

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 809 Session of
2001

INTRODUCED BY O'BRIEN, M. BAKER, BARRAR, BELFANTI, CALTAGIRONE,
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MICOZZIE, MUNDY, ORIE, PRESTON, SATHER, SAYLOR, SHANER,
E. Z. TAYLOR, THOMAS, TIGUE, WALKO, C. WILLIAMS AND WILT,
FEBRUARY 26, 2001

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 26, 2001

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)
2 of the Pennsylvania Consolidated Statutes, adding provisions
3 relating to fundamental changes to charitable nonprofit
4 corporations; and further providing for judicial supervision
5 of certain proceedings.

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

8 Section 1. Title 15 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 5906. Charitable nonprofit corporations.

11 (a) General rule.--Where any provision of this subchapter or
12 subchapter C (relating to merger, consolidation and sale of
13 assets), D (relating to division), E (relating to conversion), F
14 (relating to voluntary dissolution and winding up), G (relating
15 to involuntary liquidation and dissolution) or H (relating to
16 postdissolution provision for liabilities) relates to a
17 nonprofit corporation incorporated for any charitable purpose or

purposes as defined under section 5103 (relating to definitions):

(1) No action shall take effect unless, after notice to the Attorney General, an order of the court approving the proposed transaction has been obtained, except as provided in subsection (f)(3).

(2) No affiliation, amendment of articles of incorporation, partnership, joint venture, gift or other transaction, which results in a change in control of all or substantially all of the assets of a nonprofit corporation incorporated for any charitable purpose or purposes defined under section 5103, shall take effect unless, after notice to the Attorney General, an order of court approving the proposed transaction has been obtained, except as provided in subsection (f)(3).

(b) Notice to Attorney General.--

(1) At least 90 days' advance written notice of any proceeding in a court concerning the proposed transaction shall be provided to the Attorney General at his principal office in Harrisburg, Pennsylvania. The notice shall include or be accompanied by any documents or information the Attorney General may request.

(2) Within 30 days after receipt of the notice required by this section, the Attorney General shall notify the nonprofit charitable corporation in writing of the Attorney General's decision on whether the proposed transaction requires further review or a recommendation to require court approval.

(c) Scope of Attorney General's review.--In reviewing the proposed transaction, the Attorney General may consider:

1 (1) Whether the fiduciary responsibilities of trustees,
2 officers and directors, particularly relative to the exercise
3 of due diligence, have been appropriately discharged.

4 (2) Whether the nonprofit charitable corporation will
5 receive fair market value for its charitable assets.

6 (3) Whether the transaction is at arm's length or will
7 result in private inurement to any person.

8 (4) Whether the remaining or successor charitable
9 organization utilizes the assets for a charitable purpose
10 consistent with the articles of incorporation, as amended, of
11 the original nonprofit corporation.

12 (5) Whether the parties to the transaction have
13 petitioned the court under subsection (f) for an appropriate
14 cy pres proceeding as to the application of the charitable
15 assets after the transaction is completed.

16 (6) The solvency of the remaining or successor
17 charitable organization after the transaction is complete.

18 (d) Cost of Attorney General's review.--

19 (1) The Attorney General may contract with independent
20 experts and consultants in evaluating the propriety and
21 effects of the proposed transaction and shall be reimbursed
22 for all reasonable costs and expenses incurred therefor by
23 the identified parties, regardless of the Attorney General's
24 position concerning the proposed transaction or the court's
25 ultimate disposition of the same.

26 (2) Within a reasonable time after notice is given to
27 the Attorney General pursuant to subsection (b), the Attorney
28 General shall notify the parties to the transaction of their
29 obligations under this subsection. The parties to the
30 transaction must agree to any expenditures for experts

1 exceeding \$100,000 and in the event such expenses imposed
2 upon the charitable nonprofit organization exceed a total of
3 \$150,000, then the excess of that amount shall be borne by
4 the Office of the Attorney General.

5 (3) The parties to the transaction may petition the
6 court for a review and adjustment of the costs and expenses
7 incurred under this subsection.

8 (e) Public hearings, notice of time and place.--

9 (1) The Attorney General may conduct one or more public
10 hearings, one of which must be held in the county where the
11 nonprofit charitable corporation affected by the transaction
12 is located. At the public hearing, the Attorney General may
13 hear comments from interested persons desiring to make
14 statements regarding the proposed transaction.

15 (2) The Attorney General shall notify the parties to the
16 transaction of any public hearing to be held at least 14 days
17 prior to the date selected for the hearing.

18 (f) Court approval required.--

19 (1) Except as provided in paragraph (3), no fundamental
20 change or transaction subject to the provisions of this
21 section shall be effective unless and until an order of court
22 has been obtained approving the transaction. The action shall
23 be brought in the county or counties in which the registered
24 office or offices of the affected charitable nonprofit
25 corporation or corporations are located and shall be
26 published in at least two newspapers of general circulation
27 in each county involved. All transaction documents shall be
28 submitted to the court and the same shall be available for
29 public inspection, except for information determined by the
30 Attorney General to be confidential or proprietary, or upon

1 application by the moving party and after notice to the
2 Attorney General, the court should seal the record pending a
3 final disposition of the case. Any such orders so entered
4 shall be immediately dissolved upon the approval or other
5 final disposition of the case.

6 (2) The court may shorten the time for notice to the
7 Attorney General to not less than 30 days and may reduce the
8 content of such notice, if a nonprofit corporation is:

9 (i) insolvent;

10 (ii) generally not paying its debts as they become
11 due, unless such default is the subject of a bona fide
12 dispute; or

13 (iii) in default of a material obligation to a
14 creditor;

15 upon petition of the nonprofit corporation, any creditor
16 thereof or a receiver appointed under Subchapter G.

17 (3) Notwithstanding subsection (a), this subsection
18 shall not apply to transactions involving only nonprofit
19 charitable organizations where the Attorney General has no
20 objection to the transaction and has determined that no order
21 of the court is required pursuant to section 5547(b)
22 (relating to nondiversion of certain property).

23 (4) For purposes of this subsection, with reference to a
24 nonprofit corporation, "insolvent" means a financial
25 condition such that the sum of the corporation's debts are
26 greater than all of its property at a fair market valuation.

27 (g) Savings clause.--Nothing in this section shall be
28 construed to derogate from the authority of the Attorney
29 General, or the rights of others, provided by common law or
30 other statute or rule.

1 (h) Applicability.--No provision of this subchapter shall
2 apply to any charitable nonprofit corporation with total assets
3 of less than \$100,000 before accumulated depreciation or that
4 has held such assets in any one of its last three fiscal years.
5 For the purposes of this subsection, the term "total assets"
6 shall include the consideration in any pending agreement of
7 sale.

8 (i) Construction.--Nothing contained in this subchapter
9 shall be construed to limit or affect any other statutory or
10 common law authority vested in the Attorney General.

11 Section 2. Section 5976(b) of Title 15 is amended to read:
12 § 5976. Judicial supervision of proceedings.

13 * * *

14 (b) Distribution of property committed to charitable
15 purposes.--If the assets of the corporation include any property
16 committed to charitable purposes, the board of directors or
17 other body shall apply to the court for an order pursuant to
18 [section] sections 5547(b) (relating to nondiversion of certain
19 property) and 5906 (relating to charitable nonprofit
20 corporations) specifying the disposition of the property.

21 * * *

22 Section 3. This act shall take effect in 60 days.