

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1520 Session of
2012

INTRODUCED BY GREENLEAF, BAKER, RAFFERTY, EICHELBERGER,
ERICKSON, SOLOBAY AND YUDICHAK, MAY 29, 2012

REFERRED TO STATE GOVERNMENT, MAY 29, 2012

AN ACT

1 Amending Title 10 (Charities) of the Pennsylvania Consolidated
2 Statutes, consolidating the Solicitation of Funds for
3 Charitable Purposes Act; consolidating the Institutions of
4 Purely Public Charity Act; and making related repeals.

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

7 Section 1. Title 10 of the Pennsylvania Consolidated
8 Statutes is amended by adding parts to read:

9 PART I

10 PRELIMINARY PROVISIONS

11 Chapter

12 1. General Provisions

13 CHAPTER 1

14 GENERAL PROVISION

15 Sec.

16 101. Short title of title.

17 § 101. Short title of title.

18 This title shall be known and may be cited as the "Charities
19 Code."

PART II

GAMES

(RESERVED)

PART III

OPERATION

Chapter

11. General Provisions (Reserved)

13. Solicitation of Funds for Charitable Purposes

CHAPTER 11

GENERAL PROVISIONS

(RESERVED)

CHAPTER 13

SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES

Sec.

1301. Scope of chapter.

1302. Legislative intent.

1303. Definitions.

1304. Powers and duties of secretary.

1305. Registration of charitable organizations; financial
reports; fees; failure to file.

1306. Exemptions from registration.

1307. Short form registration.

1308. Registration of professional fundraising counsel and
contracts.

1309. Registration of professional solicitors; contract and
disclosure requirements; bonds; records; books.

1310. Contracts voidable by charitable organizations.

1311. Information filed to become public records.

1312. Records to be kept by charitable organizations,
professional fundraising counsels and professional

1 solicitors; inspection; retention.
2 1313. Limitation on activities of charitable organizations;
3 disclosure requirements.
4 1314. Reciprocal agreements.
5 1315. Prohibited acts.
6 1316. Investigation; subpoenas; injunctions; court orders.
7 1317. Administrative enforcement and penalties.
8 1318. Criminal penalties.
9 1319. Civil penalties.
10 1320. Additional regulations by counties, municipalities or
11 consolidated government.
12 1321. Charitable organizations deemed fiduciary.
13 1322. Prior registration unaffected.
14 1323. Repeals.
15 § 1301. Scope of chapter.

16 This chapter relates to solicitation of funds for charitable
17 purposes.

18 § 1302. Legislative intent.

19 It is the intention of the General Assembly that this chapter
20 shall not merely require proper registration of charitable
21 organizations, professional fundraisers and professional
22 solicitors, but shall protect the citizens of this Commonwealth
23 by requiring full public disclosure of the identity of persons
24 who solicit contributions from the public, the purposes for
25 which the contributions are solicited and the manner in which
26 they are actually used, by promoting consumer education about
27 charitable concerns, by providing civil and criminal penalties
28 for deception and dishonest statements and conduct in the
29 solicitation and reporting of contributions for or in the name
30 of charitable purposes and by publicizing matters relating to

fraud, deception and misrepresentation perpetrated in the name of charity. This chapter shall not be construed to be exclusive in its purview, and its application shall not operate as a bar or otherwise prevent the contemporaneous or subsequent application of other relevant acts.

§ 1303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative costs." Management and general costs of a charitable organization, not identifiable with a single program or fundraising activity, but indispensable to the conduct of the programs and activities and to an organization's existence, including expenses for the overall direction of the organization, business management, general recordkeeping, budgeting, financial reporting and related activities, salaries, rent, supplies, equipment and general overhead expenses.

"Affiliate." A chapter, branch, auxiliary or other subordinate unit of any charitable organization, however designated, whose policies, fundraising activities and expenditures are supervised or controlled by the parent organization.

"Bureau." The Bureau of Charitable Organizations of the Department of State.

"Charitable organization." A person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or a person who is or holds himself out to be established for a charitable purpose or a person who in a manner employs a charitable appeal as the basis of any solicitation or an appeal which has a

1 tendency to suggest there is a charitable purpose to any
2 solicitation. An affiliate of a charitable organization which
3 has its principal place of business outside this Commonwealth
4 shall be a charitable organization for the purposes of this
5 chapter. The term shall not be deemed to include:

6 (1) A bona fide duly constituted organization of law
7 enforcement personnel, firefighters or other persons who
8 protect the public safety whose stated purpose in the
9 solicitation does not include a benefit to a person outside
10 the actual active membership of the organization.

11 (2) Any bona fide duly constituted religious
12 institutions and separate groups or corporations which form
13 an integral part of religious institutions, provided that:

14 (i) Religious institutions, groups or corporations
15 are tax exempt under the Internal Revenue Code of 1986.

16 (ii) No part of the institution, group or
17 corporation's net income inures to the direct benefit of
18 an individual.

19 (iii) The institution, group or corporation's
20 conduct is primarily supported by government grants or
21 contracts, funds solicited from their own memberships,
22 congregations or previous donors and fees charged for
23 services rendered.

24 "Charitable promotion." An advertising or sales campaign,
25 event or performance, conducted, produced, promoted,
26 underwritten, arranged or sponsored by a commercial coventurer,
27 which represents that the purchase or use of goods or services
28 or attendance at events or performances offered or sponsored by
29 the commercial coventurer will benefit, in whole or in part, a
30 charitable organization or purpose.

1 "Charitable purpose." A benevolent, educational,
2 philanthropic, humane, scientific, patriotic, social welfare or
3 advocacy, public health, environmental conservation, civic or
4 other eleemosynary objective, including an objective of a bona
5 fide duly constituted organization of law enforcement personnel,
6 firefighters or other persons who protect the public safety if a
7 stated purpose of the solicitation includes a benefit to a
8 person outside the actual active membership of the organization.

9 "Commercial coventurer." A person who for profit is
10 regularly and primarily engaged in trade or commerce other than
11 in connection with the raising of funds or any other thing of
12 value when offered at the usual retail price comparable to
13 similar goods or services in the market for a charitable
14 organization and who advertises that the purchase or use of
15 goods, services, entertainment or any other thing of value will
16 benefit a charitable organization.

17 "Contribution." The promise, grant or pledge of money,
18 credit, property, financial assistance or other thing of any
19 kind or value, excluding volunteer services, in response to a
20 solicitation, including the payment or promise to pay in
21 consideration of a performance, event or sale of a good or
22 service. Payment by members of an organization for membership
23 fees, dues, fines or assessments or for services rendered to
24 individual members, if the fees, dues, fines or assessments
25 confer a bona fide right, privilege, professional standing,
26 honor or other direct benefit, shall not be deemed
27 contributions, provided that membership is not conferred solely
28 as consideration for making a contribution in response to a
29 solicitation. Government grants or contracts shall not be deemed
30 a contribution.

1 "Department." The Department of State of the Commonwealth.

2 "Federated fundraising organization." A federation of
3 independent charitable organizations which have voluntarily
4 joined together, including, but not limited to, a United Way or
5 Community Chest, for purposes of raising and distributing money
6 for and among themselves and where membership does not confer
7 upon the federated group organization operating authority and
8 control of the individual agencies.

9 "Firefighters." A person who is or represents or holds
10 itself out to represent, aid, train or otherwise benefit a paid
11 or volunteer firefighter, active or retired, or his family.

12 "Fundraising costs." Those costs incurred in inducing others
13 to make contributions to a charitable organization for which the
14 contributors will receive no direct economic benefit.
15 Fundraising costs normally include, but are not limited to,
16 salaries, rent, acquiring and maintaining mailing lists,
17 printing, mailing and direct and indirect costs of soliciting,
18 as well as the cost of unsolicited merchandise sent to encourage
19 contributions. Fundraising costs do not include the direct cost
20 of merchandise or goods sold or the direct cost of fundraising
21 dinners, bazaars, shows, circuses, banquets, dinners, theater
22 parties or any other form of benefit performances.

23 "Law enforcement personnel." A person who is or represents
24 or holds itself out to represent, aid, train or otherwise
25 benefit a police officer, sheriff or deputy sheriff, constable
26 or deputy constable, county detective, fire police or other
27 person who is empowered to make arrests, serve warrants, issue
28 summons or otherwise enforce the laws of this Commonwealth to
29 include retired law enforcement personnel and the families of
30 law enforcement personnel.

1 "Net proceeds." The total proceeds received from the
2 solicitation of contributions reduced by the direct cost of
3 merchandise or other goods sold or fundraising events of any
4 kind.

5 "Owner." A person who has a direct or indirect interest in a
6 professional fundraising counsel or professional solicitor.

7 "Parent organization." That part of a charitable
8 organization which coordinates, supervises or exercises control
9 of policy, fundraising and expenditures, or assists or receives
10 funds from or advises one or more affiliates.

11 "Person." An individual, organization, corporation,
12 association, partnership, trust, foundation or any other entity
13 however styled.

14 "Professional fundraising counsel." A person who is retained
15 by a charitable organization for a fixed fee or rate under a
16 written agreement to plan, manage, advise, consult or prepare
17 material for or with respect to the solicitation in this
18 Commonwealth of contributions for a charitable organization, but
19 who does not solicit contributions or employ, procure or engage
20 a compensated person to solicit contributions and who does not
21 have custody or control of contributions. A bona fide salaried
22 officer or regular, nontemporary employee of a charitable
23 organization shall not be deemed to be a professional
24 fundraising counsel provided that the individual is not employed
25 or engaged as professional fundraising counsel or as a
26 professional solicitor by another person.

27 "Professional solicitor." Any person who is retained for
28 financial or other consideration by a charitable organization to
29 solicit in this Commonwealth contributions for charitable
30 purposes directly or in the form of payment for goods, services

or admission to fundraising events, whether the solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees especially employed by or for a charitable organization who are engaged in the solicitation of contributions, the sale of goods or services or the production of fundraising events under the direction of the person, or a person who plans, conducts, manages, carries on, advises, consults, whether directly or indirectly, in connection with the solicitation of contributions, sale of goods or services or the production of fundraising events for or on behalf of any charitable organization, but does not qualify as a professional fundraising counsel within the meaning of this chapter. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if his compensation is related to the amount of contributions received. A bona fide salaried officer or regular, nontemporary employee of a charitable organization shall not be deemed to be a professional solicitor provided that the individual is not employed or engaged as professional fundraising counsel or as a professional solicitor by any other person.

"Secretary." The Secretary of the Commonwealth.

"Solicitation." A direct or indirect request for a contribution on the representation that the contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

(1) An oral request that is made in person, by telephone, radio or television or other advertising or communication media.

(2) A written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed,

1 posted in a public place or advertised or communicated by
2 press, telegraph, television or other media.

3 (3) A sale of, offer or attempt to sell an
4 advertisement, advertising space, sponsorship, book, card,
5 chance, coupon, device, food, magazine, merchandise,
6 newspaper, subscription, ticket or other service or tangible
7 good, thing or item of value.

8 (4) An announcement requesting the public to attend an
9 appeal, assemblage, athletic or competitive event, carnival,
10 circus, concert, contest, dance, entertainment, exhibition,
11 exposition, game, lecture, meal, party, show, social
12 gathering or other performance or event of any kind.

13 § 1304. Powers and duties of secretary.

14 The secretary shall have the following powers and duties to:

15 (1) Provide for and regulate the registration of
16 charitable organizations, professional fundraising counselors
17 and professional solicitors.

18 (2) Decide matters relating to the issuance, renewal,
19 suspension or revocation of registrations.

20 (3) Promulgate, adopt and enforce the rules and
21 regulations necessary to carry out this chapter.

22 (4) Promulgate regulations altering fees and fines
23 established in this chapter sufficient to meet expenditures
24 of the bureau.

25 (5) Take appropriate action to initiate civil or
26 criminal proceedings necessary to enforce this chapter, in
27 accordance with the act of October 15, 1980 (P.L.950,
28 No.164), known as the Commonwealth Attorneys Act.

29 (6) Conduct hearings and make adjudications.

30 (7) Keep a record showing the names and addresses of all

1 registered charitable organizations, professional fundraising
2 counsel and professional solicitors.

3 (8) Submit annually, on or before September 30, to the
4 Governor, to the State Government Committee of the Senate and
5 to the State Government Committee of the House of
6 Representatives, as well as to interested parties, a report
7 on the number of registered charities, the number of
8 charities ordered to cease and desist solicitation, the
9 number of charities contracting with professional solicitors
10 and the compensation of professional solicitors for each
11 solicitation campaign in relation to the funds raised and
12 administrative costs.

13 (9) Delegate to a division director of his office the
14 powers and duties under this chapter as he may deem
15 appropriate.

16 (10) Exercise other authority accorded to him by this
17 chapter.

18 § 1305. Registration of charitable organizations; financial
19 reports; fees; failure to file.

20 (a) Registration and approval required.--A charitable
21 organization, unless exempted from registration requirements
22 under section 1306 (relating to exemptions from registration),
23 shall file a registration statement with the department. This
24 statement must be refiled annually within 135 days after the
25 close of its fiscal year in which the charitable organization
26 was engaged in solicitation activities. The department shall
27 review the statement under subsection (r). No charitable
28 organization shall solicit contributions or have contributions
29 solicited in its behalf before approval of its registration
30 statement by the department.

1 (b) Filing of statement.--It shall be the duty of the
2 president, chairman or principal officer of each charitable
3 organization to file the registration statement, financial
4 report and fee required under this section. The registration
5 statement shall be made by two authorized officers subject to 18
6 Pa.C.S. § 4904 (relating to unsworn falsification to
7 authorities), including the chief fiscal officer of the
8 organization, and shall contain the following information:

9 (1) The name of the organization and any other name or
10 names under which it intends to solicit contributions.

11 (2) The principal address and telephone number of the
12 organization and the addresses and telephone numbers of
13 offices in this Commonwealth. If the organization does not
14 maintain an office, the name and address of the individual
15 having custody of its financial records.

16 (3) The names and addresses of any affiliates which
17 share in the contributions or other revenue raised in this
18 Commonwealth.

19 (4) The names and addresses of the officers, directors
20 and trustees and the principal salaried executive staff
21 officers.

22 (5) A copy of the financial report required under
23 subsection (e).

