

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2484 Session of 2020

INTRODUCED BY WHITE, MAY 5, 2020

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 20, 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, in principal
7 and income, further providing for charitable trusts.

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

10 Section 1. ~~Section 5548(c)(3) of Title 15 of the~~ <--
11 ~~Pennsylvania Consolidated Statutes is amended to read:~~

12 SECTION 1. SECTION 5548(C) AND (D) OF TITLE 15 OF THE <--
13 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED AND THE SECTION
14 IS AMENDED BY ADDING SUBSECTIONS TO READ:

15 § 5548. Investment of trust funds.

16 * * *

17 (c) Determination of income.--

18 * * *

19 ~~(3) If an election is made to be governed by this~~ <--
20 ~~subsection, all of the following apply:~~

1 ~~(i) The term "income" shall mean a percentage of the~~
2 ~~value of the assets so held by or for the corporation.~~

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

9 ~~(A) except as set forth in clause (B), be less~~
10 ~~than 2% nor more than 7% per year[.]; or~~

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

12 ~~(I) each calendar year during which the~~
13 ~~proclamation of disaster emergency issued by the~~
14 ~~Governor on March 6, 2020, published at 50 Pa.B.~~
15 ~~1644 (March 21, 2020), and any renewal of the~~
16 ~~state of disaster emergency, is in effect; and~~

17 ~~(II) the succeeding calendar year.~~

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

23 (2) TO MAKE AN ELECTION UNDER THIS SUBSECTION, THE BOARD
24 OF DIRECTORS OR OTHER BODY SHALL ADOPT AND FOLLOW AN
25 INVESTMENT POLICY SEEKING A TOTAL RETURN FOR THE ASSETS HELD
26 BY THE CORPORATION OR IN THE NAME OF A NOMINEE OF THE
27 CORPORATION OR BY AN INSTITUTIONAL TRUSTEE PURSUANT TO
28 SECTION 5549 (RELATING TO TRANSFER OF TRUST OR OTHER ASSETS
29 TO INSTITUTIONAL TRUSTEE), WHETHER THE RETURN IS TO BE
30 DERIVED FROM CAPITAL APPRECIATION, EARNINGS OR DISTRIBUTIONS

1 WITH RESPECT TO THE CAPITAL OR BOTH. THE POLICY CONSTITUTING
2 THE ELECTION SHALL BE IN WRITING, SHALL BE MAINTAINED AS PART
3 OF THE PERMANENT RECORDS OF THE CORPORATION AND SHALL RECITE
4 THAT IT CONSTITUTES AN ELECTION TO BE GOVERNED BY THIS
5 SUBSECTION.

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

10 (II) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH
11 (III), THE BOARD OF DIRECTORS OR OTHER BODY SHALL IN A
12 WRITING MAINTAINED AS PART OF THE PERMANENT RECORDS OF
13 THE CORPORATION ANNUALLY SELECT A PERCENTAGE AND
14 DETERMINE THAT IT IS CONSISTENT WITH THE LONG-TERM
15 PRESERVATION OF THE REAL VALUE OF THE ASSETS, BUT IN NO
16 EVENT SHALL THE PERCENTAGE BE LESS THAN 2% NOR MORE THAN
17 7% PER YEAR.

18 (III) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY
19 SHALL, IN SELECTING A PERCENTAGE, CONSIDER BOTH THE LONG-
20 TERM PRESERVATION OF THE REAL VALUE OF THE ASSETS AND THE
21 CORPORATION'S NEED FOR CAPITAL TO FULFILL ITS MISSION AND
22 MAY SELECT A PERCENTAGE OF NOT MORE THAN 10% PER YEAR.
23 THIS SUBPARAGRAPH SHALL ONLY APPLY DURING CALENDAR YEARS
24 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL
25 YEARS THAT END DURING THOSE CALENDAR YEARS.

