AN ACT

1 Amending Titles 15 (Corporations and Unincorporated
2 Associations) and 20 (Decedents, Estates and Fiduciaries) of
3 the Pennsylvania Consolidated Statutes, establishing
4 financial restrictions related to the COVID-19 emergency; in
5 financial matters of domestic nonprofit corporations, further
6 providing for investment of trust funds; and, in principal
7 and income, further providing for charitable trusts.
8
9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 5548(c)(3) of Title 15 of the
12 Pennsylvania Consolidated Statutes is amended to read:
13 SECTION 1. SECTION 5548(C) AND (D) OF TITLE 15 OF THE
14 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED AND THE SECTION
15 IS AMENDED BY ADDING SUBSECTIONS TO READ:
16 § 5548. Investment of trust funds.
17 * * *
18 (c) Determination of income.--
19 * * *
20 (3) If an election is made to be governed by this
21 subsection, all of the following apply:
(i) The term "income" shall mean a percentage of the value of the assets so held by or for the corporation.

(ii) The board of directors or other body shall in a writing maintained as part of the permanent records of the corporation annually select a percentage and determine that it is consistent with the long-term preservation of the real value of the assets, but in no event shall the percentage:

(A) except as set forth in clause (B), be less than 2% nor more than 7% per year;

(B) be less than 2% nor more than 10% for:

(I) each calendar year during which the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency, is in effect; and

(II) the succeeding calendar year.

(1) UNLESS OTHERWISE SPECIFICALLY DIRECTED IN THE TRUST INSTRUMENT, THE BOARD OF DIRECTORS OR OTHER BODY MAY ELECT TO BE GOVERNED BY THIS SUBSECTION WITH RESPECT TO ASSETS RECEIVED, INCLUDING ANY PARTICIPATION IN ANY COMMON TRUST FUND.

(2) TO MAKE AN ELECTION UNDER THIS SUBSECTION, THE BOARD OF DIRECTORS OR OTHER BODY SHALL ADOPT AND FOLLOW AN INVESTMENT POLICY SEEKING A TOTAL RETURN FOR THE ASSETS HELD BY THE CORPORATION OR IN THE NAME OF A NOMINEE OF THE CORPORATION OR BY AN INSTITUTIONAL TRUSTEE PURSUANT TO SECTION 5549 (RELATING TO TRANSFER OF TRUST OR OTHER ASSETS TO INSTITUTIONAL TRUSTEE), WHETHER THE RETURN IS TO BE DERIVED FROM CAPITAL APPRECIATION, EARNINGS OR DISTRIBUTIONS.
WITH RESPECT TO THE CAPITAL OR BOTH. THE POLICY CONSTITUTING THE ELECTION SHALL BE IN WRITING, SHALL BE MAINTAINED AS PART OF THE PERMANENT RECORDS OF THE CORPORATION AND SHALL RECITE THAT IT CONSTITUTES AN ELECTION TO BE GOVERNED BY THIS SUBSECTION.

(3) (I) IF AN ELECTION IS MADE TO BE GOVERNED BY THIS SUBSECTION, THE TERM "INCOME" SHALL MEAN A PERCENTAGE OF THE VALUE OF THE ASSETS SO HELD BY OR FOR THE CORPORATION. [THE]

(II) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (III), THE BOARD OF DIRECTORS OR OTHER BODY SHALL IN A WRITING MAINTAINED AS PART OF THE PERMANENT RECORDS OF THE CORPORATION ANNUALLY SELECT A PERCENTAGE AND DETERMINE THAT IT IS CONSISTENT WITH THE LONG-TERM PRESERVATION OF THE REAL VALUE OF THE ASSETS, BUT IN NO EVENT SHALL THE PERCENTAGE BE LESS THAN 2% NOR MORE THAN 7% PER YEAR.

(III) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY SHALL, IN SELECTING A PERCENTAGE, CONSIDER BOTH THE LONG-TERM PRESERVATION OF THE REAL VALUE OF THE ASSETS AND THE CORPORATION'S NEED FOR CAPITAL TO FULFILL ITS MISSION AND MAY SELECT A PERCENTAGE OF NOT MORE THAN 10% PER YEAR. THIS SUBPARAGRAPH SHALL ONLY APPLY DURING CALENDAR YEARS 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL YEARS THAT END DURING THOSE CALENDAR YEARS.