24 (6) A copy of any determination of the organization's
25 tax-exempt status under the Internal Revenue Code of 1986
26 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and, for
27 organizations granted tax-exempt status under section 501(c)
28 (3) of the Internal Revenue Code of 1986, a copy of the last
29 filed Internal Revenue Service Form 990 and Schedule A for
30 every charitable organization and parent organization.

1 (7) The date when the organization's fiscal year begins.

2 (8) Whether:

3 (i) The organization is authorized by any other
4 governmental authority to solicit contributions.

5 (ii) The organization or any of its present
6 officers, directors, executive personnel or trustees are
7 or have ever been enjoined in any jurisdiction from
8 soliciting contributions or have been found to have
9 engaged in unlawful practices in the solicitation of
10 contributions or administration of charitable assets.

11 (iii) The organization's registration or license has
12 been denied, suspended or revoked by any governmental
13 agency together with the reasons for the denial,
14 suspension or revocation.

15 (iv) The organization has voluntarily entered into
16 an assurance of voluntary discontinuance or agreement
17 similar to that set forth in section 1319(b) (relating to
18 civil penalties), together with a copy of that agreement.

19 (9) A clear description of the specific programs for
20 which contributions will be used and a statement whether the
21 programs are planned or in existence.

22 (10) The names and addresses of professional solicitors,
23 professional fundraising counsels and commercial coventurers
24 who are acting or have agreed to act on behalf of the
25 organization.

26 (11) The names of the individuals or officers of the
27 organization who are in charge of any solicitation
28 activities, who will have final responsibility for the
29 custody of the contributions and who will be responsible for
30 the final distribution of the contributions.

1 (12) Whether any of the organization's officers,
2 directors, trustees or employees are related by blood,
3 marriage or adoption to each other or to officers, agents or
4 employees of professional fundraising counsel or professional
5 solicitor under contract to the organization or to a supplier
6 or vendor providing goods or services to the organization,
7 and the names and business and residence addresses of any
8 related parties. Where the number of employees or vendors
9 renders it impractical for the registrant to contact them on
10 an individual basis regarding the existence of the
11 relationships set forth under this section, the registrant
12 may file an affidavit stating which relationships, if any,
13 exist to the best of the affiant's information and belief.

14 (13) Other information required by the regulations of
15 the department.

16 (c) Additional filings.--With the initial registration only,
17 each charitable organization required to be registered shall
18 also file with the department the following documents:

19 (1) A copy of the organization's charter, articles of
20 organization, agreement of association, instrument of trust,
21 constitution or other organizational instrument and bylaws.

22 (2) A statement setting forth where and the date when
23 the organization was legally established, the form of its
24 organization and its tax-exempt status together with a copy
25 of the letter of exemption, if any, issued by the Internal
26 Revenue Service.

27 (d) Federal tax exemption determination.--Each charitable
28 organization registered with the department shall file with the
29 department a copy of a Federal tax exemption determination
30 letter received after the initial registration within 30 days

after receipt, and any amendments to its organizational instrument within 30 days after adoption.

(e) Financial report.--With each registration statement filed under this section, a charitable organization must file a financial report for the immediately preceding fiscal year, which shall contain a balance sheet and statements of revenue, expenses and changes in fund balances indicating the organization's gross revenue, the amount of funds received from solicitations or other fundraising activities and expenditures for supplies, equipment, goods, services, programs, activities or other expenses, a detailed list of salaries and wages paid and expenses allowed to an officer or employee if the organization is not required to file an Internal Revenue Service Form 990 and the disposition of the net proceeds received from solicited contributions or other fundraising activities.

(f) Audit of certain financial reports.--The financial report of every charitable organization which receives annual contributions of \$300,000 or more shall be audited by an independent certified public accountant or public accountant. Every charitable organization which receives annual contributions of at least \$100,000, but less than \$300,000, shall be required to have a review or audit of their financial statements performed by an independent certified public accountant or public accountant. Every charitable organization which receives annual contributions of at least \$50,000, but less than \$100,000, shall be required to have a compilation, review or audit of their financial statements performed by an independent certified public accountant or public accountant. A compilation, audit or review is optional for a charitable organization which receives annual contributions of less than

1 \$50,000. Audits shall be performed in accordance with generally
2 accepted auditing standards, including the Statements on
3 Auditing Standards of the American Institute of Certified Public
4 Accountants, but reviews shall be performed in accordance with
5 the Statements on Standards for Accounting and Review Services
6 of the American Institute of Certified Public Accountants.

7 (g) Governmental audits.--Government audits of government
8 grants shall be accepted and shall be included as part of the
9 financial statements.

10 (h) Other acceptable reports.--The department may accept a
11 copy of a current financial report previously prepared by a
12 charitable organization for a governmental agency in another
13 jurisdiction in compliance with the laws of that jurisdiction,
14 provided that the report filed with the other governmental
15 agency shall be substantially similar in content to the report
16 required by this section.

17 (i) Reports to accompany audit.--Audited and reviewed
18 financial statements must be accompanied by the report prepared
19 and signed by the independent public accountant.

20 (j) Optional departmental action.--The department shall have
21 the discretion to require that an audit or review be submitted
22 by a charitable organization which files a registration
23 statement. The department shall also have the discretion to
24 accept the financial statement submitted by the organization in
25 lieu of an audit or review where special facts and circumstances
26 are presented.

27 (k) Time extension for filings.--For good cause shown, the
28 department may extend the time for the annual filing of a
29 registration statement or financial report for a period not to
30 exceed 180 days during which time the previous registration

1 remains in effect.

2 (l) Cancellation of registration.--In no event shall the
3 registration of a charitable organization continue in effect
4 after the date the organization should have filed, but failed to
5 file, its financial report in accordance with this section. The
6 organization shall not be eligible to file a new registration
7 statement until it shall have filed the required financial
8 report with the department.

9 (m) Reports by affiliates.--

10 (1) Each affiliate whose parent organization has its
11 principal place of business in this Commonwealth may
12 separately file the registration statement or financial
13 information required by this section, or report the required
14 information to its parent organization which shall then file
15 a combined registration statement and financial report for
16 its Pennsylvania affiliates. There shall be appended to each
17 combined report a schedule, containing information as
18 prescribed in the regulations of the department, reflecting
19 the activities of each affiliate, which shall contain a
20 certification, under oath, by an official of the
21 organization, that the information contained in the schedule
22 is true. The failure of a parent organization to file a
23 combined registration statement and financial report shall
24 not excuse either the parent organization or its affiliates
25 from complying with the requirements of this section.

26 (2) If an affiliate is soliciting in this Commonwealth
27 but its parent organization has its principal place of
28 business outside this Commonwealth, both the affiliate and
29 the parent organization shall independently comply with the
30 registration requirements of this section.

1 (n) Federated organizations.--An independent member agency
2 of a federated fundraising organization shall independently
3 comply with the provisions of this section unless specifically
4 exempted or unless it receives allocations solely from the
5 federated fundraising organization and does not independently
6 solicit contributions. Donor choice programs are deemed to be
7 independent solicitations.

8 (o) Retention of records.--Each charitable organization
9 required to register shall maintain records, books and reports
10 for at least three years after the end of the period of
11 registration to which they relate, which shall be available for
12 inspection upon demand by the department and the Office of
13 Attorney General.

14 (p) Annual registration fees.--A charitable organization
15 which submits a short form registration statement under section
16 1307 (relating to short form registration) or receives
17 contributions of \$25,000 or less during the immediately
18 preceding fiscal year shall pay an annual registration fee of
19 \$15. A charitable organization which receives contributions in
20 excess of \$25,000 but less than \$100,000 during the immediately
21 preceding fiscal year shall pay an annual registration fee of
22 \$100. A charitable organization which receives contributions in
23 excess of \$100,000 but not exceeding \$500,000 during the
24 immediately preceding fiscal year shall pay an annual
25 registration fee of \$150. A charitable organization which
26 receives contributions in excess of \$500,000 during the
27 immediately preceding fiscal year shall pay an annual
28 registration fee of \$250. A parent organization filing on behalf
29 of one or more affiliates and a federated fundraising
30 organization filing on behalf of its member agencies shall pay a

single annual registration fee for itself and other affiliates or member agencies included in the registration statement.

(q) Late filing fees.--In addition to the registration fee, an organization failing to file a registration application by the due date shall pay an additional fee of \$25 for each month or part of the month after the date on which the registration statement and financial report were due to be filed or after the period of extension granted for the filing.

(r) Department review.--The department shall examine each registration statement and supporting documents filed by a charitable organization and shall determine whether the registration requirements are satisfied. If the department determines that the registration requirements are not satisfied, the department must notify the charitable organization within ten working days of its receipt of the registration statement, otherwise the registration statement is deemed to be approved. Within seven days after receipt of a notification that the registration requirements are not satisfied, the charitable organization may request a hearing. The hearing must be held within seven days of receipt of the request, and a determination must be rendered within three working days of the hearing.

(s) Administration of charitable contributions.--A charitable organization shall maintain and administer the contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.

(t) Updating information.--A material change in information filed with the department under this section shall be reported in writing by the registrant to the department not more than 30 days after the change occurs.

§ 1306. Exemptions from registration.

1 (a) General rule.--The following charitable organizations
2 shall be exempt from the registration requirements of this
3 chapter:

4 (1) Educational institutions, the curricula of which in
5 whole or in part are registered with or approved by the
6 Department of Education, either directly or by acceptance of
7 accreditation by an accrediting body recognized by the
8 Department of Education, and any auxiliary associations,
9 foundations and support groups which are directly responsible
10 to educational institutions.

11 (2) Hospitals which are subject to regulation by the
12 Department of Health or the Department of Public Welfare and
13 the hospital foundation, if any, which is an integral part of
14 the hospitals.

15 (3) A local post, camp, chapter or similarly designated
16 element or a county unit of the elements of:

17 (i) any veterans' organization chartered under
18 Federal law and any service foundation recognized in the
19 bylaws of the organization;

20 (ii) a bona fide organization of volunteer firemen;

21 (iii) a bona fide ambulance association;

22 (iv) a bona fide rescue squad association; or

23 (v) a bona fide auxiliary or affiliate of any
24 organization or association under subparagraph (i), (ii),
25 (iii) or (iv);

26 provided that all fundraising activities of an organization
27 or association under subparagraph (i), (ii), (iii), (iv) or
28 (v) are carried on by volunteers, members or an auxiliary or
29 affiliate of the organization or association, and those
30 volunteers, members or affiliates receive no compensation

1 directly or indirectly for the fundraising activities.

2 (4) Public nonprofit library organizations which receive
3 financial aid from State and municipal governments and file
4 an annual fiscal report with the State Library System.

5 (5) Senior citizen centers and nursing homes which are
6 nonprofit and charitable and which have been granted tax-
7 exempt status under the Internal Revenue Code of 1986 (Public
8 Law 99-514, 26 U.S.C. § 1 et seq.), provided that all
9 fundraising activities are carried on by volunteers, members
10 or officers of the senior citizen center and those
11 volunteers, members or officers receive no compensation,
12 directly or indirectly, for the fundraising activities.

13 (6) Bona fide parent teacher associations or parent
14 teacher organizations as recognized in a notarized letter
15 from the school district in which they are located.

16 (7) Any corporation established by an act of Congress of
17 the United States that is required by Federal law to submit
18 annual reports of its activities to Congress containing
19 itemized accounts of all receipts and expenditures after
20 being fully audited by the Department of Defense.

21 (8) Any charitable organization which receives
22 contributions of \$25,000 or less annually, provided that the
23 organization does not compensate any person who conducts
24 solicitations. Charitable organizations which receive more
25 than \$25,000 in contributions shall file the appropriate
26 registration statement within 30 days after the contributions
27 are received.

28 (b) Effect of exemption.--Exemption from the registration
29 requirements of this chapter shall in no way limit the
30 applicability of other provisions of the act to a charitable

organization or any professional solicitor or professional fundraising counsel acting on its behalf, except that written notice under sections 1309(k) (relating to registration of professional solicitors; contract and disclosure requirements; bonds; records; books) and 1313(c) (relating to limitation on activities of charitable organizations; disclosure requirements) shall not apply.

§ 1307. Short form registration.

(a) Organizations required to file.--The following charitable organizations shall be required to file short form annual registration statements with the department in lieu of the registration statement required by section 1305 (relating to registration of charitable organizations; financial reports; fees; failure to file):

(1) Persons or charitable organizations accepting contributions for the relief of any individual specified by name at the time of acceptance or solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use; provided that all contributions collected shall be held in trust and shall be subject to the provisions of 20 Pa.C.S. Ch. 77 (relating to trusts). The secretary, the Attorney General, any contributor or any person who provides any goods or services for which funds are expressly or implicitly solicited shall have the right to petition the court of common pleas of the county in which the trust is located for an accounting of all contributions. For purposes of this paragraph, the trust shall be deemed to be located in the county where the principal place of business of the charitable organization is located. If a charitable

1 organization has its principal place of business outside this
2 Commonwealth, all of the following shall apply:

3 (i) If an affiliate is soliciting contributions
4 within this Commonwealth, the trust shall be deemed to be
5 located in the county where the principal place of
6 business of the affiliate is located.

7 (ii) If a person is soliciting contributions within
8 this Commonwealth, the trust shall be deemed to be
9 located in the county where the principal place of
10 business or the residence of the person is located.

11 (iii) If there is no place of business or residence
12 within this Commonwealth, the trust shall be deemed to be
13 located in the county of Dauphin.

14 (2) Organizations which only solicit within the
15 membership of the organization by the members of the
16 organization; provided that the term "membership" shall not
17 include those persons who are granted a membership solely
18 upon making a contribution as the result of solicitation. For
19 the purpose of this paragraph, "member" means a person having
20 membership in a nonprofit corporation, or other organization,
21 in accordance with the provisions of its articles of
22 incorporation, bylaws or other instruments creating its form
23 and organization and having bona fide rights and privileges
24 in the organization such as the right to vote, to elect
25 officers and directors, to hold office or position as
26 ordinarily conferred on members of the organizations.

27 (3) Charitable organizations whose fundraising
28 activities are carried on by volunteers, members, officers or
29 permanent employees and which do not receive contributions in
30 excess of \$25,000 during a fiscal year, if no part of their

1 assets or income inures to the benefit of or is paid to any
2 officer or member, professional fundraising counsel,
3 professional solicitor or commercial coventurer. Charitable
4 organizations which do not intend to solicit and receive in
5 excess of \$25,000, but do receive contributions in excess of
6 that amount shall file the financial report required in
7 section 1305 within 30 days after contributions are received
8 in excess of that amount.

