

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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

11 Section 1. Section 5548(c) and (d) of Title 15 of the <--
12 Pennsylvania Consolidated Statutes are IS amended and the <--
13 section is amended by adding subsections to read:

14 § 5548. Investment of trust funds.

15 * * *

16 (c) Determination of income.--

17 (1) Unless otherwise specifically directed in the trust
18 instrument, the board of directors or other body may elect to
19 be governed by this subsection with respect to assets thus
20 received, including any participation in any common trust
21 fund.

1 (2) To make an election under this subsection, the board
2 of directors or other body shall adopt and follow an
3 investment policy seeking a total return for the assets held
4 by the corporation or in the name of a nominee of the
5 corporation or by an institutional trustee pursuant to
6 section 5549 (relating to transfer of trust or other assets
7 to institutional trustee), whether the return is to be
8 derived from capital appreciation, earnings or distributions
9 with respect to the capital or both. The policy constituting
10 the election shall be in writing, shall be maintained as part
11 of the permanent records of the corporation and shall recite
12 that it constitutes an election to be governed by this
13 subsection.

14 (3) (i) If an election is made to be governed by this
15 subsection, the term "income" shall mean a percentage of
16 the value of the assets so held by or for the
17 corporation. [The]

18 (ii) Except as otherwise provided in subparagraph
19 (iii), the board of directors or other body shall in a
20 writing maintained as part of the permanent records of
21 the corporation annually select a percentage and
22 determine that it is consistent with the long-term
23 preservation of the real value of the assets, but in no
24 event shall the percentage be less than 2% nor more than
25 7% per year.

26 (iii) The board of directors or other governing body
27 shall, in selecting a percentage, consider both the long-
28 term preservation of the real value of the assets and the
29 corporation's need for capital to fulfill its mission and
30 may select a percentage of not more than 10% per year.

1 This subparagraph shall only apply during calendar years
2 2020, 2021 and 2022, or for the corporation's fiscal
3 years that end during those calendar years.

4 (4) The board of directors or other body may revoke an
5 election to be governed by this subsection if the revocation
6 is made as part of an alternative investment policy seeking
7 the long-term preservation of the real value of the assets
8 thus received. The revocation and alternative investment
9 policy shall be in writing and maintained as part of the
10 permanent records of the corporation.

11 (5) For purposes of applying this subsection, the value
12 of the assets of the corporation shall be the fair market
13 value of the assets so held by or for the corporation,
14 determined at least annually and averaged over a period of
15 three or more preceding years. However, if the assets have
16 been held for less than three years, the average shall be
17 determined over the period during which the assets have been
18 held.

19 ~~(d) Scope of section. [This section] Subsections (a), (b) <--~~
20 ~~and (c) shall apply to assets hereafter received pursuant to~~
21 ~~section 5547 (relating to authority to take and hold trust~~
22 ~~property), to assets heretofore so received and held at the time~~
23 ~~when this article takes effect and to reinvestments of all such~~
24 ~~assets.~~

25 ~~(d.1) Nonjudicial settlement agreement.~~

26 ~~(1) Notwithstanding section 5547(b), except as expressly~~
27 ~~provided in the gift instrument and as otherwise provided in~~
28 ~~subsection (d.2), if the donor placed restrictions on the use~~
29 ~~or management of property transferred to a nonprofit~~
30 ~~corporation, the donor or anyone the donor appointed for the~~

1 ~~purpose in the gift instrument, or the guardian of the~~
2 ~~donor's property, the agent under the donor's financial power~~
3 ~~of attorney or the donor's personal representative, together~~
4 ~~with the nonprofit corporation holding the property, may~~
5 ~~enter into a binding nonjudicial settlement agreement with~~
6 ~~respect to any matter involving the property, including a~~
7 ~~restriction.~~

8 ~~(2) This subsection shall only apply during calendar~~
9 ~~years 2020, 2021 and 2022, or for the corporation's fiscal~~
10 ~~years that end during those calendar years.~~

