

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 69

Session of
1993

INTRODUCED BY CAPPABIANCA, VAN HORNE, CALTAGIRONE, PESCI,
STURLA, ACOSTA, HALUSKA, SCRIMENTI, PRESTON, TIGUE, LEDERER,
FAIRCHILD, ULIANA, TOMLINSON, STEELMAN, WOZNIAK AND GORDNER,
JANUARY 27, 1993

REFERRED TO COMMITTEE ON RULES, JANUARY 27, 1993

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)
2 of the Pennsylvania Consolidated Statutes, requiring
3 nonprofit corporations to supply information as to
4 affiliation, activities and tax status to the Commonwealth;
5 providing for powers and duties of the Department of State
6 and the Department of Revenue; and providing for penalties.

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

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

11 CHAPTER 58

12 ACCOUNTABILITY

13 Sec.

14 5801. Legislative intent.

15 5802. Definitions.

16 5803. Department of Revenue.

17 5804. Reports.

18 5805. Exemption.

19 5806. Individual responsibility.

- 1 5807. Assignment of code numbers.
- 2 5808. Audit authorized.
- 3 5809. Duties of Department of State.
- 4 5810. Exchange of information and confidentiality.
- 5 5811. Regulations.
- 6 5812. Sanctions.
- 7 5813. Evidence of violation.
- 8 5814. Annual report.

9 § 5801. Legislative intent.

10 In enacting this chapter, it is the intent of the General
11 Assembly to require the Department of Revenue to:

12 (1) Establish a data base on nonprofit corporations
13 incorporated in this Commonwealth.

14 (2) Determine the extent to which affiliations exist
15 between nonprofit and for-profit entities.

16 (3) Determine the level of commercial activity of
17 nonprofit corporations and their affiliates.

18 (4) Determine the fiscal impact of such activities on
19 Commonwealth revenue.

20 (5) Determine the number of nonprofit corporations and
21 their affiliates operating on a tax-exempt basis in
22 Pennsylvania but not operating on a tax-exempt basis on the
23 Federal level.

24 § 5802. Definitions.

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

28 "Affiliation." The relationship between corporations or
29 unincorporated associations, or both, when:

30 (1) a corporation or unincorporated association is

1 controlled by or controls another corporation or
2 unincorporated association;

3 (2) a corporation or unincorporated association, or
4 both, are controlled by the same corporation or
5 unincorporated association; or

6 (3) a corporation or unincorporated association has a
7 contractual relationship with another corporation or
8 unincorporated association where the contract provides for
9 the distribution of profits among the parties to the
10 contract.

11 "Annual return." Annual return as defined by the Internal
12 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.)
13 and the regulations issued thereunder.

14 "Commercial activity." Any activity which provides a product
15 or service for a fee which could be obtained from a for-profit
16 business or any unrelated business and retail activities of
17 nonprofit corporations.

18 "Control." A corporation or unincorporated association has
19 control over another corporation or unincorporated association
20 if:

21 (1) the corporation or unincorporated association
22 directly or indirectly or acting through one or more persons
23 owns, controls or has power to vote 25% or more of any class
24 of voting securities of the other corporation or
25 unincorporated association;

26 (2) the corporation or unincorporated association
27 controls in any manner the election of a majority of the
28 directors or trustees of the other corporation or
29 unincorporated association; or

30 (3) the Department of Revenue determines, after notice

1 and opportunity for hearing, that the corporation or
2 unincorporated association directly or indirectly exercises a
3 controlling influence over the management or policies of the
4 other corporation or unincorporated association.

5 However, there shall be a presumption that any corporation or
6 unincorporated association which directly or indirectly owns,
7 controls or has power to vote less than 5% of any class of
8 voting securities of a given corporation or unincorporated
9 association does not have control over that corporation or
10 unincorporated association.

11 "Corporation." A corporation for profit or not-for-profit.

12 "Organizational structure." The control structure within
13 which a corporation or unincorporated association exists. The
14 term includes the corporation or unincorporated association, its
15 affiliates and, if applicable, its parent, its subsidiaries and
16 all stockholders owning 5% or more of its outstanding stock.