9 (4) Organizations described in section 1306(a) (3)
10 (relating to exemptions from registration) which do not
11 receive contributions in excess of \$100,000 during a fiscal
12 year if no part of their assets or income inures to the
13 benefit of or is paid to a professional solicitor.

14 (b) Contents of statement.--The short form annual
15 registration statements required to be filed under this section
16 shall include any information required by the regulations of the
17 department.

18 (c) Financial report.--Charitable organizations which file a
19 short form registration statement need not file the financial
20 report required under section 1305 (relating to registration of
21 charitable organizations; financial reports; fees; failure to
22 file).

23 (d) Updating of information.--Any material change in any
24 information filed with the department pursuant to this section
25 shall be reported in writing by the registrant to the department
26 not more than 30 days after the change occurs.

27 § 1308. Registration of professional fundraising counsel and
28 contracts.

29 (a) Registration and approval required.--No person shall act
30 as a professional fundraising counsel before obtaining

department approval of a registration statement pursuant to
subsection (c) or after the expiration, suspension or revocation
of registration. A registration application shall be signed and
be made by the principal officer of the professional fundraising
counsel subject to 18 Pa.C.S. § 4904 (relating to unsworn
falsification to authorities) and shall contain all of the
following information:

(1) The address of the principal place of business of
the applicant and any Pennsylvania addresses, if the
principal place of business is located outside this
Commonwealth.

(2) The form of the applicant's business.

(3) The names and residence addresses of all principals
of the applicant, including all officers, directors and
owners.

(4) Whether any of the owners, directors, officers or
employees of the applicant are related by blood, marriage or
adoption to any other directors, officers, owners or
employees of the applicant, any officer, director, trustee or
employee of any charitable organization under contract to the
applicant or any supplier or vendor providing goods or
services to any charitable organization under contract to the
applicant.

(5) The name of any person who is in charge of any
solicitation activity.

(6) Any other information required by the regulations of
the department.

(b) Registration fee.--The application for registration
shall be accompanied by a fee of \$250. A professional
fundraising counsel which is a partnership or corporation may

1 register for and pay a single fee on behalf of all of its
2 partners, members, officers, directors, agents and employees.
3 Each registration shall be valid for one year and may be renewed
4 for additional one-year periods upon application to the
5 department and payment of the registration fee.

6 (c) Department review of registration statement.--The
7 department shall examine each registration statement and
8 supporting documents filed by a professional fundraising counsel
9 and shall determine whether the registration requirements are
10 satisfied. If the department determines that the registration
11 requirements are not satisfied, the department must notify the
12 professional fundraising counsel within ten working days of its
13 receipt of its registration statement, otherwise the
14 registration statement is deemed to be approved. Within seven
15 days after receipt of a notification that the registration
16 requirements are not satisfied, the professional fundraising
17 counsel may request a hearing. The hearing must be held within
18 seven days of receipt of the request, and a determination must
19 be rendered within three working days of the hearing.

20 (d) Written contract.--There shall be a written contract
21 between a charitable organization and a professional fundraising
22 counsel which shall be filed by the professional fundraising
23 counsel with the department at least ten working days prior to
24 the performance by the professional fundraising counsel of any
25 service. No solicitation or services pursuant to the contract
26 shall begin before the department has approved the contract
27 pursuant to subsection (e). The contract must be signed by two
28 authorized officials of the charitable organization, one of whom
29 must be a member of the organization's governing body, and the
30 authorized contracting officer for the professional fundraising

1 counsel. The contract shall contain all of the following
2 provisions:

3 (1) The legal name and address of the charitable
4 organization as registered with the department unless that
5 charitable organization is exempt from registration.

6 (2) A statement of the charitable purpose for which the
7 solicitation campaign is being conducted.

8 (3) A statement of the respective obligations of the
9 professional fundraising counsel and the charitable
10 organization.

11 (4) A clear statement of the fees which will be paid to
12 the professional fundraising counsel.

13 (5) The effective and termination dates of the contract,
14 or, if the contract does not have a set termination date, the
15 contract shall contain a clause allowing either party a
16 reasonable period to terminate the contract or notify the
17 other party if either party chooses not to renew. The
18 contract shall also contain the date services will commence
19 with respect to solicitation in this Commonwealth of
20 contributions for a charitable organization.

21 (6) A statement that the professional fundraising
22 counsel will not at any time have custody or control of
23 contributions.

24 (7) A statement that the charitable organization
25 exercises control and approval over the content and volume of
26 any solicitation.

27 (8) Any other information required by the regulations of
28 the department.

29 (e) Department review of contract.--The department shall
30 examine each contract filed by a professional fundraising

counsel and shall determine whether the contract contains the
required information. If the department determines that the
requirements are not satisfied, the department must notify the
professional fundraising counsel within ten working days of its
receipt of the contract, otherwise the contract is deemed to be
approved. Within seven days after receipt of a notification that
the requirements are not satisfied, the professional fundraising
counsel may request a hearing. The hearing must be held within
seven days of receipt of the request, and a determination must
be rendered within three working days of the hearing.

§ 1309. Registration of professional solicitors; contract and
disclosure requirements; bonds; records; books.

(a) Registration and approval required.--No person shall act
as a professional solicitor before obtaining department approval
of a registration statement pursuant to subsection (d) or after
the expiration, suspension or revocation of registration. A
registration application shall be signed and made by the
principal officer of the professional solicitor subject to 18
Pa.C.S. § 4904 (relating to unsworn falsification to
authorities) and shall contain all of the following information:

(1) The address of the principal place of business of
the applicant and any Pennsylvania addresses, if the
principal place of business is located outside this
Commonwealth.

(2) The form of the applicant's business.

(3) The names and residence addresses of all principals
of the applicant, including all officers, directors and
owners.

(4) Whether any of the owners, directors, officers or
employees of the applicant are related by blood, marriage or

1 adoption to any other directors, officers, owners or
2 employees of the applicant, any officer, director, trustee or
3 employee of any charitable organization under contract to the
4 applicant or any supplier or vendor providing goods or
5 services to any charitable organization under contract to the
6 applicant.

7 (5) The name of all persons in charge of any
8 solicitation activity.

9 (6) Any other information required by the regulations of
10 the department.

11 (b) Registration fee.--The application for registration
12 shall be accompanied by a fee of \$250. A professional solicitor
13 which is a partnership or corporation may register for and pay a
14 single fee on behalf of all of its partners, members, officers,
15 directors, agents and employees. Each registration shall be
16 valid for one year and may be renewed for additional one-year
17 periods upon application to the department and payment of the
18 registration fee.

19 (c) Bond.--A professional solicitor shall, at the time of
20 making application for registration and renewal of registration,
21 file with and have approved by the department a bond, in which
22 it shall be the principal obligor in the sum of \$25,000, or a
23 greater amount as prescribed by the regulations of the
24 department and which shall have one or more sureties
25 satisfactory to the department whose liability in the aggregate
26 as sureties will at least equal that sum and maintain the bond
27 in effect as long as the registration is in effect. The bond
28 shall run to the Commonwealth for use of the secretary, Attorney
29 General and any person who may have a cause of action against
30 the obligor for any losses resulting from malfeasance,

nonfeasance or misfeasance in the conduct of solicitation activities. A professional solicitor which is a partnership or corporation may file one \$25,000 bond or an amount specified by regulation of the department on behalf of all its partners, members, officers, directors, agents and employees.

(d) Department review of registration statement.--The department shall examine each registration statement and supporting documents filed by a professional solicitor and shall determine whether the registration requirements are satisfied. If the department determines that registration requirements are not satisfied, the department must notify the professional solicitor within ten working days of its receipt of its registration statement, otherwise the registration statement is deemed to be approved. Within seven days after receipt of a notification that the regulation requirements are not satisfied, the professional solicitor may request a hearing. The hearing must be held within seven days of receipt of the request, and a determination must be rendered within three working days of the hearing.

(e) Contract filing.--No less than ten working days prior to the commencement of each solicitation campaign, event or services, a professional solicitor shall file with the department a copy of the contract described in subsection (f) and a written solicitation notice. No solicitation or services pursuant to the contract shall begin before the department has approved the contract pursuant to subsection (g). The solicitation notice shall be accompanied by a fee of \$25 and shall be signed and sworn to by the authorized contracting officer for the professional solicitor. If more than one event or campaign is conducted under a contract, then a solicitation

notice addendum must be filed no less than ten working days
prior to the commencement of each additional event or campaign.
No additional fee is required to file the addendum. The
solicitation notice and addendum shall contain all of the
following information:

(1) A description of the solicitation event or campaign.

(2) Each location and telephone number from which the
solicitation is to be conducted.

(3) The legal name and resident address of each person
responsible for directing and supervising the conduct of the
campaign and each person who is to solicit during the
campaign.

(4) A statement as to whether the professional solicitor
will at any time have custody or control of contributions.

(5) The account number and location of each bank account
where receipts from the campaign are to be deposited.

(6) A full and fair description of the charitable
program for which the solicitation campaign is being carried
out.

(7) The date the solicitation campaign or event will
begin or be held within this Commonwealth and the termination
date for each campaign or event.

(8) Any other information required by the regulations of
the department.

(f) Written contract.--There shall be a written contract
between a professional solicitor and a charitable organization
for each solicitation campaign which shall be signed by two
authorized officials of the charitable organization, one of whom
must be a member of the organization's governing body, and the
authorized contracting officer for the professional solicitor.

1 The contract shall contain all of the following provisions:

2 (1) The legal name and address of the charitable
3 organization as registered with the department, unless that
4 charitable organization is exempt from registration.

5 (2) A statement of the charitable purpose for which the
6 solicitation campaign is being conducted.

7 (3) A statement of the respective obligations of the
8 professional solicitor and the charitable organization.

9 (4) A statement of the guaranteed minimum percentage of
10 the gross receipts from contributions which will be remitted
11 to or retained by the charitable organization, if any, or, if
12 the solicitation involves the sale of goods, services or
13 tickets to a fundraising event, the percentage of the
14 purchase price which will be remitted to the charitable
15 organization, if any. Any stated percentage shall exclude any
16 amount which the charitable organization is to pay as
17 fundraising costs.

18 (5) A statement of the percentage of the gross revenue
19 which the professional solicitor will be compensated. The
20 stated percentage shall include any amount which the
21 professional solicitor is to be reimbursed as payment for
22 fundraising costs. If the compensation of the professional
23 solicitor is not contingent upon the number of contributions
24 or the amount of revenue received, his compensation shall be
25 expressed as a reasonable estimate of the percentage of the
26 gross revenue, and the contract shall clearly disclose the
27 assumptions upon which the estimate is based. The stated
28 assumptions shall be based upon all of the relevant facts
29 known to the professional solicitor regarding the
30 solicitation to be conducted by the professional solicitor.

1 (6) The effective and termination dates of the contract,
2 or, if the contract does not have a set termination date, the
3 contract shall contain a clause allowing either party a
4 reasonable period to terminate the contract or notify the
5 other party if either party chooses not to renew. The
6 contract shall also contain the date solicitation activity is
7 to commence within this Commonwealth.

8 (7) Any other information required by the regulations of
9 the department.

10 (g) Department review of contract.--The department shall
11 examine each contract and solicitation notice filed by a
12 professional solicitor and shall determine whether the contract
13 and notice contain the required information. If the department
14 determines that the requirements are not satisfied, the
15 department must notify the professional solicitor within ten
16 working days of its receipt of the contract and notice,
17 otherwise the contract and notice are deemed to be approved.
18 Within seven days after receipt of a notification that the
19 requirements are not satisfied, the professional solicitor may
20 request a hearing. The hearing must be held within seven days of
21 receipt of the request, and a determination must be rendered
22 within three working days of the hearing.

23 (h) Required disclosures.--Prior to orally requesting a
24 contribution or contemporaneously with a written request for a
25 contribution, a professional solicitor shall be responsible for
26 clearly and conspicuously disclosing:

27 (1) The name of the professional solicitor as on file
28 with the department and that the solicitation is being
29 conducted by a professional solicitor who is being paid for
30 his services.

1 (2) If the individual acting on behalf of the
2 professional solicitor identifies himself by name, the
3 individual's legal name.

4 (3) The legal name of the charitable organization as
5 registered with the department and a description of how the
6 contributions raised by the solicitation will be utilized for
7 a charitable purpose or, if there is no charitable
8 organization, a description as to how the contributions
9 raised by the solicitation will be utilized for a charitable
10 purpose.

11 (i) Responses.--Any responses given by or on behalf of a
12 professional solicitor to an oral or written request for
13 information shall be truthful.

14 (j) Information on disclosure.--In the case of a
15 solicitation campaign conducted orally, whether by telephone or
16 otherwise, any written confirmation, receipt and reminder sent
17 to any person who has contributed or has pledged to contribute
18 shall include a clear and conspicuous disclosure of the
19 information required by subsection (h).

20 (k) Notice.--In addition to the information required by
21 subsection (j), any written confirmation, receipt and reminder
22 of a contribution made pursuant to an oral solicitation and any
23 written solicitation shall conspicuously state verbatim:

24 The official registration and financial information of
25 (insert the legal name of the charity as registered with
26 the department) may be obtained from the Pennsylvania
27 Department of State by calling toll free, within
28 Pennsylvania, 1 (800) 000-0000. Registration does not
29 imply endorsement.

30 (l) Financial reports.--Within 90 days after a solicitation

campaign or event has been completed and on the anniversary of
the commencement of a solicitation campaign lasting more than
one year, a professional solicitor shall file with the
department a financial report for the campaign, including gross
revenue and an itemization of all expenses incurred. This report
shall be signed and sworn to by the authorized contracting agent
for the professional solicitor and two authorized officials of
the charitable organization.

(m) Retention of records--A professional solicitor shall
maintain during each solicitation campaign and for not less than
three years after the completion of the campaign the following
records, which shall be available for inspection upon demand by
the department or the Office of Attorney General:

(1) The date and amount of each contribution received
and the name and address of each contributor.

(2) The name and residence of each employee, agent or
other person involved in the solicitation.

(3) Records of all revenue received and expenses
incurred in the course of the solicitation campaign.

(4) The location and account number of each bank or
other financial institution account in which the professional
solicitor has deposited revenue from the solicitation
campaign.

