
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1222 Session of
2019

INTRODUCED BY LEWIS, MILLARD, BERNSTINE, MOUL AND CIRESI,
APRIL 26, 2019

SENATOR PHILLIPS-HILL, STATE GOVERNMENT, IN SENATE, AS AMENDED,
SEPTEMBER 24, 2019

AN ACT

1 Amending Title 10 (Charities) of the Pennsylvania Consolidated
2 Statutes, consolidating the Solicitation of Funds for
3 Charitable Purposes Act and the Institutions of Purely Public
4 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 PROVISIONS

15 Sec.

16 101. Scope of title.

17 § 101. Scope of title.

18 This title relates to charities.

1 PART II

2 GAMES

3 (Reserved)

4 PART III

5 OPERATION

6 Chapter

7 11. General Provisions (Reserved)

8 13. Solicitation of Funds for Charitable Purposes

9 CHAPTER 11

10 GENERAL PROVISIONS

11 (Reserved)

12 CHAPTER 13

13 SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES

14 Sec.

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16 1302. Legislative intent.

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28 1312. Records to be kept by charitable organizations,

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30 solicitors.

1 1313. Limitation on activities of charitable organizations and
2 disclosure requirements.

3 1314. Reciprocal agreements.

4 1315. Prohibited acts.

5 1316. Investigation.

6 1317. Administrative enforcement and penalties.

7 1318. Criminal penalties.

8 1319. Civil penalties.

9 1320. Additional regulations by counties, municipalities or
10 consolidated government.

11 1321. Charitable organizations deemed fiduciary.

12 1322. Prior registration unaffected.

13 1323. Regulations.

14 § 1301. Scope of chapter.

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

17 § 1302. Legislative intent.

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

1 of charity. This chapter shall not be construed to be exclusive
2 in its purview, and its application shall not operate as a bar
3 or otherwise prevent the contemporaneous or subsequent
4 application of other relevant acts.

5 § 1303. Definitions.

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

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

17 "Affiliate." A chapter, branch, auxiliary or other
18 subordinate unit of any charitable organization, notwithstanding
19 its designation, whose policies, fundraising activities and
20 expenditures are supervised or controlled by the parent
21 organization.

22 "Bureau." The Bureau of Corporations and Charitable
23 Organizations of the Department of State.

24 "Charitable organization." A person granted tax exempt
25 status under section 501(c)(3) of the Internal Revenue Code of
26 1986 or a person who is or holds himself or herself out to be
27 established for a charitable purpose or a person who in a manner
28 employs a charitable appeal as the basis of any solicitation or
29 an appeal which has a tendency to suggest that there is a
30 charitable purpose to any solicitation. An affiliate of a

1 charitable organization which has its principal place of
2 business outside this Commonwealth shall be a charitable
3 organization for the purposes of this chapter. The term shall
4 not include:

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

10 (2) A bona fide duly constituted religious institution
11 and separate group or corporation which forms an integral
12 part of a religious institution, if all of the following
13 apply:

14 (i) The religious institution, group or corporation
15 is tax exempt under the Internal Revenue Code of 1986.

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

19 (iii) The institution's, group's 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. The term shall not include the following:

23 (1) Payment by members of an organization for membership
24 fees, dues, fines or assessments or for services rendered to
25 individual members, if the fees, dues, fines or assessments
26 confer a bona fide right, privilege, professional standing,
27 honor or other direct benefit if membership is not conferred
28 solely as consideration for making a contribution in response
29 to a solicitation.

30 (2) Government grants or contracts.

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 if membership does not confer upon
7 the federation operating authority and control of the individual
8 agencies.

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

13 "Fundraising costs." Costs incurred in inducing others to
14 make contributions to a charitable organization for which the
15 contributors will receive no direct economic benefit, such as
16 salaries, rent, acquiring and maintaining mailing lists,
17 printing, mailing and direct and indirect costs of soliciting
18 and the cost of unsolicited merchandise sent to encourage
19 contributions. The term shall not include the direct cost of
20 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 "Internal Revenue Code of 1986." The Internal Revenue Code
24 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

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

1 retired law enforcement personnel and the families of law
2 enforcement personnel.

