Emergency Mitigation Plan for-
Businesses, that required the Governor to develop a business-
mitigation plan for this Commonwealth following the Federal-
guidance provided by the Centers for Disease Control and-
Prevention and conforming to the March 28, 2020, Advisory-
Memorandum on Identification of Essential Critical
Infrastructure Workers During COVID 19 Response, as published by-
the United States Cybersecurity and Infrastructure Security-
Agency (CISA); and

WHEREAS, On April 20, 2020, the Governor vetoed Senate Bill
No. 613, Printer's No. 1636, positing in his veto message that,
"Reopening tens of thousands of businesses too early will only-
increase the spread of the virus, place more lives at risk,
increase the death tolls, and extend the length of economic-
hardships created by the pandemic"; and

WHEREAS, In response to the severe and deteriorating negative-
economic consequences of the Governor's March 19, 2020, business-
closure order on businesses and workers in this Commonwealth,
the General Assembly passed House Bill No. 2388, Printer's No.
3719, which required the Secretary of Community and Economic-
Development to immediately issue waivers for the following-
business operations: vehicle dealers, lawn and garden centers,
cosmetology salons and barber shops, messenger services, animal-
grooming services and manufacturing operations; and required the-
business operations to adhere to social distancing practices and-
other mitigation measures defined by the Centers for Disease-
Control and Prevention and orders issued by the Secretary of
WHEREAS, On May 19, 2020, the Governor vetoed House Bill No. 2388, Printer's No. 3719, positing in his veto message that, "This legislation is an infringement on the authority and responsibility of the executive and violates the separation of powers which is critical to the proper functioning of our democracy"; and

WHEREAS, In continuing efforts to address the severe and unmitigated negative economic consequences to citizens seeking to purchase or sell a home in this Commonwealth, and in an effort to prevent homelessness, the General Assembly also passed House Bill No. 2412, Printer's No. 3720, which required the Secretary of Community and Economic Development to immediately issue a waiver to the Governor's March 19, 2020, business closure order to permit providers of real estate services, including legal services, residential and commercial real estate services and settlement services, to conduct business; and required the business operations to adhere to social distancing practices and other mitigation measures defined by the Centers for Disease Control and Prevention and orders issued by the Secretary of Health; and

WHEREAS, On May 19, 2020, the Governor vetoed House Bill No. 2412, Printer's No. 3720, positing in his veto message that, "This legislation is an infringement on the authority and responsibility of the executive and violates the separation of powers which is critical to the proper functioning of our democracy"; and

WHEREAS, As a result of the disparate impact that the COVID-19 virus is having among the Commonwealth's counties, where some counties experienced few cases of COVID-19 and others
experienced wider spread of the virus, the General Assembly passed Senate Bill No. 327, Printer's No. 1700, which, among other COVID-19 provisions, established the COVID-19 County Emergency Mitigation Plan for Businesses; and

WHEREAS, The COVID-19 County Emergency Mitigation Plan for Businesses authorized the governing body of a county, in consultation with its county emergency management agency, county health department, county health officer or any other appropriate health or emergency management official, to develop and implement a countywide plan to mitigate the spread of COVID-19 for businesses within the county, and required the business mitigation plan for the county follow the Federal guidance provided by the Centers for Disease Control and Prevention and conform to the March 28, 2020, Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, as published by CISA; and

WHEREAS, On May 19, 2020, the Governor vetoed Senate Bill No. 327, Printer's No. 1700, positing in his veto message that, "This prohibition is a legislative infringement on executive rule-making authority and violates the separation of powers which is critical to the proper functioning of our democracy"; and

WHEREAS, In response to the unprecedented and well documented economic harms being experienced by this Commonwealth's citizens and businesses, each chamber of the General Assembly has passed other legislation substantially similar to Senate Bill No. 613, House Bill No. 2388, House Bill No. 2412 and Senate Bill No. 327, to require the Secretary of Community and Economic Development to issue waivers to the Governor's March 19, 2020, business closure order for residential and commercial
construction, restaurant operations, outdoor events and curbside
retail services and required the business operations to adhere
to social distancing practices and other mitigation measures
defined by the Centers for Disease Control and Prevention and
orders issued by the Secretary of Health; and

WHEREAS, It is evident, notwithstanding bipartisan support
for these legislative efforts, and with apparent disregard to
the ongoing economic harm being experienced in this Commonwealth
by millions of citizens and businesses, that the Governor, by
and through his use of the temporary emergency powers under 35
Pa.C.S. § 7101 et seq., has demonstrated that he will not
cooperatively manage the COVID-19 crisis to the benefit of all
Pennsylvanians; and

WHEREAS, Since the issuance of the March 6, 2020,
Proclamation of Disaster Emergency, the documented cases of
COVID-19 have peaked and have continuously declined; and

WHEREAS, Based on data provided by the Department of Health,
the most immediate and direct threat posed by the COVID-19 virus
is to older citizens and those individuals with preexisting
health conditions, a fact which was referenced in the seventh
clause of the March 6, 2020, Proclamation of Disaster Emergency
that has now been proven; and

WHEREAS, 35 Pa.C.S. § 7301(c) provides broad contemporaneous
authority, without preconditions, to the General Assembly to
terminate all or part of a state of emergency by concurrent
resolution at any time; and