(n) Records from ticket sales.--If the professional
solicitor sells tickets to an event and represents that tickets
will be donated for use by another, the professional solicitor
shall maintain, for not less than three years after the
completion of the event, the following records, which shall be
available for inspection upon demand by the department or the
Office of Attorney General:

1 (1) The number of tickets purchased and donated by each
2 contributor.

3 (2) The name and address of all organizations receiving
4 donated tickets for use by others, including the number of
5 tickets received by each organization.

6 (o) Deposit of contributions.--Each contribution in the
7 control or custody of the professional solicitor shall, in its
8 entirety and within five days of its receipt, be deposited in an
9 account at a bank or other federally insured financial
10 institution which shall be in the name of the charitable
11 organization. The charitable organization shall maintain and
12 administer the account and shall have sole control of all
13 withdrawals.

14 (p) Updating of information.--Any material change in any
15 information filed with the department pursuant to this section
16 shall be reported in writing by the professional solicitor to
17 the department not more than seven days after the change occurs.

18 (q) Restrictions.--

19 (1) No person may act as a professional solicitor if the
20 person, any officer or director, any person with a
21 controlling interest, or any person the professional
22 solicitor employs, engages or procures to solicit for
23 compensation, has been convicted, by a court of any state or
24 the United States, of any felony or of any misdemeanor
25 involving dishonesty or arising from the conduct of a
26 solicitation for a charitable organization or purpose.

27 (2) A professional solicitor shall not solicit in this
28 Commonwealth on behalf of a charitable organization unless
29 that charitable organization is registered or is exempt from
30 registration with the department.

1 § 1310. Contracts voidable by charitable organizations.

2 (a) Contracts with registered groups.--No professional
3 fundraising counsel or professional solicitor shall contract
4 with a charitable organization unless the professional
5 fundraising counsel or professional solicitor is registered with
6 the department. A contract with an unregistered professional
7 fundraising counsel or professional solicitor shall be voidable
8 at the option of the charitable organization.

9 (b) Cancellation of contract.--Whenever a charitable
10 organization contracts with a professional fundraising counsel
11 or professional solicitor, the charitable organization shall
12 have the right to cancel the contract without cost, penalty or
13 liability for a period of ten days following the date on which
14 that contract is executed. Any provision in the contract that is
15 intended to waive this right of cancellation shall be void and
16 unenforceable.

17 (c) Manner of cancellation.--A charitable organization may
18 cancel a contract pursuant to subsection (b) by serving a
19 written notice of cancellation on the professional fundraising
20 counsel or professional solicitor. If mailed, service shall be
21 by certified mail, return receipt requested, and cancellation
22 shall be deemed effective upon receipt by the professional
23 fundraising counsel or professional solicitor. The notice shall
24 be sufficient if it indicates that the charitable organization
25 does not intend to be bound by the contract.

26 (d) Cancellation notice to department.--Whenever a
27 charitable organization cancels a contract pursuant to the
28 provisions of this section, it shall mail a duplicate copy of
29 the notice of cancellation to the department.

30 (e) Status of funds after cancellation.--Any funds collected

after effective notice that a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of any nature. A charitable organization shall be entitled to recover all funds collected after the date of cancellation.

§ 1311. Information filed to become public records.

Except as otherwise provided in section 1312 (relating to records to be kept by charitable organizations, professional fundraising counsels and professional solicitors; inspection; retention), registration statements and applications, reports, notices, contracts or agreements between charitable organizations and professional fundraising counsel, professional solicitors and commercial coventurers, and all other documents and information required to be filed under this chapter with the department, shall become public records in the office of the bureau and shall be open to the general public at the time and under conditions the department prescribes.

§ 1312. Records to be kept by charitable organizations, professional fundraising counsels and professional solicitors; inspection; retention.

(a) True and accurate fiscal records.--A charitable organization, professional fundraising counsel and professional solicitor subject to the provisions of this chapter shall, in accordance with the rules and regulations prescribed by the department, keep true fiscal records as to its activities in this Commonwealth as may be covered under this chapter, in a form to enable them to accurately provide the information required under this chapter.

(b) Availability for inspection.--Except as provided in subsection (c), the records shall be made available for

1 inspection upon demand by the department or the Office of
2 Attorney General.

3 (c) Nonpublic records.--Notwithstanding subsection (b),
4 names, addresses and identities of contributors and amounts
5 contributed by them shall not be considered a matter of public
6 record. This information shall generally:

7 (1) Not be made available for public inspection.

8 (2) Not be used for a purpose inconsistent with this
9 chapter.

10 (3) Be removed from the records in the custody of the
11 department at the time that the information is no longer
12 necessary for the enforcement of this chapter.

13 (d) Term of record retention.--Records shall be maintained
14 for a period of at least three years after the end of the period
15 of registration to which they relate.

16 § 1313. Limitation on activities of charitable organizations;
17 disclosure requirements.

18 (a) Solicitation limitation.--A charitable organization may
19 only solicit contributions for the charitable purpose expressed
20 in a solicitation for contributions or the registration
21 statement of the charitable organization and may only apply
22 contributions in a manner substantially consistent with that
23 purpose.

24 (b) Solicitation disclosures.--A charitable organization
25 soliciting in this Commonwealth shall disclose the following at
26 the point of solicitation:

27 (1) Its legal name and address as registered with the
28 department. If different, the legal name and address of the
29 charitable organization, as registered with the department,
30 on whose behalf the solicitation is being conducted. Any use

1 of a project or program name in a solicitation must be
2 followed immediately by a disclosure of the legal, registered
3 name of the charitable organization.

4 (2) If requested, the name and address or telephone
5 number of a representative to whom inquiries could be
6 addressed.

7 (3) A full and fair description of the charitable
8 purpose or purposes for which the solicitation is being made
9 and a source from which written information is available.

10 (4) If requested, the source from which a financial
11 statement may be obtained. The financial statement shall:

12 (i) Be consistent with the annual financial report
13 requested under section 1305 (relating to registration of
14 charitable organizations; financial reports; fees;
15 failure to file).

16 (ii) Disclose assets, liabilities, fund balances,
17 revenue and expenses for the preceding fiscal year.

18 (iii) List expenses separately, under the categories
19 of Program Services, Administrative Costs and Fundraising
20 Costs.

21 (c) Notice on printed solicitation.--On every printed
22 solicitation or written confirmation, receipt and reminder of a
23 contribution, the following statement must be printed
24 conspicuously, verbatim:

25 The official registration and financial information of
26 (insert the legal name of the charity as registered with
27 the department) may be obtained from the Pennsylvania
28 Department of State by calling toll free, within
29 Pennsylvania, 1 (800) 732-0999. Registration does not
30 imply endorsement.

1 (d) Misrepresentation.--A misrepresentation is accomplished
2 by words, conduct or failure to disclose a material fact. A
3 charitable organization may not misrepresent any of the
4 following:

5 (1) Its purpose.

6 (2) Its nature.

7 (3) The purpose of a solicitation.

8 (4) The beneficiary of a solicitation.

9 (e) Control over fundraising activities.--A charitable
10 organization must establish and exercise control over
11 fundraising activities conducted for its benefit, including
12 approval of all written contracts and agreements, and must
13 assure that fundraising activities are conducted without
14 coercion.

15 (f) Restrictions on certain contracts.--A charitable
16 organization shall not enter into a contract or agreement with
17 or employ any professional fundraising counsel or professional
18 solicitor unless the counsel or solicitor is registered with the
19 department.

20 (g) Registration with department required.--A charitable
21 organization shall not enter into a contract or agreement with
22 or raise any funds for a charitable organization required to be
23 registered pursuant to this chapter unless both charitable
24 organizations are registered with the department.

25 (h) Deposit of contributions.--Each contribution in the
26 control or custody of a professional solicitor shall, in its
27 entirety and within five days of its receipt, be deposited,
28 maintained and administered in an account at a bank or other
29 federally insured financial institution. The account shall be in
30 the name of the charitable organization, which shall have sole

1 control of all account withdrawals.

2 § 1314. Reciprocal agreements.

3 (a) Authorization.--The secretary may enter into reciprocal
4 agreements with the appropriate authority of any other state for
5 the purpose of exchanging information with respect to charitable
6 organizations, professional fundraising counsel and professional
7 solicitors.

8 (b) Effect.--Pursuant to any reciprocal agreement, the
9 secretary may accept information filed by a charitable
10 organization, professional fundraising counsel or professional
11 solicitor with the appropriate authority of another state in
12 lieu of the information required to be filed in accordance with
13 this chapter, if the information is substantially similar to the
14 information required under this chapter.

15 (c) Annual registration exemption.--The secretary may grant
16 exemptions from the requirements for the filing of annual
17 registration statements with the department to a charitable
18 organization if the following apply:

19 (1) It is organized under the laws of another state.

20 (2) It has its principal place of business outside this
21 Commonwealth.

22 (3) Its funds are derived principally from sources
23 outside this Commonwealth.

24 (4) It has been exempted from the filing of registration
25 statements by the state under whose laws it is organized if
26 the state has a statute similar in substance to the
27 provisions of this chapter.

28 § 1315. Prohibited acts.

29 (a) General rule.--Regardless of a person's intent or the
30 lack of injury, the following acts and practices are prohibited

1 in the planning, conduct or execution of a solicitation or
2 charitable sales promotion:

3 (1) Operating in violation of, or failing to comply
4 with, any requirement of this chapter, regulation of the
5 department or order of the secretary.

6 (2) Soliciting contributions after registration with the
7 department has expired or has been suspended or revoked.

8 (3) Soliciting contributions prior to the solicitation
9 notice and contract having been approved by the department.

10 (4) Utilizing any unfair or deceptive acts or practices
11 or engaging in any fraudulent conduct which creates a
12 likelihood of confusion or of misunderstanding.

13 (5) Conveying any representation that implies the
14 contribution is for or on behalf of a charitable organization
15 or utilizing an emblem, device or printed matter belonging to
16 or associated with a charitable organization without first
17 being authorized in writing to do so by the charitable
18 organization.

19 (6) Utilizing a name, symbol or statement so closely
20 related or similar to that used by another charitable
21 organization or other person that the use would tend to
22 confuse or mislead a solicited person.

23 (7) Misrepresenting or misleading anyone in any manner
24 to believe that the person on whose behalf a solicitation or
25 charitable sales promotion is being conducted is a charitable
26 organization or that the proceeds of the solicitation or
27 charitable sales promotion will be used for charitable
28 purposes when this is not the fact.

29 (8) Misrepresenting to or misleading anyone in any
30 manner so as to allow the belief that another person

1 sponsors, endorses or approves the solicitation or charitable
2 sales promotion when in fact the other person has not given
3 consent in writing to the use of that person's name for these
4 purposes.

5 (9) Misrepresenting to or misleading anyone in any
6 manner so as to allow the belief that goods or services have
7 sponsorship, approval, characteristics, ingredients, uses,
8 benefits or qualities that they do not have or that a person
9 has a sponsorship, approval, status, affiliation or
10 connection that the person in fact does not have.

11 (10) Utilizing or exploiting the fact of registration so
12 as to lead a person to believe that the registration in any
13 manner constitutes an endorsement or approval by the
14 Commonwealth. The use of the following statement shall not be
15 deemed a prohibited exploitation:

16 The official registration and financial information of
17 (insert the legal name of the charity as registered with
18 the department) may be obtained from the Pennsylvania
19 Department of State by calling toll free, within
20 Pennsylvania, 1 (800) 732-0999. Registration does not
21 imply endorsement.

22 (11) Representing directly or by implication that a
23 charitable organization will receive an amount greater than
24 the actual net proceeds reasonably estimated to be retained
25 by the charity for its use.

26 (12) With respect to solicitations by professional
27 solicitors on behalf of law enforcement personnel,
28 firefighters or other persons who protect the public safety,
29 issuing, offering, giving, delivering or distributing
30 honorary membership cards, courtesy cards or similar cards,

1 or any stickers, emblems, plates or other items which could
2 be used for display on a motor vehicle.

3 (13) Violating the following:

4 (i) Soliciting for advertising to appear in a for-
5 profit publication which relates to, purports to relate
6 to or which could reasonably be construed to relate to
7 any charitable purpose without making the following
8 disclosures at the time of solicitation:

9 (A) The publication is a for-profit, commercial
10 enterprise.

11 (B) The true name of the solicitor and the fact
12 that the solicitor is a professional solicitor.

13 (C) The publication is not directly affiliated
14 or sponsored by any charitable organization.

15 (ii) Where a sale of advertising has been made, the
16 solicitor, prior to accepting any money for the sale,
17 shall present the purchaser with the same disclosures as
18 are set forth in subparagraph (i), in written form and in
19 conspicuous type.

20 (14) Representing that a part of contributions received
21 will be given or donated to another charitable organization
22 unless that organization has consented in writing to the use
23 of its name prior to the solicitation. The written consent
24 shall be signed by two authorized officers, directors or
25 trustees of the charitable organization.

26 (15) Representing that tickets to events will be donated
27 for use by another, unless all of the following requirements
28 have been met:

29 (i) The charitable organization or professional
30 solicitor has commitments, in writing, from charitable

1 organizations stating that they will accept donated
2 tickets and specifying the number of tickets they are
3 willing to accept.

4 (ii) The charitable organization or professional
5 solicitor does not solicit or accept more contributions
6 of donated tickets than the lesser of:

7 (A) the number of ticket commitments it has
8 received from charitable associations; or

9 (B) the total attendance capacity of the site of
10 the event.

11 (iii) A ticket commitment alone, as described in
12 this subsection, does not constitute written consent to
13 use the organization's name in the solicitation campaign.

14 (b) Criteria to determine unfairness.--In determining
15 whether or not a practice is unfair, deceptive, fraudulent or
16 misleading under this section, definitions, standards or
17 interpretations relating to the practice under the act of
18 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
19 Practices and Consumer Protection Law, shall apply.

20 § 1316. Investigation; subpoenas; injunctions; court orders.

21 (a) Permissible investigations.--The Attorney General, the
22 secretary or a district attorney with jurisdiction may make or
23 cause to be made an investigation of any person as deemed
24 necessary. In conducting the investigation, the official may:

25 (1) Require or permit a person to file a statement in
26 writing, under oath or otherwise, as to all the facts and
27 circumstances concerning the matter being investigated.

28 (2) Administer oaths or affirmations.

29 (3) Take testimony under oath.

30 (4) Require the attendance and testimony of witnesses

1 and the production of books, accounts, papers, records,
2 documents, audits and files relating to a solicitation or
3 practice subject to this chapter or the regulations of the
4 department promulgated pursuant to the authority of this
5 chapter.

