HOUSE BILL
No. 2484 Session of 2020

INTRODUCED BY WHITE AND KORTZ, MAY 5, 2020

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MAY 28, 2020

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 PROVIDING FOR
7 NONJUDICIAL SETTLEMENT AGREEMENT; and, in principal and
8 income, further providing for charitable trusts.
9
10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:
12
13 Section 1. Section 5548(c) and (d) of Title 15 of the
14 Pennsylvania Consolidated Statutes are IS amended and the
15 section is amended by adding subsections to read:
16
17 § 5548. Investment of trust funds.
18
19 (c) Determination of income.--
20
21 (1) Unless otherwise specifically directed in the trust
22 instrument, the board of directors or other body may elect to
23 be governed by this subsection with respect to assets thus
24 received, including any participation in any common trust
25 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. TITLE 15 IS AMENDED BY ADDING A SECTION TO READ: <--

§ 5548.1. NONJUDICIAL SETTLEMENT AGREEMENT.

NOTWITHSTANDING SECTION 5547(B) (RELATING TO AUTHORITY TO
TAKE AND HOLD TRUST PROPERTY):

(1) EXCEPT AS EXPRESSLY PROVIDED IN THE GIFT INSTRUMENT
 AND AS OTHERWISE PROVIDED IN PARAGRAPH (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 DURING CALENDAR YEARS 2020, 2021 AND
 2022, OR THE NONPROFIT CORPORATION'S FISCAL YEARS THAT END
 DURING THOSE CALENDAR YEARS WITH RESPECT TO ANY MATTER
 INVOLVING THE PROPERTY, INCLUDING A RESTRICTION.

(2) 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.

(3) A NONPROFIT CORPORATION MAY REQUEST, DURING CALENDAR
YEARS 2020, 2021 AND 2022, OR THE NONPROFIT CORPORATION'S
FISCAL YEARS THAT END DURING THOSE CALENDAR YEARS, THE COURT
TO REVIEW A NONJUDICIAL SETTLEMENT AGREEMENT IN ORDER TO
DETERMINE WHETHER THE AGREEMENT CONTAINS TERMS AND CONDITIONS
THE COURT COULD HAVE APPROVED.

(4) A PROCEEDING COMMENCED DURING CALENDAR YEARS 2020,
2021 AND 2022, OR THE NONPROFIT CORPORATION'S FISCAL YEARS
THAT END DURING THOSE CALENDAR YEARS, TO ENFORCE A GIFT
INSTRUMENT RELATED TO ASSETS HELD BY A NONPROFIT CORPORATION
FOR A CHARITABLE PURPOSE, WHETHER OR NOT SUBJECT TO A
NONJUDICIAL SETTLEMENT AGREEMENT, 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 AND NONJUDICIAL SETTLEMENT
AGREEMENT, IF APPLICABLE, TO RECEIVE ANY PORTION OF THE
ASSETS GOVERNED BY THE GIFT INSTRUMENT AND NONJUDICIAL
SETTLEMENT AGREEMENT, IF APPLICABLE, OR BY ANY OTHER PERSON
HAVING STANDING TO DO SO, WHICH MAY INCLUDE ANYONE APPOINTED
IN THE GIFT INSTRUMENT.

Section 23. Section 8113(c) of Title 20 is amended to read:

§ 8113. Charitable trusts.

* * *

(c) Effect of election.--

(1) If an election is made to be governed by this
section, [governed by this section,] the term "income" shall
mean a percentage of the value of the trust. [The]

(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[4] 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 4. This act shall take effect immediately. <--