(4) THE BOARD OF DIRECTORS OR OTHER BODY MAY REVOKE AN ELECTION TO BE GOVERNED BY THIS SUBSECTION IF THE REVOCATION IS MADE AS PART OF AN ALTERNATIVE INVESTMENT POLICY SEEKING THE LONG-TERM PRESERVATION OF THE REAL VALUE OF THE ASSETS THUS RECEIVED. THE REVOCATION AND ALTERNATIVE INVESTMENT
POLICY SHALL BE IN WRITING AND MAINTAINED AS PART OF THE
PERMANENT RECORDS OF THE CORPORATION.

(5) FOR PURPOSES OF APPLYING THIS SUBSECTION, THE VALUE
OF THE ASSETS OF THE CORPORATION SHALL BE THE FAIR MARKET
VALUE OF THE ASSETS SO HELD BY OR FOR THE CORPORATION,
DETERMINED AT LEAST ANNUALLY AND AVERAGED OVER A PERIOD OF
THREE OR MORE PRECEDING YEARS. HOWEVER, IF THE ASSETS HAVE
BEEN HELD FOR LESS THAN THREE YEARS, THE AVERAGE SHALL BE
determined over the period during which the assets have been
held.

(D) SCOPE OF SECTION.--[THIS SECTION] SUBSECTIONS (A), (B)
AND (C) SHALL APPLY TO ASSETS HEREAFTER RECEIVED PURSUANT TO
SECTION 5547 (RELATING TO AUTHORITY TO TAKE AND HOLD TRUST
PROPERTY), TO ASSETS HERETOFORE SO RECEIVED AND HELD AT THE TIME
WHEN THIS ARTICLE TAKES EFFECT AND TO REINVESTMENTS OF ALL SUCH
ASSETS.

(D.1) NONJUDICIAL SETTLEMENT AGREEMENT.--

(1) NOTWITHSTANDING SECTION 5547(B), EXCEPT AS EXPRESSLY
PROVIDED IN THE GIFT INSTRUMENT AND AS OTHERWISE PROVIDED IN
SUBSECTION (D.2), IF THE DONOR PLACED RESTRICTIONS ON THE USE
OR MANAGEMENT OF PROPERTY TRANSFERRED TO A NONPROFIT
CORPORATION, THE DONOR OR ANYONE THE DONOR APPOINTED FOR THE
PURPOSE IN THE GIFT INSTRUMENT, OR THE GUARDIAN OF THE
DONOR'S PROPERTY, THE AGENT UNDER THE DONOR'S FINANCIAL POWER
OF ATTORNEY OR THE DONOR'S PERSONAL REPRESENTATIVE, TOGETHER
WITH THE NONPROFIT CORPORATION HOLDING THE PROPERTY, MAY
ENTER INTO A BINDING NONJUDICIAL SETTLEMENT AGREEMENT WITH
RESPECT TO ANY MATTER INVOLVING THE PROPERTY, INCLUDING A
RESTRICTION.

(2) THIS SUBSECTION SHALL ONLY APPLY DURING CALENDAR
YEARS 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL
YEARS THAT END DURING THOSE CALENDAR YEARS.

(D.2) EXCEPTION.--

(1) NOTWITHSTANDING SECTION 5547(B), A NONJUDICIAL
SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT INCLUDES
TERMS AND CONDITIONS THAT THE COURT COULD APPROVE UNDER THIS
CHAPTER OR OTHER APPLICABLE LAW, AND THAT THE PROPERTY
REMAINS COMMITTED TO A CHARITABLE PURPOSE OR PURPOSES.

(2) THIS SUBSECTION SHALL ONLY APPLY DURING CALENDAR
YEARS 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL
YEARS THAT END DURING THOSE CALENDAR YEARS.

(D.3) REQUEST OF COURT.--

(1) NOTWITHSTANDING SECTION 5547(B), A NONPROFIT
CORPORATION MAY REQUEST THE COURT TO REVIEW A NONJUDICIAL
SETTLEMENT AGREEMENT IN ORDER TO DETERMINE WHETHER THE
AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE
APPROVED.