6 (5) Issue subpoenas.

7 (6) Conduct private or public hearings.

8 (7) Examine witnesses and receive evidence during an
9 investigation or public or private hearings.

10 (b) Notice.--Notice of the time and place for the
11 examination of documentary material shall be given by the
12 Attorney General, the secretary or the district attorney at
13 least ten days prior to the date of the examination or taking of
14 testimony.

15 (c) Contents of notice.--Each notice shall:

16 (1) State the time and place for the taking of testimony
17 or the examination and the name and address of the person to
18 be examined, if known, or if the name is not known, a general
19 description sufficient to identify the person or the
20 particular class or group to which the person belongs.

21 (2) State the statute, if any, proscribing the alleged
22 violation which is under investigation and state the general
23 subject matter of the investigation.

24 (3) Describe the class or classes of documentary
25 material to be produced under the notice with reasonable
26 specificity, so as to fairly indicate the material demanded.

27 (4) Prescribe a return date within which the documentary
28 material is to be produced.

29 (5) Identify the members of the Office of Attorney
30 General's staff, the secretary's staff or the district

1 attorney's staff to whom the documentary material is to be
2 made available for inspection and copying.

3 (d) Restrictions on notices.--No notice shall contain any
4 requirement which would be unreasonable or improper if contained
5 in a subpoena duces tecum issued by a court of the Commonwealth.

6 (e) Restriction on materials.--

7 (1) Except as provided under paragraph (2), any
8 documentary material or other information produced by a
9 person in accordance with this section shall not, unless
10 otherwise ordered by a court of competent jurisdiction for
11 good cause shown, be produced for inspection or copying by or
12 be disclosed to a person other than the authorized
13 representative of the Attorney General, the secretary or the
14 district attorney without the consent of the person who
15 produced the material.

16 (2) Under reasonable terms and conditions that the
17 Attorney General, the secretary or the district attorney
18 shall prescribe, documentary material in paragraph (1) shall
19 be available for inspection and copying by the person who
20 produced the material or a duly authorized representative of
21 the person. The Attorney General, the secretary or the
22 district attorney or a duly authorized representative may use
23 the documentary material or copies as the official may
24 determine is necessary in the enforcement of this chapter,
25 including production at a subsequent administrative or
26 judicial proceeding.

27 (f) Compliance.--A person upon whom a notice is served
28 pursuant to this section shall comply with the terms of the
29 notice unless otherwise provided by an order of court. The
30 Attorney General or the district attorney may petition for an

1 order of court for enforcement of this section. Additionally,
2 the secretary may take appropriate action to petition for an
3 order of court for the enforcement of this section in accordance
4 with the act of October 15, 1980 (P.L.950, No.164), known as the
5 Commonwealth Attorneys Act.

6 (g) Contempt of final order.--Any disobedience of a final
7 order entered under this section by a court shall be punishable
8 as contempt.

9 (h) Civil penalties.--Any person shall be assessed a civil
10 penalty of not more than \$5,000 if the person does any of the
11 following:

12 (1) Fails to appear.

13 (2) With intent, avoids, evades or prevents compliance
14 with, in whole or in part, any civil investigation under this
15 chapter.

16 (3) Removes from any place, conceals, withholds or
17 destroys, mutilates, alters or by any other means falsifies
18 any documentary material in the possession, custody or
19 control of a person subject to any notice.

20 (4) Knowingly conceals any relevant information.

21 (i) Service.--Service of a subpoena may be made in any of
22 the following ways:

23 (1) Delivering a duly executed copy to the person to be
24 served or to a partner or to any officer or agent authorized
25 by appointment or by law to receive service of process on
26 behalf of the person.

27 (2) Delivering a duly executed copy to the principal
28 place of business in this Commonwealth of the person to be
29 served.

30 (3) Mailing by registered or certified mail a duly

1 executed copy addressed to the person to be served at the
2 person's principal place of business in this Commonwealth or,
3 if the person has no place of business in this Commonwealth,
4 to the last address of the person known to the secretary.

5 (4) Appointing the Secretary of State as its agent, if
6 the charitable organization, fundraising counsel or
7 professional solicitor has its principal place of business
8 outside this Commonwealth or is organized under and by virtue
9 of the laws of a foreign state, which is subject to the
10 provisions of this chapter. The Secretary of State shall be
11 deemed its irrevocable agent upon whom may be served any
12 summons, subpoena duces tecum or other process directed to
13 the charitable organization, fundraising counsel or
14 professional solicitor, or any partner, principal officer or
15 director of it, in an action or proceeding brought under the
16 provisions of this chapter. Service of process upon the
17 Secretary of State shall be made by personally delivering to
18 and leaving with the secretary a copy of the process at the
19 secretary's office in Harrisburg, Pennsylvania. This service
20 shall be sufficient, provided notice of service and a copy of
21 the process shall be sent by the secretary by registered mail
22 to the charitable organization, fundraising counsel,
23 professional solicitor or other person to whom it is
24 directed, with return receipt requested, at the last address
25 known to the secretary.

26 § 1317. Administrative enforcement and penalties.

27 (a) General rule.--The secretary may refuse to register or
28 revoke or suspend the registration of a charitable organization,
29 professional fundraising counsel or professional solicitor
30 whenever he finds that a charitable organization, professional

1 fundraising counsel or professional solicitor, or an agent,
2 servant or employee:

3 (1) Has violated or is operating in violation of any
4 provision of this chapter, the regulations of the department
5 promulgated under it or an order issued by the secretary.

6 (2) Has refused or failed or any of its principal
7 officers has refused or failed, after notice, to produce any
8 records of the organization or to disclose any information
9 required to be disclosed under this chapter or the
10 regulations of the department.

11 (3) Has made a material false statement in an
12 application, statement or report required to be filed under
13 this chapter.

14 (b) Additional actions.--When the secretary finds that the
15 registration of a person may be refused, suspended or revoked
16 under the terms of subsection (a), the secretary may:

17 (1) Revoke a grant of exemption to any of the provisions
18 of this chapter.

19 (2) Issue an order directing that the person cease and
20 desist specified fundraising activities.

21 (3) Impose an administrative fine not to exceed \$1,000
22 for each act or omission which constitutes a violation of
23 this chapter and an additional penalty, not to exceed \$100
24 for each day during which the violation continues.

25 Registration will be automatically suspended upon final
26 affirmation of an administrative fine until the fine is paid
27 or until the normal expiration date of the registration. No
28 registration may be renewed until the fine is paid.

29 (4) Place a registrant on probation for a period of time
30 and subject to conditions as the secretary may decide.

1 (c) Administrative procedures.--Actions of the secretary are
2 subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
3 procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating
4 to judicial review of Commonwealth agency action).

5 § 1318. Criminal penalties.

6 (a) Deceit or fraud violation.--A person who willfully and
7 knowingly violates any provision of this chapter with intent to
8 deceive or defraud a charity or individual, commits a
9 misdemeanor of the first degree and shall, upon conviction, be
10 sentenced to pay a fine not exceeding \$10,000 or imprisonment
11 for not more than five years, or both.

12 (b) Other violations.--Any other violation of this chapter
13 shall constitute a misdemeanor of the third degree punishable,
14 upon conviction, by a fine not exceeding \$2,500 or imprisonment
15 for not more than one year, or both.

16 (c) Location of offense.--An offense committed under this
17 chapter involving a solicitation may be deemed to have been
18 committed at either the place at which the solicitation was
19 initiated or at the place where the solicitation was received.

20 § 1319. Civil penalties.

21 (a) General rule.--Whenever the Attorney General or any
22 district attorney shall have reason to believe, or shall be
23 advised by the secretary, that a person is operating in
24 violation of the provisions of this chapter, the Attorney
25 General or district attorney may bring an action in the name of
26 the Commonwealth against that person, to enjoin the person from
27 continuing the violation and for other relief as the court deems
28 appropriate. In a proceeding under this subsection, the court
29 may make appropriate orders, including:

30 (1) the appointment of a master or receiver;

1 (2) the sequestration of assets;

2 (3) the reimbursement of persons from whom contributions
3 have been unlawfully solicited;

4 (4) the distribution of contributions in accordance with
5 the charitable purpose expressed in the registration
6 statement or in accordance with the representations made to
7 the person solicited;

8 (5) the reimbursement of the Commonwealth for attorney
9 fees and the costs of investigation, including audit costs;

10 (6) the assessment of a civil penalty not exceeding
11 \$1,000 per violation of the act, which penalty shall be in
12 addition to any other relief which may be granted; and

13 (7) the granting of other appropriate relief.

14 (b) Assurance of voluntary compliance.--In any case where
15 the Attorney General or a district attorney has authority to
16 institute an action or proceeding under this chapter, the
17 official may accept an assurance of voluntary compliance through
18 which a person alleged to be engaged in any method, act or
19 practice in violation of this chapter agrees to discontinue the
20 method, act or practice.

21 (1) An assurance of compliance:

22 (i) May, among other terms, include a stipulation of
23 a voluntary payment by the person of the cost of the
24 investigation or of an amount to be held in escrow
25 pending the outcome of an action or as restitution to
26 aggrieved persons, or both.

27 (ii) Shall be in writing.

28 (iii) Shall be filed with a court of the
29 Commonwealth.

30 (2) (Reserved).

1 (3) In the event of an alleged violation of the
2 assurance of voluntary compliance, the Attorney General or a
3 district attorney may, at his discretion, either initiate
4 contempt proceedings or proceed as if the assurance of
5 voluntary compliance has not been accepted. Evidence of a
6 violation of the assurance shall be prima facie evidence of a
7 violation of this chapter in a subsequent proceeding brought
8 by the Attorney General or district attorney.

9 (4) Matters closed may be reopened at any time by the
10 court for further proceedings in the public interest.

11 § 1320. Additional regulations by counties, municipalities or
12 consolidated government.

13 Nothing contained in this chapter shall serve to deny the
14 right to a county, municipality or consolidated government to
15 pass ordinances, rules and regulations as may be deemed
16 appropriate to regulate further the soliciting of contributions
17 within the county, municipality or consolidated government. The
18 ordinance may not alter any of the obligations set forth in this
19 chapter or the regulations of the department but may add other
20 requirements and rules as appear to be proper to the county,
21 municipality or consolidated government involved.

22 § 1321. Charitable organizations deemed fiduciary.

23 Every person soliciting, collecting or expending
24 contributions for charitable purposes and every officer,
25 director, trustee and employee of the person concerned with the
26 solicitation, collection or expenditure of the contribution
27 shall be deemed to be a fiduciary and acting in a fiduciary
28 capacity.

29 § 1322. Prior registration unaffected.

30 A person who is registered with the department under the act

of April 30, 1986 (P.L.107, No.36), known as the Charitable
Organization Reform Act, prior to February 19, 1991, shall, on
and after February 19, 1991, be deemed to be registered with the
department as provided for in this chapter. Registration shall
be reissued in accordance with this chapter.

§ 1323. Repeals.

The act of April 30, 1986 (P.L.107, No.36), known as the
Charitable Organization Reform Act, is repealed. Existing
regulations promulgated pursuant to the Charitable Organization
Reform Act shall remain in effect until amended in accordance
with the provisions of this chapter.

PART IV

TAX

Chapter

19. General Provisions (Reserved)

21. Charitable Gift Annuity Exemptions (Reserved)

23. Institutions of Purely Public Charity

CHAPTER 19

GENERAL PROVISIONS

(RESERVED)

CHAPTER 21

CHARITABLE GIFT ANNUITY EXEMPTIONS

(RESERVED)

CHAPTER 23

INSTITUTIONS OF PURELY PUBLIC CHARITY

Sec.

2301. Scope of chapter.

2302. Legislative intent.

2303. Definitions.

2304. State-related universities.

1 2305. Criteria for institutions of purely public charity.

2 2306. Presumption process.

3 2307. Voluntary agreements.

4 2308. Unfair competition with small businesses.

5 2309. Accountability and disclosure.

6 2310. Exemption for Federal Government instrumentality.

7 2311. Prohibited act.

8 2312. Compliance.

9 2313. Civil penalty.

10 2314. Repeals.

11 2315. Applicability.

12 § 2301. Scope of chapter.

13 This chapter relates to institutions of purely public
14 charity.

15 § 2302. Legislative intent.

16 (a) Findings.--The General Assembly finds and declares as
17 follows:

18 (1) It is in the best interest of the Commonwealth and
19 its citizens that the recognition of tax-exempt status be
20 accomplished in an orderly, uniform and economical manner.

21 (2) For more than 100 years, it has been the policy of
22 the Commonwealth to foster the organization and operation of
23 institutions of purely public charity by exempting them from
24 taxation.

25 (3) Because institutions of purely public charity
26 contribute to the common good or lessen the burden of
27 government, the historic policy of exempting these
28 institutions from taxation should be continued.

29 (4) Lack of specific legislative standards defining the
30 term "institutions of purely public charity" has led to

1 increasing confusion and confrontation among traditionally
2 tax-exempt institutions and political subdivisions to the
3 detriment of the public.

4 (5) There is increasing concern that the eligibility
5 standards for charitable tax exemptions are being applied
6 inconsistently, which may violate the uniformity provision of
7 the Constitution of Pennsylvania.

8 (6) Recognizing the interest of the taxpayers in a fair
9 and equitable system of property tax assessment and the
10 attendant statutory requirements for the political
11 subdivision responsible for maintaining real property
12 assessment rolls to administer the system of property
13 assessment, this chapter shall not in any way limit the
14 responsibilities, prerogatives or abilities of political
15 subdivisions with respect to the determination of or
16 challenges to the taxable status of a parcel of property
17 based on the use of the parcel or part of the parcel of
18 property.

19 (7) Institutions of purely public charity benefit
20 substantially from local government services. These
21 institutions have significant value to the Commonwealth and
22 its citizens, and the need exists for revenues to maintain
23 local government services provided for the benefit of all
24 citizens, including institutions of purely public charity. It
25 is the intent of this chapter to encourage financially secure
26 institutions of purely public charity to enter into voluntary
27 agreements or to maintain existing or continuing agreements
28 for the purpose of defraying some of the cost of various
29 local government services. Payments made under the agreements
30 shall be deemed to be in compliance with any fiduciary

obligation pertaining to the institutions of purely public charity, its officers or directors.