17 "Parent." A corporation which owns more than 50% of the
18 voting stock of another corporation.

19 "Secretary." The Secretary of Revenue of the Commonwealth.

20 "Subsidiary." A corporation of which more than 50% of the
21 voting shares are owned by another corporation.

22 "Unincorporated association." The act of two or more persons
23 in uniting together for any of the purposes set forth in section
24 5301 (relating to purposes) which does not contemplate pecuniary
25 gain or profit, incidental or otherwise, and which is not
26 incorporated under the laws of this Commonwealth or any other
27 state.

28 § 5803. Department of Revenue.

29 The Department of Revenue shall receive the reports required
30 by this chapter from nonprofit corporations and shall compile

1 information based on those reports.

2 § 5804. Reports.

3 (a) Initial.--A Pennsylvania nonprofit corporation which
4 files a 1992 annual return with the Internal Revenue Service
5 under the Internal Revenue Code of 1986 (Public Law 99-514, 26
6 U.S.C. § 1 et seq.) shall file with the Department of Revenue,
7 no later than the date it is required to file a 1992 annual
8 return with the Internal Revenue Service, including any
9 extension granted by the Internal Revenue Service, a copy of its
10 1992 annual return as filed with the Internal Revenue Service
11 and the following information if not included in such annual
12 return:

13 (1) The date when it was incorporated and a reference to
14 any determination of its tax-exempt status under the Internal
15 Revenue Code of 1986, including, if applicable, its Internal
16 Revenue tax exemption code number or other documentation
17 certified by the Internal Revenue Service and the tax-exempt
18 purposes as established with the Internal Revenue Service.

19 (2) The names of all corporations, unincorporated
20 associations or other affiliates within its organizational
21 structure, whether each corporation, unincorporated
22 association or other affiliate is organized on a for-profit
23 or not-for-profit basis and whether each corporation,
24 unincorporated association or other affiliate is organized as
25 a corporation or unincorporated association together with the
26 relationship of each corporation, unincorporated association
27 or other affiliate within the organizational structure,
28 including the relationship of the filing nonprofit
29 corporation to the other corporations, unincorporated
30 associations or other affiliates within the organizational

1 structure.

2 (3) Its relationship with any national nonprofit
3 corporation or unincorporated association.

4 (4) Whether any contracts exist, on the date of filing
5 the report, between members of the organizational structure
6 and, if so, a description of the nature of each contract and
7 the members which are parties to it.

8 (b) Annual.--A Pennsylvania nonprofit corporation which
9 files an annual return with the Internal Revenue Service under
10 the Internal Revenue Code of 1986 shall file, with the
11 Department of Revenue on an annual basis, a copy of its annual
12 return for the given tax year as filed with the Internal Revenue
13 Service, any change in its tax status with the Internal Revenue
14 Service and, if not included in the annual return, the
15 information required in subsection (a). The information required
16 by this subsection shall be filed with the Department of Revenue
17 no later than the date the nonprofit corporation is required to
18 file its annual return with the Internal Revenue Service,
19 including any extension granted in accordance with the Internal
20 Revenue Code of 1986.

21 (c) Amendment.--Any nonprofit corporation filing an annual
22 return under this chapter which, thereafter, files an amended
23 return with the Internal Revenue Service shall file a copy of
24 the amended return with the Department of Revenue within ten
25 days of its filing with the Internal Revenue Service.

26 (d) Unincorporated associations.--An unincorporated
27 association which is a member of the organizational structure of
28 or affiliated with a nonprofit corporation shall not be required
29 to file any report required by this section.

30 § 5805. Exemption.

1 A Pennsylvania nonprofit corporation which is related to a
2 national nonprofit corporation or unincorporated association and
3 which does not file a separate annual return with the Internal
4 Revenue Service but is included in a consolidated return filed
5 by the national nonprofit corporation or unincorporated
6 association shall be exempted from the reporting requirements of
7 this chapter for any year in which the consolidated return is
8 filed upon the filing of a notarized statement to such effect
9 with the Department of Revenue, including the name of the
10 national nonprofit corporation or unincorporated association
11 with which it is affiliated.