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

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

9 "Parent organization." The part of a charitable organization
10 which coordinates, supervises or exercises control of policy,
11 fundraising and expenditure, or assists or receives funds from
12 or advises one or more affiliates.

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

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

28 "Professional solicitor." As follows:

29 (1) Any person who is retained for financial or other
30 consideration by a charitable organization to solicit in this

1 Commonwealth contributions for charitable purposes directly
2 or in the form of payment for goods, services or admission to
3 fundraising events, whether the solicitation is performed
4 personally or through the person's agents, servants or
5 employees or through agents, servants or employees especially
6 employed by or for a charitable organization who are engaged
7 in the solicitation of contributions, the sale of goods or
8 services or the production of fundraising events under the
9 direction of the person, or a person who plans, conducts,
10 manages, carries on, advises, consults, whether directly or
11 indirectly, in connection with the solicitation of
12 contributions, sale of goods or services or the production of
13 fundraising events for or on behalf of any charitable
14 organization, but does not qualify as a professional
15 fundraising counsel within the meaning of this chapter.

16 (2) The term shall include a person who is otherwise a
17 professional fundraising counsel if the person's compensation
18 is related to the amount of contributions received.

19 (3) The term shall not include a bona fide salaried
20 officer or regular, nontemporary employee of a charitable
21 organization if the individual is not employed or engaged as
22 professional fundraising counsel or as a professional
23 solicitor by any other person.

24 "Secretary." The Secretary of State of the Commonwealth.

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

29 (1) An oral request that is made in person, by
30 telephone, radio or television or other advertising or

1 communication media.

2 (2) A written or otherwise recorded or published request
3 that is mailed, sent, delivered, circulated, distributed,
4 posted in a public place or advertised or communicated by
5 press, telegraph, television or other media.

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

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

16 § 1304. Powers and duties of secretary.

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

18 (1) Provide for and regulate the registration of
19 charitable organizations, professional fundraising counselors
20 and professional solicitors.

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

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

25 (4) Promulgate regulations altering fees and fines
26 established under this chapter sufficient to meet
27 expenditures of the bureau.

28 (5) Take appropriate action to initiate civil or
29 criminal proceedings necessary to enforce this chapter, in
30 accordance with the act of October 15, 1980 (P.L.950,

1 No.164), known as the Commonwealth Attorneys Act.

2 (6) Conduct hearings and make adjudications.

3 (7) Keep a record showing the names and addresses of
4 each registered charitable organization, professional
5 fundraising counsel and professional solicitor.

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

16 (9) Delegate to a division director of the office the
17 powers and duties under this chapter as the secretary may
18 deem appropriate.

19 (10) Exercise other authority accorded to the secretary
20 by this chapter.

21 § 1305. Registration of charitable organizations; financial
22 reports; fees; failure to file.

23 (a) Registration and approval required.--A charitable
24 organization, unless exempted from registration requirements
25 under section 1306 (relating to exemptions from registration),
26 shall file a registration statement with the department. The
27 statement must be refiled annually ~~within 135 days after~~ AND <--
28 POSTMARKED BY THE FIFTEENTH DAY OF THE FIFTH MONTH FOLLOWING the
29 close of its fiscal year in which the charitable organization
30 was engaged in solicitation activities. The department shall

1 review the statement under subsection (r). A charitable
2 organization may not solicit contributions or have contributions
3 solicited on the charitable organization's behalf before
4 approval of its registration statement by the department.

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

14 (1) The name of the charitable organization and any
15 other name or names under which it intends to solicit
16 contributions.

17 (2) The principal address and telephone number of the
18 charitable organization and the addresses and telephone
19 numbers of offices in this Commonwealth. If the charitable
20 organization does not maintain an office, the name and
21 address of the individual having custody of the charitable
22 organization's financial records.

23 (3) The names and addresses of any affiliates which
24 share in the contributions or other revenue raised in this
25 Commonwealth.