(b) Intent.--It is the intent of the General Assembly to eliminate inconsistent application of eligibility standards for charitable tax exemptions, reduce confusion and confrontation among traditionally tax-exempt institutions and political subdivisions and ensure that charitable and public funds are not unnecessarily diverted from the public good to litigate eligibility for tax-exempt status by providing standards to be applied uniformly in all proceedings throughout this Commonwealth for determining eligibility for exemption from State and local taxation which are consistent with traditional legislative and judicial applications of the constitutional term "institutions of purely public charity."

§ 2303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affiliate." A domestic or foreign corporation, association, trust or other organization which owns a 10% or greater interest in an institution of purely public charity. A domestic or foreign corporation, association, trust or other organization in which an institution of purely public charity owns a 10% or greater interest.

"Annual return." The annual information return required to be filed with the Internal Revenue Service by institutions exempt from tax under section 501(a) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(a)). The annual information return consists of Internal Revenue Service Form 990 or Form 990EZ and Schedule A or any succeeding form used for the

1 same or similar purpose. For an institution which is not
2 required to file the returns, the institution's annual financial
3 statement with reported income shall constitute its annual
4 return.

5 "Bureau." The Bureau of Charitable Organizations of the
6 Department of State of the Commonwealth.

7 "Commercial business." The sale of products or services that
8 are principally the same as those offered by an existing small
9 business in the same community.

10 "Contribution." The promise, grant, pledge or gift of money,
11 property, goods, services, financial assistance or other similar
12 remittance.

13 "Goods or services." Goods or services which promote any of
14 the enumerated purposes under section 2305(b) (relating to
15 criteria for institutions of purely public charity) and which
16 are valued in accordance with generally accepted accounting
17 principles applicable to the institution.

18 "Government agency." Any Commonwealth agency or any
19 political subdivision or municipal or other local authority or
20 any officer or agency of any political subdivision or local
21 authority.

22 "Institution." A domestic or foreign nonprofit corporation,
23 association or trust or other similar entity.

24 "Institution of purely public charity." An institution which
25 meets the criteria under section 2305 (relating to criteria for
26 institutions of purely public charity).

27 "Net operating income." The amount of funds remaining after
28 all operating expenses related to the provision of goods or
29 services associated with the institution's charitable purpose
30 are deducted from payments received for providing these goods or

1 services, as determined in accordance with generally accepted
2 accounting principles applicable to the institution.

3 "Political subdivision." Any county, city, borough, town,
4 township, school district, vocational school district and county
5 institution district.

6 "Program service revenue." Income earned from the provision
7 of goods or services, including government fees and contracts
8 associated with the institution's charitable purpose, which is
9 reported on the annual return.

10 "Small business." Any self-employed individual, sole
11 proprietorship, firm, corporation, partnership, association or
12 other entity that:

13 (1) has fewer than 101 full-time employees; and

14 (2) is subject to income taxation under the act of March
15 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

16 "Total operating expenses." The costs related to the
17 provision of goods or services associated with the institution's
18 charitable purpose, as determined in accordance with generally
19 accepted accounting principles applicable to the institution.

20 "Voluntary agreement." An agreement, contract or other
21 arrangement for the purpose of receiving contributions under
22 section 2307 (relating to voluntary agreements) between a
23 political subdivision and an institution seeking or possessing
24 an exemption as an institution of purely public charity. These
25 contributions are for the purpose of defraying some of the cost
26 of various local government services. The term includes the
27 establishment of public service foundations by institutions of
28 purely public charity.

29 § 2304. State-related universities.

30 (a) General rule.--It is the intent of the General Assembly

1 to recognize that the State-related universities provide a
2 direct public benefit and serve the public purposes of this
3 Commonwealth by declaring the real property of State-related
4 universities to be public property for purposes of exemption
5 from State and local taxation when the property is actually and
6 regularly used for public purposes, provided that nothing in
7 this section is intended or shall be construed to affect the
8 title to real property of State-related universities or the
9 power and authority of the governing bodies of State-related
10 universities with respect to the real property. Nothing in this
11 section is intended or shall be construed to affect, impair or
12 terminate any contract or agreement in effect on or before
13 November 26, 1997, by and between a State-related university and
14 any political subdivision where the State-related university
15 pays real estate taxes, amounts in lieu of real estate taxes or
16 other charges, fees or contributions for government services.

17 (b) Real property.--All real property owned by State-related
18 universities or owned by the Commonwealth and used by a State-
19 related university is and shall be deemed public property for
20 purposes of the Constitution of Pennsylvania and the laws of
21 this Commonwealth relating to the assessment, taxation and
22 exemption of real estate and shall be exempt from all State and
23 local taxation when actually and regularly used for public
24 purposes.

25 (c) Exception.--This section shall not include the property
26 of a State-related university, the possession and control of
27 which has been transferred to a for-profit entity not otherwise
28 entitled to tax-exempt status, irrespective of whether that
29 entity is affiliated with the university. The execution of a
30 management services contract with a third party entity to

provide operational services to the university which would otherwise be provided or conducted directly by the university shall not, however, be considered a transfer of possession and control of real property within the meaning of this section.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Public purposes." All activities relating to the educational mission of State-related universities, including teaching, research, service and activities incident or ancillary to the educational mission which provide services to or for students, employees or the public.

"State-related universities." The Pennsylvania State University and its affiliates, the Pennsylvania College of Technology, the University of Pittsburgh, Temple University and its subsidiaries Temple University Hospital, Inc., and Temple University Children's Hospital, Inc., and Lincoln University.
§ 2305. Criteria for institutions of purely public charity.

(a) General rule.--An institution of purely public charity is an institution which meets the criteria set forth in subsections (b), (c), (d), (e) and (f). An institution which meets the criteria of this section shall be considered to be founded, endowed and maintained by public or private charity.

(b) Charitable purpose.--The institution must advance a charitable purpose. This criterion is satisfied if the institution is organized and operated primarily to fulfill any one or combination of the following purposes:

(1) Relief of poverty.

(2) Advancement and provision of education. This paragraph includes postsecondary education.

1 (3) Advancement of religion.

2 (4) Prevention and treatment of disease or injury,
3 including mental retardation and mental disorders.

4 (5) Government or municipal purposes.

5 (6) Accomplishment of a purpose which is recognized as
6 important and beneficial to the public and which advances
7 social, moral or physical objectives.

8 (c) Private profit motive.--The institution must operate
9 entirely free from private profit motive. Notwithstanding
10 whether the institution's revenues exceed its expenses, this
11 criterion is satisfied if the institution meets all of the
12 following:

13 (1) Neither the institution's net earnings nor donations
14 which it receives inures to the benefit of private
15 shareholders or other individuals, as the private inurement
16 standard is interpreted under section 501(c)(3) of the
17 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
18 501(c)(3)).

19 (2) The institution applies or reserves all revenue,
20 including contributions, in excess of expenses in furtherance
21 of its charitable purpose or to fund other institutions which
22 meet the provisions of subsection (b) and this subsection.

23 (3) Compensation, including benefits, of any director,
24 officer or employee is not based primarily upon the financial
25 performance of the institution.

26 (4) The governing body of the institution of purely
27 public charity has adopted as part of its articles of
28 incorporation or, if unincorporated, other governing legal
29 documents a provision that expressly prohibits the use of any
30 surplus funds for private inurement to any person in the

1 event of a sale or dissolution of the institution of purely
2 public charity.

3 (d) Community service.--The following shall apply:

4 (1) The institution must donate or render gratuitously a
5 substantial portion of its services. This criterion is
6 satisfied if the institution benefits the community by
7 actually providing any one of the following:

8 (i) Goods or services to all who seek them without
9 regard to a person's ability to pay for what the person
10 receives if all of the following apply:

11 (A) The institution has a written policy to this
12 effect.

13 (B) The institution has published this policy in
14 a reasonable manner.

15 (C) The institution provides uncompensated goods
16 or services at least equal to 75% of the
17 institution's net operating income but not less than
18 3% of the institution's total operating expenses.

19 (ii) Goods or services for fees that are based upon
20 the recipient's ability to pay for them if all of the
21 following apply:

22 (A) The institution can demonstrate that it has
23 implemented a written policy and a written schedule
24 of fees based on individual or family income. An
25 institution will meet the requirement of this clause
26 if the institution consistently applies a formula to
27 all individuals requesting consideration of reduced
28 fees which is in part based on individual or family
29 income.

30 (B) At least 20% of the individuals receiving

1 goods or services from the institution pay no fee or
2 a fee which is lower than the cost of the goods or
3 services provided by the institution.

4 (C) At least 10% of the individuals receiving
5 goods or services from the institution receive a
6 reduction in fees of at least 10% of the cost of the
7 goods or services provided to them.

8 (D) No individuals receiving goods or services
9 from the institution pay a fee which is equal to or
10 greater than the cost of the goods or services
11 provided to them, or the goods or services provided
12 to the individuals described in clause (B) are
13 comparable in quality and quantity to the goods or
14 services provided to those individuals who pay a fee
15 which is equal to or greater than the cost of the
16 goods or services provided to them.

17 (iii) Wholly gratuitous goods or services to at
18 least 5% of those receiving similar goods or services
19 from the institution.

20 (iv) Financial assistance or uncompensated goods or
21 services to at least 20% of those receiving similar goods
22 or services from the institution if at least 10% of the
23 individuals receiving goods or services from the
24 institution either paid no fees or fees which were 90% or
25 less of the cost of the goods or services provided to
26 them, after consideration of any financial assistance
27 provided to them by the institution.

28 (v) Uncompensated goods or services which in the
29 aggregate are equal to at least 5% of the institution's
30 costs of providing goods or services.

1 (vi) Goods or services at no fee or reduced fees to
2 government agencies or goods or services to individuals
3 eligible for government programs if any one of the
4 following applies:

5 (A) The institution receives 75% or more of its
6 gross operating revenue from grants or fee-for-
7 service payments by government agencies and if the
8 aggregate amount of fee-for-service payments from
9 government agencies does not exceed 95% of the
10 institution's costs of providing goods or services to
11 the individuals for whom the fee-for-services
12 payments are made.

13 (B) The institution provides goods or services
14 to individuals with mental retardation, to
15 individuals who need mental health services, to
16 members of an individual's family or guardian in
17 support of the goods or services or to individuals
18 who are dependent, neglected or delinquent children,
19 as long as the institution performs duties that would
20 otherwise be the responsibility of government and the
21 institution is restricted in its ability to retain
22 revenue over expenses or voluntary contributions by
23 any one of the following statutes or regulations or
24 by contractual limitations with county children and
25 youth offices in this Commonwealth:

26 (I) Sections 1905(d) and 1915(c) of the
27 Social Security Act (49 Stat. 620, 42 U.S.C. §§
28 1396d(d) and 1396n(c)).

29 (II) 42 CFR 440.150 (relating to
30 intermediate care facility (ICF/MR) services).

1 (III) 42 CFR Pt. 483 Subpt. I (relating to
2 conditions of participation for intermediate care
3 facilities for the mentally retarded).

4 (IV) The act of October 20, 1966 (3rd
5 Sp.Sess., P.L.96, No.6), known as the Mental
6 Health and Mental Retardation Act of 1966.

7 (V) Articles II, VII, IX and X of the act of
8 June 13, 1967 (P.L.31, No.21), known as the
9 Public Welfare Code.

10 (VI) 23 Pa.C.S. Ch. 63 (relating to child
11 protective services).

12 (VII) 42 Pa.C.S. Ch. 63 (relating to
13 juvenile matters).

14 (VIII) 55 Pa. Code Chs. 3170 (relating to
15 allowable costs and procedures for county
16 children and youth social service programs), 3680
17 (relating to administration and operation of a
18 children and youth social service agency), 4300
19 (relating to county mental health and mental
20 retardation fiscal manual), 6210 (relating to
21 participation requirements for the intermediate
22 care facilities for the mentally retarded
23 program), 6211 (relating to allowable cost
24 reimbursement for non-State operated intermediate
25 care facilities for the mentally retarded), 6400
26 (relating to community homes for individuals with
27 mental retardation), 6500 (relating to family
28 living homes) and 6600 (relating to intermediate
29 care facilities for the mentally retarded).

30 (vii) Fundraising on behalf of or grants to an

1 institution of purely public charity, an entity similarly
2 recognized by another state or foreign jurisdiction, a
3 qualifying religious organization or a government agency
4 and actual contribution of a substantial portion of the
5 funds raised or contributions received to an institution
6 of purely public charity, an entity similarly recognized
7 by another state or foreign jurisdiction, a qualifying
8 religious organization or a government agency.

9 (2) The institution may elect to average the applicable
10 data for its five most recently completed fiscal years for
11 the purposes of calculating any formula or meeting any
12 quantitative standard in paragraph (1).

13 (3) For purposes of calculating the number of
14 individuals for use in the percentage calculations in this
15 subsection, educational institutions may use full-time
16 equivalent students as defined by the Department of
17 Education.

18 (4) For purposes of this subsection, the term
19 "uncompensated goods or services" shall be limited to any of
20 the following:

21 (i) The full cost of all goods or services provided
22 by the institution for which the institution has not
23 received monetary compensation or the difference between
24 the full cost and any lesser fee received for the goods
25 or services, including the cost of the goods or services
26 provided to individuals unable to pay.

27 (ii) The difference between the full cost of
28 education and research programs provided by or
29 participated in by the institution and the payment made
30 to the institution to support the education and research

1 programs.

2 (iii) The difference between the full cost of
3 providing the goods or services and the payment made to
4 the institution under any government program, including
5 individuals covered by Medicare or Medicaid.

6 (iv) The difference between the full cost of the
7 community services which the institution provides or
8 participates in and the payment made to the institution
9 to support the community services.

10 (v) The reasonable value of any moneys, property,
11 goods or services donated by a primary donor to an
12 institution of purely public charity or to a government
13 agency or the reasonable value of the net donation made
14 by a secondary donor to a primary donor. As used in this
15 subparagraph, the following words and phrases shall have
16 the following meanings:

17 (A) "Net donation." In the case of a donation
18 of money, property or identical goods and services
19 made by a secondary donor, the difference between the
20 value of the donation made by the secondary donor and
21 the value of the donation made by the primary donor,
22 provided the value is positive.

23 (B) "Primary donor." An institution which makes
24 a donation of any money, property, goods or services
25 to an institution of purely public charity.

26 (C) "Secondary donor." An institution which
27 receives a donation of any money, property, goods or
28 services from a primary donor and then makes a
29 donation back to that primary donor within three
30 years of having received the donation.