WHEREAS, On April 13, 2020, the Pennsylvania Supreme Court in
Friends of Danny DeVito v. Wolf (No. 68 MM 2020, 2020 WL
1847100), affirmed the General Assembly's authority to terminate
a state of emergency, writing that, "As a counterbalance to the
exercise of the broad powers granted to the Governor, the
Emergency Code provides that the General Assembly by concurrent-
resolution may terminate a state of disaster emergency at any-
time”; and
WHEREAS, The Court, in reviewing the takings without-
compensation claims raised by businesses subject to the
Governor's March 19, 2020, business closure order in Friends of
Danny DeVito v. Wolf, also specifically affirmed that the
Emergency Code, "provides the General Assembly with the ability
to terminate the order at any time. 35 Pa.C.S. § 7301(c)";
therefore be it
RESOLVED (the Senate concurring), That the General Assembly,
in consideration of the orders issued by the Governor to
mitigate the spread of COVID-19 and the effect the orders have
had on the public health and the Commonwealth's economy, hereby-
terminate in part the Proclamation of Disaster Emergency issued
on March 6, 2020, to the extent the Proclamation and the orders
issued pursuant to the Proclamation regulate the conduct of
business operations deemed non-life-sustaining differently than
the conduct of business operations deemed life-sustaining under
the March 19, 2020, business closure order as amended; and be it
further
RESOLVED, That upon adoption of this concurrent resolution by
both chambers of the General Assembly, the Chief Clerk of the
House of Representatives shall do all of the following:
(1) Transmit a copy of this resolution to the Secretary
of the Commonwealth as an official action of the General
Assembly under the authority provided under 35 Pa.C.S. §
7301(c) to terminate all or part of a state of emergency.
(2) Transmit a copy of this resolution to the Director
of the Pennsylvania Emergency Management Agency.

(3) Transmit this resolution to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin under 45 Pa.C.S. § 725(a)(4).

(4) Provide public notice of adoption of this resolution by publishing a summary of it in newspapers of general circulation in this Commonwealth within five days of adoption by the House of Representatives and the Senate.

WHEREAS, 35 PA.C.S. § 7301(C) (RELATING TO GENERAL AUTHORITY OF GOVERNOR) AUTHORIZES THE GOVERNOR TO DECLARE A STATE OF DISASTER EMERGENCY; AND

WHEREAS, ON MARCH 6, 2020, THE GOVERNOR ISSUED A PROCLAMATION DECLARING A DISASTER EMERGENCY IN RESPONSE TO THE EXISTENCE OF COVID-19 CASES IN PENNSYLVANIA; AND

WHEREAS, ON JUNE 3, 2020, THE GOVERNOR ISSUED AN AMENDMENT TO THE PROCLAMATION OF DISASTER EMERGENCY RENEWING THE MARCH 6, 2020, DECLARATION FOR AN ADDITIONAL 90 DAYS; AND

WHEREAS, THE JUNE 3, 2020, AMENDMENT PROVIDES THAT ALL "DIRECTIVES, AUTHORIZED ACTIONS AND PROVISIONS" OF THE MARCH 6, 2020, PROCLAMATION SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL RESCINDED BY THE GOVERNOR OR "TERMINATED BY LAW"; AND

WHEREAS, PURSUANT TO SECTION 12 OF ARTICLE I OF THE CONSTITUTION OF PENNSYLVANIA, THE POWER TO SUSPEND LAWS BELONGS TO THE LEGISLATURE; AND

WHEREAS, 35 PA.C.S. § 7301(C) AUTHORIZES THE GENERAL ASSEMBLY BY CONCURRENT RESOLUTION TO TERMINATE A STATE OF DISASTER EMERGENCY AT ANY TIME; AND

WHEREAS, 35 PA.C.S. § 7301(C) PROVIDES THAT UPON THE TERMINATION OF THE DECLARATION BY CONCURRENT RESOLUTION OF THE GENERAL ASSEMBLY, "THE GOVERNOR SHALL ISSUE AN EXECUTIVE ORDER..."
OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY";

THEREFORE BE IT

RESOLVED (THE SENATE CONCURRING), THAT THE GENERAL ASSEMBLY,
IN ACCORDANCE WITH 35 PA.C.S. § 7301(C) AND ITS ARTICLE I,
SECTION 12 POWER TO SUSPEND LAWS, HEREBY TERMINATE THE DISASTER
EMERGENCY DECLARED ON MARCH 6, 2020, AS AMENDED AND RENEWED, IN
RESPONSE TO COVID-19; AND BE IT FURTHER

RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY
BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE SECRETARY OF THE
SENATE SHALL NOTIFY THE GOVERNOR OF THE GENERAL ASSEMBLY'S
ACTION WITH THE DIRECTIVE THAT THE GOVERNOR ISSUE AN EXECUTIVE
ORDER OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY IN
ACCORDANCE WITH THIS RESOLUTION AND 35 PA.C.S. § 7301(C); AND BE
IT FURTHER

RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY
BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE CHIEF CLERK OF THE
HOUSE OF REPRESENTATIVES SHALL DO ALL OF THE FOLLOWING:

(1) TRANSMIT A COPY OF THIS RESOLUTION TO THE SECRETARY
OF THE COMMONWEALTH AS AN OFFICIAL ACTION OF THE GENERAL
ASSEMBLY UNDER THE AUTHORITY PROVIDED UNDER 35 PA.C.S. §
7301(C) TO TERMINATE A STATE OF EMERGENCY.

(2) TRANSMIT A COPY OF THIS RESOLUTION TO THE DIRECTOR
OF THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY.

(3) TRANSMIT THIS RESOLUTION TO THE LEGISLATIVE
REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA BULLETIN
UNDER 45 PA.C.S. § 725(A)(4).

(4) PROVIDE PUBLIC NOTICE OF ADOPTION OF THIS RESOLUTION
BY PUBLISHING A SUMMARY OF IT IN NEWSPAPERS OF GENERAL
CIRCULATION IN THIS COMMONWEALTH WITHIN FIVE DAYS OF ADOPTION
BY THE SENATE AND THE HOUSE OF REPRESENTATIVES.

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