(2) THIS SUBSECTION SHALL ONLY APPLY DURING CALENDAR
YEARS 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL
YEARS THAT END DURING THOSE CALENDAR YEARS.

(D.4) PROCEEDING TO ENFORCE GIFT INSTRUMENT.--

(1) NOTWITHSTANDING SECTION 5547(B), A PROCEEDING TO
ENFORCE A GIFT INSTRUMENT RELATED TO ASSETS HELD BY A
NONPROFIT CORPORATION FOR A CHARITABLE PURPOSE MAY BE BROUGHT
BY THE DONOR DURING THE DONOR'S LIFETIME OR AT ANY TIME BY
THE OFFICE OF THE ATTORNEY GENERAL, BY A CHARITABLE
ORGANIZATION EXPRESSLY NAMED IN THE GIFT INSTRUMENT TO
RECEIVE ANY PORTION OF THE ASSETS GOVERNED BY THE GIFT
INSTRUMENT OR BY ANY OTHER PERSON HAVING STANDING TO DO SO,
WHICH MAY INCLUDE ANYONE APPOINTED IN THE GIFT INSTRUMENT.
(2) THIS SUBSECTION SHALL ONLY APPLY DURING CALENDAR YEARS 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL YEARS THAT END DURING THOSE CALENDAR YEARS.

* * *

Section 2. Section 8113(c) of Title 20 is amended to read:

§ 8113. Charitable trusts.

* * *

(c) Effect of election. If an election is made to be governed by this section, all of the following apply:

(1) The term "income" shall mean a percentage of the value of the trust.

(2) The trustee shall, in a writing maintained as part of the permanent records of the trust, select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but in no event shall the percentage:

(i) except as set forth in subparagraph (ii), be less than 2% nor more than 7% per year; or

(ii) be less than 2% nor more than 10% for:

(A) each calendar year during which the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency, is in effect; and

(B) the succeeding calendar year.

(3) The term "principal" shall mean all other assets held by the trustee with respect to the trust.

(4) The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.
(C) EFFECT OF ELECTION.--

(1) IF AN ELECTION IS MADE TO BE GOVERNED BY THIS SECTION, THE TERM "INCOME" SHALL MEAN A PERCENTAGE OF THE VALUE OF THE TRUST.

(2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3), THE TRUSTEE SHALL, IN A WRITING MAINTAINED AS PART OF THE PERMANENT RECORDS OF THE TRUST, SELECT THE PERCENTAGE AND DETERMINE THAT IT IS CONSISTENT WITH THE LONG-TERM PRESERVATION OF THE REAL VALUE OF THE PRINCIPAL OF THE TRUST, BUT IN NO EVENT SHALL THE PERCENTAGE BE LESS THAN 2% NOR MORE THAN 7% PER YEAR.

(3) THE TRUSTEE SHALL CONSIDER THE LONG-TERM PRESERVATION OF THE REAL VALUE OF THE TRUST ASSETS IN SELECTING A PERCENTAGE AND, AS TO EACH CHARITABLE ORGANIZATION TO WHICH THE TRUSTEE IS REQUIRED TO OR MAY DISTRIBUTE FUNDS, SHALL CONSIDER THE ORGANIZATION'S NEED FOR CAPITAL TO FULFILL ITS MISSION AND COMMUNICATE WITH THE ORGANIZATION TO MAKE THAT DETERMINATION, IN SELECTING A PERCENTAGE, AND MAY SELECT A PERCENTAGE AS GREAT AS 10% PER YEAR. THIS PARAGRAPH SHALL ONLY APPLY DURING CALENDAR YEARS 2020, 2021 AND 2022, OR FOR THE TRUST'S FISCAL YEARS THAT END DURING THOSE CALENDAR YEARS.

(4) THE TERM "PRINCIPAL" SHALL MEAN ALL OTHER ASSETS HELD BY THE TRUSTEE WITH RESPECT TO THE TRUST. THE SELECTION MAY BE MADE EITHER ANNUALLY OR SUBJECT TO CHANGE ONLY WHEN THE TRUSTEE DEEMS SUCH CHANGE NECESSARY AND PRUDENT.

* * *

Section 3. This act shall take effect immediately.