12 § 5806. Individual responsibility.

13 If more than one nonprofit corporation subject to the
14 reporting requirements of this chapter exists within the same
15 organizational structure, each nonprofit corporation shall be
16 individually responsible for complying with the reporting
17 requirements of this chapter.

18 § 5807. Assignment of code numbers.

19 The Department of Revenue shall assign a common code number
20 to the filing nonprofit corporation and to each member of its
21 organizational structure, together with alphabetical identifiers
22 to differentiate each member of the organizational structure.

23 § 5808. Audit authorized.

24 The secretary shall conduct a random annual audit of 1% of
25 the filing nonprofit corporations and the members of each of
26 their organizational structures to verify the information
27 contained in their annual reports. The secretary is further
28 empowered to conduct an audit of any filing nonprofit
29 corporation and the members of its organizational structure
30 whenever he considers it necessary to carry out the purposes of

1 this chapter.

2 § 5809. Duties of Department of State.

3 (a) Notification of existing nonprofit corporations.--Within
4 90 days of the effective date of this chapter, the Department of
5 State shall notify each Pennsylvania nonprofit corporation of
6 the requirements of this chapter by certified mail, return
7 receipt requested, and include therein any forms necessary to
8 comply with the reporting requirements of this chapter.

9 (b) Notification of newly incorporated nonprofit
10 corporations.--The Department of State shall notify each
11 Pennsylvania nonprofit corporation incorporated after the
12 effective date of this chapter of the requirements of this
13 chapter at the time of its incorporation and provide the
14 nonprofit corporations any forms necessary to comply with the
15 reporting requirements of this chapter at that time.

16 (c) Providing of list.--The Department of State shall
17 provide a list to the Department of Revenue of all Pennsylvania
18 nonprofit corporations for which verification of notification
19 has been received under subsection (a) and shall thereafter
20 provide, on an annual basis, a list of all newly incorporated
21 Pennsylvania nonprofit corporations.

22 § 5810. Exchange of information and confidentiality.

23 The Department of State and the Department of Revenue are
24 authorized to enter into cooperative agreements for the exchange
25 of information with Federal and State agencies for the purpose
26 of implementation of this chapter. Any information obtained
27 under this chapter or as a result of any exchange of information
28 authorized by this section shall be subject to the same
29 requirements of confidentiality as exist for annual returns
30 filed under the Internal Revenue Code of 1986 (Public Law 99-

1 514, 26 U.S.C. § 1 et seq.) and tax returns filed under the act
2 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
3 1971.

4 § 5811. Regulations.

5 The Department of State and the Department of Revenue may
6 promulgate either joint or separate regulations necessary and
7 appropriate to carry out the purposes of this chapter.

8 § 5812. Sanctions.

9 A nonprofit corporation which fails to comply with the
10 provisions of section 5804 (relating to reports) shall be
11 subject to a fine of \$10 a day for each day the report is late
12 up to a maximum of \$5,000 unless reasonable cause can be shown
13 for the late filing. Levying of the penalty shall be in
14 accordance with the provisions of 2 Pa.C.S. Ch. 5 Subch. A
15 (relating to practice and procedure of Commonwealth agencies).

16 § 5813. Evidence of violation.

17 If, in the course of performing its duties under this
18 chapter, the Department of Revenue believes a violation
19 enumerated in section 503 (relating to actions to revoke
20 corporate franchises) has occurred, it shall so inform the
21 Attorney General, who shall determine whether to institute
22 proceedings under that section.

23 § 5814. Annual report.

24 Within 90 days after the end of the calendar year, the
25 secretary shall submit to the General Assembly a summary of the
26 annual reports filed under this chapter during the prior year,
27 which shall contain information on the subjects set forth in
28 section 5801 (relating to legislative intent) and on the number
29 of referrals under section 5813 (relating to evidence of
30 violation).

1 Section 2. The provisions of 15 Pa.C.S. Ch. 58 shall expire
2 five years from the effective date of this act.
3 Section 3. This act shall take effect in 90 days.