1 (vi) The reasonable value of volunteer assistance
2 donated by individuals who are involved or assist in the
3 provision of goods or services by the institution. The
4 reasonable value of volunteer assistance, computed on an
5 hourly basis, shall not exceed the Statewide average
6 weekly wage as defined in section 105.1 of the act of
7 June 2, 1915 (P.L.736, No.338), known as the Workers'
8 Compensation Act, divided by 40.

9 (vii) The cost of goods or services provided by an
10 institution licensed by the Department of Health or the
11 Department of Public Welfare to individuals who are
12 unable to pay, provided that reasonable and customary
13 collection efforts have been made by the institution.

14 (viii) The value of any voluntary agreement as set
15 forth in section 2307(c) (relating to voluntary
16 agreements).

17 (e) Charity to persons.--The following shall apply:

18 (1) The institution must benefit a substantial and
19 indefinite class of persons who are legitimate subjects of
20 charity.

21 (2) As used in this subsection, the following words and
22 phrases shall have the meanings given to them in this
23 paragraph:

24 (i) "Legitimate subjects of charity." Those
25 individuals who are unable to provide themselves with
26 what the institution provides for them.

27 (ii) "Substantial and indefinite class of persons."
28 Persons not predetermined in number, provided that, where
29 the goods or services are received primarily by members
30 of the institution, membership cannot be predetermined in

1 number and cannot be arbitrarily denied by a vote of the
2 existing members. This subsection specifically recognizes
3 that the use of admissions criteria and enrollment
4 limitations by educational institutions does not
5 constitute predetermined membership or arbitrary
6 restrictions on membership so as to violate this section
7 and recognizes that an institution may reasonably deny
8 membership based on the types of services it provides, as
9 long as denial is not in violation of Federal or State
10 antidiscrimination laws, such as the Civil Rights Act of
11 1964 (Public Law 88-352, 78 Stat. 241) and the act of
12 October 27, 1955 (P.L.744, No.222), known as the
13 Pennsylvania Human Relations Act.

14 (3) An institution shall be considered to benefit a
15 substantial and indefinite class of persons who are
16 legitimate subjects of charity if the institution is
17 primarily engaged in fundraising on behalf of or making
18 grants to an institution of purely public charity, an entity
19 similarly recognized by another state or foreign
20 jurisdiction, a qualifying religious organization or a
21 government agency and there is actual contribution of a
22 substantial portion of the funds raised or contributions
23 received to an institution of purely public charity, an
24 entity similarly recognized by another state or foreign
25 jurisdiction, a qualifying religious organization or a
26 government agency.

27 (4) An institution which operates exclusively on a
28 voluntary basis to provide emergency health and safety
29 services to the community or an institution which provides
30 funds and support exclusively to volunteer institutions which

1 provide emergency health and safety services to the community
2 shall be considered to benefit a substantial and indefinite
3 class of persons who are legitimate subjects of charity.

4 (5) An institution shall not be considered to benefit a
5 substantial and indefinite class of persons who are
6 legitimate subjects of charity if:

7 (i) the institution is not qualified under section
8 501(c)(3) of the Internal Revenue Code of 1986; and

9 (ii) the institution is qualified under section
10 501(c)(4), (5), (6), (7), (8) or (9) of the Internal
11 Revenue Code of 1986 (26 U.S.C. § 501(c)(4), (5), (6),
12 (7), (8) or (9)) as any of the following:

13 (A) An association of employees, the membership
14 of which is limited to the employees of a designated
15 person or persons.

16 (B) A labor organization.

17 (C) An agricultural or horticultural
18 organization.

19 (D) A business league, chamber of commerce, real
20 estate board, board of trade or professional sports
21 league.

22 (E) A club organized for pleasure or recreation.

23 (F) A fraternal beneficiary society, order or
24 association.

25 (f) Government service.--The institution must relieve the
26 government of some of its burden. This criterion is satisfied if
27 the institution meets any one of the following:

28 (1) Provides a service to the public that the government
29 would otherwise be obliged to fund or to provide directly or
30 indirectly or to assure that a similar institution exists to

1 provide the service.

2 (2) Provides services in furtherance of its charitable
3 purpose which are either the responsibility of the government
4 by law or which historically have been assumed or offered or
5 funded by the government.

6 (3) Receives on a regular basis payments for services
7 rendered under a government program if the payments are less
8 than the full costs incurred by the institution, as
9 determined by generally accepted accounting principles.

10 (4) Provides a service to the public which directly or
11 indirectly reduces dependence on government programs or
12 relieves or lessens the burden borne by government for the
13 advancement of social, moral, educational or physical
14 objectives.

15 (5) Advances or promotes religion and is owned and
16 operated by a corporation or other entity as a religious
17 ministry and otherwise satisfies the criteria set forth in
18 this section.

19 (6) Has a voluntary agreement under section 2307.

20 (g) Other nonprofit entities.--A nonprofit parent
21 corporation, together with all of its subsidiary nonprofit
22 corporations, may elect to be considered as a single institution
23 in meeting the criteria set forth in this section as long as all
24 of the following are met:

25 (1) Each subsidiary:

26 (i) is a nonstock corporation of which the nonprofit
27 parent corporation is the only member; and

28 (ii) meets the requirements of this section.

29 (2) The parent:

30 (i) is a nonstock corporation;

1 (ii) is qualified by the Internal Revenue Service as
2 meeting the requirements of section 501(c)(3) of the
3 Internal Revenue Code of 1986;

4 (iii) meets the requirements of subsection (b) and
5 (c); and

6 (iv) except for services that meet the requirements
7 of this section, does not render services for a fee to an
8 individual or entity that does not meet the requirements
9 of paragraph (1).

10 (h) Parcel review.--The following shall apply:

11 (1) Nothing in this chapter shall affect, impair or
12 hinder the responsibilities or prerogatives of the political
13 subdivision responsible for maintaining real property
14 assessment rolls to make a determination whether a parcel of
15 property or a portion of a parcel of property is being used
16 to advance the charitable purpose of an institution of purely
17 public charity or to assess the parcel or part of the parcel
18 of property as taxable based on the use of the parcel or part
19 of the parcel for purposes other than the charitable purpose
20 of that institution.

21 (2) Nothing in this chapter shall prohibit a political
22 subdivision from filing challenges or making determinations
23 as to whether a particular parcel of property is being used
24 to advance the charitable purpose of an institution of purely
25 public charity.

26 (i) Standards.--An institution of purely public charity may
27 conduct activities intended to influence legislation provided
28 that no substantial part of the activities of an institution of
29 purely public charity shall consist of carrying on propaganda,
30 except as otherwise provided in section 501(h) of the Internal

Revenue Code of 1986, or participating in or intervening in,
including the publishing or distributing of statements, any
political campaign on behalf of or in opposition to any
candidate for public office as the limitations are interpreted
under section 501 of the Internal Revenue Code of 1986.

§ 2306. Presumption process.

(a) Presumption determination.--An institution of purely
public charity possessing a valid exemption from the tax imposed
by Article II of the act of March 4, 1971 (P.L.6, No.2), known
as the Tax Reform Code of 1971, shall be entitled to assert a
rebuttable presumption regarding that institution's compliance
with the criteria set forth in section 2305 (relating to
criteria for institutions of purely public charity) as follows:

(1) An institution of purely public charity that has
annual program service revenue less than \$10,000,000 shall be
entitled to assert the presumption if the institution
possesses a valid exemption under section 204(10) of the Tax
Reform Code of 1971.

(2) An institution of purely public charity that has
annual program service revenue equal to or exceeding
\$10,000,000 shall be entitled to assert the presumption if
all of the following apply:

(i) the institution possesses a valid exemption
under section 204(10) of the Tax Reform Code of 1971; and

(ii) the institution has a voluntary agreement as
provided under section 2307 (relating to voluntary
agreements) with a political subdivision in which that
institution conducts substantial business operations.

(3) The presumption under paragraph (2) may be asserted
by an institution of purely public charity only with regard

1 to a challenge made by a political subdivision with which
2 that institution has a voluntary agreement in effect under
3 section 2307.

4 (4) For the purpose of calculating annual program
5 service revenue under this section, an institution of purely
6 public charity may elect to average annual program service
7 revenue for its two most recently completed fiscal years.

8 (5) Commencing July 1, 1999, and every year thereafter,
9 the Department of Revenue shall increase the amount set forth
10 in paragraphs (1) and (2) by 1%. The department shall
11 transmit notice of the adjustment to the Legislative
12 Reference Bureau for publication in the Pennsylvania
13 Bulletin.

14 (b) Burden of proof.--If an institution of purely public
15 charity asserts a presumption under subsection (a), a political
16 subdivision challenging that institution before a government
17 agency or court shall bear the burden, by a preponderance of the
18 evidence, of proving that the institution of purely public
19 charity does not comply with the requirements of section 2305.

20 (c) Issuance of written order.--The department shall furnish
21 a written order to any institution applying for exemption under
22 section 204(10) of the Tax Reform Code of 1971 approving or
23 denying the exemption. An order denying an exemption shall
24 include specific information concerning that institution's
25 failure to comply with at least one of the criteria under
26 section 2305.

27 (d) Waiver of confidentiality.--An institution of purely
28 public charity asserting a presumption under subsection (a)
29 shall be deemed to have waived any right to confidentiality with
30 regard to all records in the possession of the department

1 relating to the application for exemption. These records shall
2 be deemed public records that the department must furnish to any
3 person upon request. A political subdivision challenging the
4 presumption may request from the institution of purely public
5 charity all relevant financial statements, records and documents
6 used to obtain the exemption under section 204(10) of the Tax
7 Reform Code of 1971. Failure by that institution to supply or,
8 at its option, to permit inspection of the information in its
9 possession within 30 days shall eliminate the presumption with
10 respect to that challenge.

11 (e) Department involvement.--A determination made under this
12 section shall not in any way subject the department to
13 participation in any controversy, discovery or litigation
14 between a political subdivision and an institution claiming the
15 exemption as an institution of purely public charity, other than
16 providing a copy of its written order and any supporting
17 documentation supplied to the department by that institution.
18 § 2307. Voluntary agreements.

19 (a) General rule.--A political subdivision may execute a
20 voluntary agreement with an institution that owns real property
21 within the political subdivision. All contributions received
22 from the voluntary agreements shall be used to help ensure that
23 essential governmental, public or community services will
24 continue to be provided in a manner that will permit an
25 institution to continue to fulfill its charitable mission.
26 Nothing in this section shall be construed to prohibit a
27 political subdivision from sharing with another political
28 subdivision a portion of the proceeds derived from a voluntary
29 agreement upon the mutual agreement of all affected parties.

30 (b) Public service foundations.--Institutions of purely

public charity may establish a public service foundation, upon mutual agreement with a political subdivision, for the purpose of receiving contributions from institutions of purely public charity. Upon agreement, the foundation shall make distributions or grants to a participating political subdivision to help ensure that essential governmental, public or community services will continue to be provided in a manner that will permit an institution to continue to fulfill its charitable mission. A political subdivision which receives a distribution or grant from a public service foundation shall not assess or seek a separate contribution for services from institutions of purely public charity participating in a foundation.

(c) Additional credit for voluntary agreements.--An institution which has entered into a voluntary agreement may credit the following percentage of the reasonable value of its contribution for purposes of computing the community service criteria set forth in section 2305(d)(4)(viii) (relating to criteria for institutions of purely public charity):

(1) If the reasonable value of the institution's contribution is equal to or less than 0.15% of its program service revenue, the institution may credit the entire contribution at 150% of its value.

(2) If the reasonable value of the institution's contribution is greater than 0.15% but less than 0.25% of its program service revenue, the institution may credit the entire contribution at 250% of its value.

(3) If the reasonable value of the institution's contribution is equal to or greater than 0.25% of its program service revenue, the institution may credit the entire contribution at 350% of its value.

1 (d) Existing agreements.--Nothing in this chapter shall be
2 construed to affect, impair, terminate or supersede any
3 contract, agreement or other arrangement on or before November
4 27, 1997, between an institution and a political subdivision
5 which authorizes or requires payment of taxes, amounts in lieu
6 of taxes or other charges or fees for the services of a
7 political subdivision.

8 (e) New agreements.--Nothing in this chapter shall be
9 construed to impair or otherwise inhibit the right or ability of
10 any institution seeking or possessing an exemption as an
11 institution of purely public charity, a public service
12 foundation or a political subdivision from executing voluntary
13 agreements after November 26, 1997.

14 § 2308. Unfair competition with small businesses.

15 (a) Intent.--It is the policy of this chapter that
16 institutions of purely public charity shall not use their tax-
17 exempt status to compete unfairly with small business.

18 (b) General rule.--An institution of purely public charity
19 may not fund, capitalize, guarantee the indebtedness of, lease
20 obligations of or subsidize a commercial business that is
21 unrelated to the institution's charitable purpose as stated in
22 the institution's charter or governing legal documents.

23 (c) Exceptions.--Institutions of purely public charity are
24 not in violation of subsection (b) if any of the following
25 apply:

26 (1) The commercial business is intended only for the use
27 of its employees, staff, alumni, faculty, members, students,
28 clients, volunteers, patients or residents. For purposes of
29 this paragraph, a person shall not be considered an employee,
30 staff, member, alumnus, faculty, student, client, volunteer,

1 patient or resident if the person's only relationship with
2 the institution of purely public charity is to receive
3 products or services resulting from the commercial business.

4 (2) The commercial business results in sales to the
5 general public that are incidental or periodic rather than
6 permanent and ongoing.

7 (d) Support for other charities.--Nothing in this section
8 shall be construed as prohibiting or limiting the ability of an
9 institution of purely public charity to fund, capitalize,
10 guarantee the indebtedness of or otherwise subsidize another
11 institution of purely public charity.

12 (e) Investments.--The investment in publicly traded stocks
13 and bonds; real estate, whether directly or indirectly; or other
14 investments by an institution of purely public charity does not
15 violate subsection (b).

16 (f) Educational functions.--Use of facilities to host groups
17 for educational purposes by an institution of purely public
18 charity does not violate subsection (b).

19 (g) Government functions.--An institution of purely public
20 charity may engage in a new commercial business that may
21 otherwise be in violation of subsection (b) if the institution
22 is formally requested to do so by the Commonwealth or a
23 political subdivision.