26 (4) THE BOARD OF DIRECTORS OR OTHER BODY MAY REVOKE AN
27 ELECTION TO BE GOVERNED BY THIS SUBSECTION IF THE REVOCATION
28 IS MADE AS PART OF AN ALTERNATIVE INVESTMENT POLICY SEEKING
29 THE LONG-TERM PRESERVATION OF THE REAL VALUE OF THE ASSETS
30 THUS RECEIVED. THE REVOCATION AND ALTERNATIVE INVESTMENT

1 POLICY SHALL BE IN WRITING AND MAINTAINED AS PART OF THE
2 PERMANENT RECORDS OF THE CORPORATION.

3 (5) FOR PURPOSES OF APPLYING THIS SUBSECTION, THE VALUE
4 OF THE ASSETS OF THE CORPORATION SHALL BE THE FAIR MARKET
5 VALUE OF THE ASSETS SO HELD BY OR FOR THE CORPORATION,
6 DETERMINED AT LEAST ANNUALLY AND AVERAGED OVER A PERIOD OF
7 THREE OR MORE PRECEDING YEARS. HOWEVER, IF THE ASSETS HAVE
8 BEEN HELD FOR LESS THAN THREE YEARS, THE AVERAGE SHALL BE
9 DETERMINED OVER THE PERIOD DURING WHICH THE ASSETS HAVE BEEN
10 HELD.

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

17 (D.1) NONJUDICIAL SETTLEMENT AGREEMENT.--

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

30 (2) THIS SUBSECTION SHALL ONLY APPLY DURING CALENDAR

1 YEARS 2020, 2021 AND 2022, OR FOR THE CORPORATION'S FISCAL
2 YEARS THAT END DURING THOSE CALENDAR YEARS.

3 (D.2) EXCEPTION.--

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

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

12 (D.3) REQUEST OF COURT.--

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

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

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

22 (1) NOTWITHSTANDING SECTION 5547(B), A PROCEEDING TO
23 ENFORCE A GIFT INSTRUMENT RELATED TO ASSETS HELD BY A
24 NONPROFIT CORPORATION FOR A CHARITABLE PURPOSE MAY BE BROUGHT
25 BY THE DONOR DURING THE DONOR'S LIFETIME OR AT ANY TIME BY
26 THE OFFICE OF THE ATTORNEY GENERAL, BY A CHARITABLE
27 ORGANIZATION EXPRESSLY NAMED IN THE GIFT INSTRUMENT TO
28 RECEIVE ANY PORTION OF THE ASSETS GOVERNED BY THE GIFT
29 INSTRUMENT OR BY ANY OTHER PERSON HAVING STANDING TO DO SO,
30 WHICH MAY INCLUDE ANYONE APPOINTED IN THE GIFT INSTRUMENT.

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

4 * * *

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

6 § 8113. Charitable trusts.

7 * * *

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

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

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

17 ~~(i) except as set forth in subparagraph (ii), be~~
18 ~~less than 2% nor more than 7% per year[.]; or~~

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

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

25 ~~(B) the succeeding calendar year.~~

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

28 ~~(4) The selection may be made either annually or subject~~
29 ~~to change only when the trustee deems such change necessary~~
30 ~~and prudent.~~

1 (C) EFFECT OF ELECTION.--

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

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

12 (3) THE TRUSTEE SHALL CONSIDER THE LONG-TERM
13 PRESERVATION OF THE REAL VALUE OF THE TRUST ASSETS IN
14 SELECTING A PERCENTAGE AND, AS TO EACH CHARITABLE
15 ORGANIZATION TO WHICH THE TRUSTEE IS REQUIRED TO OR MAY
16 DISTRIBUTE FUNDS, SHALL CONSIDER THE ORGANIZATION'S NEED FOR
17 CAPITAL TO FULFILL ITS MISSION AND COMMUNICATE WITH THE
18 ORGANIZATION TO MAKE THAT DETERMINATION, IN SELECTING A
19 PERCENTAGE, AND MAY SELECT A PERCENTAGE AS GREAT AS 10% PER
20 YEAR. THIS PARAGRAPH SHALL ONLY APPLY DURING CALENDAR YEARS
21 2020, 2021 AND 2022, OR FOR THE TRUST'S FISCAL YEARS THAT END
22 DURING THOSE CALENDAR YEARS.

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

27 * * *

28 Section 3. This act shall take effect immediately.