11 ~~(d.2) Exception.~~

12 ~~(1) Notwithstanding section 5547(b), a nonjudicial~~
13 ~~settlement agreement is valid only to the extent it includes~~
14 ~~terms and conditions that the court could approve under this~~
15 ~~chapter or other applicable law, and that the property~~
16 ~~remains committed to a charitable purpose or purposes.~~

17 ~~(2) This subsection shall only apply during calendar~~
18 ~~years 2020, 2021 and 2022, or for the corporation's fiscal~~
19 ~~years that end during those calendar years.~~

20 ~~(d.3) Request of court.~~

21 ~~(1) Notwithstanding section 5547(b), a nonprofit~~
22 ~~corporation may request the court to review a nonjudicial~~
23 ~~settlement agreement in order to determine whether the~~
24 ~~agreement contains terms and conditions the court could have~~
25 ~~approved.~~

26 ~~(2) This subsection shall only apply during calendar~~
27 ~~years 2020, 2021 and 2022, or for the corporation's fiscal~~
28 ~~years that end during those calendar years.~~

29 ~~(d.4) Proceeding to enforce gift instrument.~~

30 ~~(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

1 THE EXTENT IT INCLUDES TERMS AND CONDITIONS THAT THE COURT
2 COULD APPROVE UNDER THIS CHAPTER OR OTHER APPLICABLE LAW AND
3 THAT THE PROPERTY REMAINS COMMITTED TO A CHARITABLE PURPOSE
4 OR PURPOSES.

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

11 (4) A PROCEEDING COMMENCED DURING CALENDAR YEARS 2020,
12 2021 AND 2022, OR THE NONPROFIT CORPORATION'S FISCAL YEARS
13 THAT END DURING THOSE CALENDAR YEARS, TO ENFORCE A GIFT
14 INSTRUMENT RELATED TO ASSETS HELD BY A NONPROFIT CORPORATION
15 FOR A CHARITABLE PURPOSE, WHETHER OR NOT SUBJECT TO A
16 NONJUDICIAL SETTLEMENT AGREEMENT, MAY BE BROUGHT BY THE DONOR
17 DURING THE DONOR'S LIFETIME OR AT ANY TIME BY THE OFFICE OF
18 THE ATTORNEY GENERAL, BY A CHARITABLE ORGANIZATION EXPRESSLY
19 NAMED IN THE GIFT INSTRUMENT AND NONJUDICIAL SETTLEMENT
20 AGREEMENT, IF APPLICABLE, TO RECEIVE ANY PORTION OF THE
21 ASSETS GOVERNED BY THE GIFT INSTRUMENT AND NONJUDICIAL
22 SETTLEMENT AGREEMENT, IF APPLICABLE, OR BY ANY OTHER PERSON
23 HAVING STANDING TO DO SO, WHICH MAY INCLUDE ANYONE APPOINTED
24 IN THE GIFT INSTRUMENT.

25 Section 2 3. Section 8113(c) of Title 20 is amended to read: <--

26 § 8113. Charitable trusts.

27 * * *

28 (c) Effect of election.--

29 (1) If an election is made to be governed by this
30 section, [governed by this section,] the term "income" shall

1 mean a percentage of the value of the trust. [The]

2 (2) Except as otherwise provided in paragraph (3), the
3 trustee shall, in a writing maintained as part of the
4 permanent records of the trust, select the percentage and
5 determine that it is consistent with the long-term
6 preservation of the real value of the principal of the
7 trust[,] but in no event shall the percentage be less than 2%
8 nor more than 7% per year.

9 (3) The trustee shall consider the long-term
10 preservation of the real value of the trust assets in
11 selecting a percentage and, as to each charitable
12 organization to which the trustee is required to or may
13 distribute funds, shall consider the organization's need for
14 capital to fulfill its mission and communicate with the
15 organization to make that determination, in selecting a
16 percentage, and may select a percentage as great as 10% per
17 year. This paragraph shall only apply during calendar years
18 2020, 2021 and 2022, or for the trust's fiscal years that end
19 during those calendar years.

20 (4) The term "principal" shall mean all other assets
21 held by the trustee with respect to the trust. The selection
22 may be made either annually or subject to change only when
23 the trustee deems such change necessary and prudent.

24 * * *

25 Section 3 4. This act shall take effect immediately.

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