24 (h) Existing business arrangements.--An institution of
25 purely public charity that prior to March 26, 1998, funded,
26 capitalized, guaranteed the indebtedness of, leased obligations
27 of or subsidized a commercial business may continue to own and
28 operate the businesses without violating subsection (b) as long
29 as the institution does not substantially expand the scope of
30 the commercial business. In the event an injunction is issued

1 under subsection (i), the effect of the injunction shall be
2 limited to restraining the substantial expansion of the scope of
3 the commercial business which was initiated after March 26,
4 1998.

5 (i) Remedies.--The Department of State shall establish a
6 system of mandatory arbitration for the purpose of receiving all
7 complaints from aggrieved small businesses relating to an
8 institution of purely public charity's alleged violation of this
9 section. Upon receipt of the complaint, the department shall
10 direct that the complaint be resolved as follows:

11 (1) All complaints shall be in the form of a sworn
12 statement setting forth all allegations and requests for
13 relief and shall be filed with the department, together with
14 a fee as prescribed by the department.

15 (2) Within ten days of filing the complaint with the
16 department, the aggrieved small business shall serve a copy
17 of the complaint on the institution of purely public charity
18 against which the complaint is filed. The institution of
19 purely public charity must respond to the complaint within 30
20 days of its receipt by the institution of purely public
21 charity.

22 (3) Within 30 days following the period of time allotted
23 to the institution of purely public charity to respond to the
24 complaint, the department shall provide an unbiased and
25 qualified arbitrator who possesses sufficient knowledge
26 regarding the institutions to adjudicate the matter. If the
27 institution of purely public charity does not participate in
28 the arbitration, the arbitrator may issue an order to compel
29 the participation. An order shall be enforceable by the court
30 of common pleas in the judicial district where the

1 arbitration takes place.

2 (4) The arbitration shall take place in the judicial
3 district in which the aggrieved small business is located.
4 The department shall provide the arbitrator all relevant
5 material regarding the complaint, including the original
6 complaint, the institution of purely public charity's
7 response to the complaint and copies of any other relevant
8 information which the department may possess. The arbitration
9 shall be completed within one year from the date on which the
10 arbitrator was assigned.

11 (5) Within 30 days of the arbitrator's assignment, the
12 arbitrator shall determine if the complaint sets forth prima
13 facie evidence that a violation of this section has occurred.
14 If the arbitrator determines that the complaint does not
15 contain prima facie evidence, the arbitrator shall issue a
16 written report detailing the findings and shall terminate the
17 arbitration. A small business may appeal a determination as
18 provided in paragraph (9).

19 (6) The arbitrator shall determine if the activity of
20 the institution of purely public charity is in violation of
21 this section. In making this determination, the arbitrator
22 shall review all relevant law, including previous
23 arbitrators' decisions, regulations and the charter or
24 governing legal documents of the institution of purely public
25 charity.

26 (7) The decision of the arbitrator shall be set forth in
27 a written decision issued to each party specifying findings
28 of fact and conclusions of law. If the arbitrator finds a
29 violation of this section, the arbitrator may include an
30 order or injunction as part of the decision, provided that no

1 damages may be assessed against an institution of purely
2 public charity.

3 (8) Upon agreement of the parties, the decision of the
4 arbitrator shall be final and binding as to all matters of
5 fact and law and shall be entered by the arbitrator as a
6 final judgment in the court of common pleas of the judicial
7 district in which the arbitration took place. A copy of the
8 arbitrator's final decision shall also be filed with the
9 department.

10 (9) Either party may initiate a de novo appeal from the
11 arbitrator's decision in the court of common pleas of the
12 judicial district in which the arbitration took place within
13 30 days of the arbitrator's decision.

14 (10) The department may provide for the system of
15 arbitration by maintaining a list of qualified arbitrators or
16 by contracting for qualified arbitration services.

17 (11) The department may adopt regulations necessary to
18 implement this section.

19 (12) The cost of an arbitration proceeding, including
20 the arbitrator's fee, shall be borne by the complainant,
21 unless the arbitrator directs otherwise. Each party shall be
22 responsible for its attorney fees and other costs incurred.

23 (13) Except as set forth in this section or in
24 regulations promulgated by the department under this section,
25 the arbitration shall be governed by 42 Pa.C.S. Ch. 73 Subch.
26 A (relating to statutory arbitration).

27 (14) The remedies set forth in this subsection shall be
28 the exclusive remedies available to an aggrieved small
29 business.

30 § 2309. Accountability and disclosure.

1 (a) Reporting.--An institution of purely public charity that
2 does not register with the Department of State under Ch. 13
3 (relating to solicitation of funds for charitable purposes),
4 including institutions exempt under section 1306(a) (relating to
5 exemptions from registration), shall file an annual report with
6 the bureau. The report shall be filed within 135 days after the
7 close of the institution's fiscal year unless an extension is
8 granted by the department. The report shall be in a format
9 approved by the department and shall include:

10 (1) A copy of the annual return filed or required to be
11 filed with the Internal Revenue Service.

12 (2) The date the institution of purely public charity
13 was organized under applicable law.

14 (3) Any revocation of tax-exempt status by the Internal
15 Revenue Service.

16 (4) The following information on each affiliate of the
17 institution of purely public charity:

18 (i) The name and type of organization.

19 (ii) Whether the affiliate is organized on a for-
20 profit or nonprofit basis.

21 (iii) The relationship of each affiliate to the
22 institution of purely public charity making the report.

23 (5) The relationship of the institution of purely public
24 charity with any other nonprofit corporation or
25 unincorporated association if the relationship involves
26 formal governance or the sharing of revenue.

27 (b) Regulations.--The department shall promulgate
28 regulations to require institutions of purely public charity
29 which register under section 5 of the act of December 19, 1990
30 (P.L.1200, No.202), known as the Solicitation of Funds for

1 Charitable Purposes Act, to include the information set forth in
2 subsection (a).

3 (c) Amendments to annual returns.--An institution of purely
4 public charity which files an amended annual return with the
5 Internal Revenue Service shall file a copy of the amended annual
6 return with the bureau within ten days of its filing with the
7 Internal Revenue Service.

8 (d) Exemption from filing.--Each of the following
9 institutions of purely public charity shall be exempt from the
10 reporting requirements of this section:

11 (1) A bona fide duly constituted religious institution
12 and the separate groups or corporations which form an
13 integral part of a religious institution and are exempt from
14 filing an annual return pursuant to the Internal Revenue Code
15 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

16 (2) An institution of purely public charity which
17 receives contributions of less than \$25,000 per year provided
18 that the institution's program service revenue does not equal
19 or exceed \$5,000,000.

20 (e) Filing fee.--An institution of purely public charity
21 which is required to file a report under subsection (a) shall
22 pay an annual filing fee of \$15. All fees collected under this
23 chapter and under the Solicitation of Funds for Charitable
24 Purposes Act shall be deposited in the State Treasury. The
25 amount of the filing fee under this subsection may be adjusted
26 by the department by regulation. All fines, penalties, attorney
27 fees and costs of investigation collected under this chapter and
28 under the Solicitation of Funds for Charitable Purposes Act
29 shall be paid as follows:

30 (1) Amounts collected by the bureau shall be paid to the

1 State Treasury.

2 (2) Amounts collected by the action or litigation of
3 another government agency shall be paid directly to that
4 agency.

5 (f) Paperwork reduction.--The department shall allow an
6 institution of purely public charity to certify that the
7 information required in subsection (a) (2), (3), (4) and (5) has
8 not changed since the prior report in lieu of providing the same
9 information in the report required by subsection (a). The
10 department may obtain from the Internal Revenue Service copies
11 of annual returns of institutions of purely public charity which
12 file annual returns with the Internal Revenue Service on
13 computer disk or other electronic or paper media.

14 (g) Retention of records.--The department shall retain the
15 reporting information required by this section for three years
16 from the date the reports are required to be filed.

17 (h) Utilization of reports.--The department shall make
18 reports submitted under this section available for public
19 inspection to the extent that the information is available for
20 public inspection under section 6104 of the Internal Revenue
21 Code of 1986 (26 U.S.C. § 6104). The department shall provide
22 any government agency a copy of the report filed under this
23 section upon request. Nothing in this subsection shall prevent a
24 government agency from requiring any institution seeking
25 exemption as an institution of purely public charity to provide
26 the information described in subsection (a) to that agency as
27 part of a determination of the tax-exempt status of the
28 institution.

29 (i) Administrative penalty.--The department may impose an
30 administrative penalty not to exceed \$500 for any of the

1 following:

2 (1) Knowingly failing to file the report required by
3 this section.

4 (2) Knowingly making a false statement which is material
5 in a report required by this section.

6 § 2310. Exemption for Federal Government instrumentality.

7 All real property owned by any corporation established by an
8 act of the Congress of the United States that is required to
9 submit annual reports of its activities to Congress containing
10 itemized accounts of all receipts and expenditures after being
11 fully audited by the Department of Defense, for purposes of the
12 Constitution of Pennsylvania and the laws of this Commonwealth
13 relating to the assessment and taxation of real estate, is
14 deemed to be property of a Federal Government instrumentality
15 and thus exempt from all State and local taxation.

16 § 2311. Prohibited act.

17 No institution may claim an exemption from sales and use tax
18 as an institution of purely public charity unless the
19 institution has received an order from the Department of Revenue
20 approving and authorizing the exemption.

21 § 2312. Compliance.

22 Institutions of purely public charity shall comply with the
23 provisions of this chapter and with the provisions of Article II
24 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
25 Reform Code of 1971.

26 § 2313. Civil penalty.

27 In addition to any penalties authorized by the act of March
28 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for
29 violations of that act, the Department of Revenue may impose an
30 administrative penalty not to exceed \$500 for any willful and

1 knowing violation of this chapter. This section shall not apply
2 to any violation of section 2308 (relating to unfair competition
3 with small businesses).

4 § 2314. Repeals.

5 (a) Absolute.--(Reserved).

6 (b) General.--All other acts and parts of acts are repealed
7 insofar as they are inconsistent with this chapter except for
8 section 204(a)(3) of the act of May 22, 1933 (P.L.853, No.155),
9 known as The General County Assessment Law, as it applies to
10 charitable organizations providing residential housing services.

11 § 2315. Applicability.

12 (a) General.--This chapter shall not apply to nor affect 40
13 Pa.C.S. § 6103 (relating to exemptions applicable to certified
14 hospital plan corporations) or 6307 (relating to exemptions
15 applicable to certificated professional health service
16 corporations) or the entities subject to those sections.

17 (b) Existing sales and use tax exemptions.--An exemption
18 from tax under section 204(10) of the act of March 4, 1971
19 (P.L.6, No.2), known as the Tax Reform Code of 1971, existing on
20 November 26, 1997, shall remain in effect until the expiration
21 of that exemption.

22 (c) Presumption.--No institution of purely public charity
23 may assert a presumption under section 2306 (relating to
24 presumption process) until that institution's exemption under
25 section 204(10) of the Tax Reform Code of 1971 is granted or
26 renewed after March 25, 1998.

27 Section 2. Repeals are as follows:

28 (1) The General Assembly declares that the repeal under
29 paragraph (2) is necessary to effectuate the addition of 10
30 Pa.C.S. Ch 13.

1 (2) The act of December 19, 1990 (P.L.1200, No.202),
2 known as the Solicitation of Funds for Charitable Purposes
3 Act, is repealed.

4 (3) The General Assembly declares that the repeal under
5 paragraph (4) is necessary to effectuate the addition of 10
6 Pa.C.S. Ch. 23.

7 (4) The act of November 26, 1997 (P.L.508, No.55), known
8 as the Institutions of Purely Public Charity Act, is
9 repealed.

10 Section 3. The addition of 10 Pa.C.S. Ch. 13 is a
11 continuation of the act of December 19, 1990 (P.L.1200, No.202),
12 known as the Solicitation of Funds for Charitable Purposes Act.
13 The following apply:

14 (1) Except as otherwise provided in 10 Pa.C.S. Ch. 13,
15 all activities initiated under the Solicitation of Funds for
16 Charitable Purposes Act shall continue and remain in full
17 force and effect and may be completed under 10 Pa.C.S. Ch.
18 13. Orders, regulations, rules and decisions which were made
19 under the the Solicitation of Funds for Charitable Purposes
20 Act and which are in effect on the effective date of section
21 2(2) of this act shall remain in full force and effect until
22 revoked, vacated or modified under 10 Pa.C.S. Ch. 13.

23 Contracts, obligations and collective bargaining agreements
24 entered into under the Solicitation of Funds for Charitable
25 Purposes Act are not affected nor impaired by the repeal of
26 the Solicitation of Funds for Charitable Purposes Act.

27 (2) Except as set forth in paragraph (3), any difference
28 in language between 10 Pa.C.S. Ch. 13 and the Solicitation of
29 Funds for Charitable Purposes Act is intended only to conform
30 to the style of the Pennsylvania Consolidated Statutes and is

1 not intended to change or affect the legislative intent,
2 judicial construction or administration and implementation of
3 the Solicitation of Funds for Charitable Purposes Act.

4 (3) (Reserved).

5 Section 4. The addition of 10 Pa.C.S. Ch. 23 is a
6 continuation of the act of November 26, 1997 (P.L.508, No.55),
7 known as the Institutions of Purely Public Charity Act. The
8 following apply:

9 (1) Except as otherwise provided in 10 Pa.C.S. Ch. 23,
10 all activities initiated under the Institutions of Purely
11 Public Charity Act shall continue and remain in full force
12 and effect and may be completed under 10 Pa.C.S. Ch. 23.
13 Orders, regulations, rules and decisions which were made
14 under the Institutions of Purely Public Charity Act and which
15 are in effect on the effective date of section 2(4) of this
16 act shall remain in full force and effect until revoked,
17 vacated or modified under 10 Pa.C.S. Ch. 23. Contracts,
18 obligations and collective bargaining agreements entered into
19 under the Institutions of Purely Public Charity Act are not
20 affected nor impaired by the repeal of the Institutions of
21 Purely Public Charity Act.

22 (2) Except as set forth in paragraph (3), any difference
23 in language between 10 Pa.C.S. Ch. 23 and the Institutions of
24 Purely Public Charity Act is intended only to conform to the
25 style of the Pennsylvania Consolidated Statutes and is not
26 intended to change or affect the legislative intent, judicial
27 construction or administration and implementation of the
28 Institutions of Purely Public Charity Act.

29 (3) (Reserved).

30 Section 5. This act shall take effect in 60 days.