26 (4) The names and addresses of the officers, directors
27 and trustees and the principal salaried executive staff
28 officers.

29 (5) A copy of the financial report required under
30 subsection (e).

1 (6) A copy of any determination of the charitable
2 organization's tax-exempt status under the Internal Revenue
3 Code of 1986 and, for charitable organizations granted tax-
4 exempt status under section 501(c)(3) of the Internal Revenue
5 Code of 1986, a copy of the last filed Internal Revenue
6 Service Form 990 and Schedule A for every charitable
7 organization and parent organization.

8 (7) The date when the charitable organization's fiscal
9 year begins.

10 (8) Whether:

11 (i) The charitable organization is authorized by any
12 other governmental authority to solicit contributions.

13 (ii) The charitable organization or any of its
14 present officers, directors, executive personnel or
15 trustees are or have ever been enjoined in any
16 jurisdiction from soliciting contributions or have been
17 found to have engaged in unlawful practices in the
18 solicitation of contributions or administration of
19 charitable assets.

20 (iii) The charitable organization's registration or
21 license has been denied, suspended or revoked by any
22 governmental agency, together with the reasons for the
23 denial, suspension or revocation.

24 (iv) The charitable organization has voluntarily
25 entered into an assurance of voluntary discontinuance or
26 agreement similar to that set forth in section 1319(b)
27 (relating to civil penalties), together with a copy of
28 that agreement.

29 (9) A clear description of the specific programs for
30 which contributions will be used and a statement whether the

1 programs are planned or in existence.

2 (10) The names and addresses of professional solicitors,
3 professional fundraising counsels and commercial coventurers
4 who are acting or have agreed to act on behalf of the
5 charitable organization.

6 (11) The names of the individuals or officers of the
7 organization who are in charge of any solicitation
8 activities, who will have final responsibility for the
9 custody of the contributions and who will be responsible for
10 the final distribution of the contributions.

11 (12) Whether any of the charitable organization's
12 officers, directors, trustees or employees are related by
13 blood, marriage or adoption to each other or to officers,
14 agents or employees of a professional fundraising counsel or
15 professional solicitor under contract to the organization or
16 to a supplier or vendor providing goods or services to the
17 charitable organization, and the names and business and
18 residence addresses of related parties. Where the number of
19 employees or vendors renders it impractical for the
20 registrant to contact them on an individual basis regarding
21 the existence of the relationships set forth under this
22 section, the registrant may file an affidavit stating which
23 relationships, if any, exist to the best of the affiant's
24 information and belief.

25 (13) Other information required by the regulations of
26 the department.

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

30 (1) A copy of the charitable organization's charter,

1 articles of organization, agreement of association,
2 instrument of trust, constitution or other organizational
3 instrument and bylaws.

4 (2) A statement setting forth where and the date when
5 the charitable organization was legally established, the form
6 of its organization and its tax-exempt status, together with
7 a copy of the letter of exemption, if any, issued by the
8 Internal Revenue Service.

9 (d) Federal tax exemption determination.--Each charitable
10 organization registered with the department shall file with the
11 department a copy of a Federal tax exemption determination
12 letter received after the initial registration within 30 days
13 after receipt, and any amendments to its organizational
14 instrument within 30 days after adoption.

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

29 (f) Audit of certain financial reports.--The financial
30 report of every charitable organization which receives annual

1 contributions of ~~\$300,000~~ \$750,000 or more shall be audited by <--
2 an independent certified public accountant or public accountant.
3 Every charitable organization which receives annual
4 contributions of at least ~~\$100,000~~ \$250,000, but less than <--
5 ~~\$300,000~~ \$750,000, shall be required to have a review or audit <--
6 of their financial statements performed by an independent
7 certified public accountant or public accountant. Every
8 charitable organization which receives annual contributions of
9 at least ~~\$50,000~~ \$100,000, but less than ~~\$100,000~~ \$250,000, <--
10 shall be required to have a compilation, review or audit of
11 their financial statements performed by an independent certified
12 public accountant or public accountant. A compilation, audit or
13 review is optional for a charitable organization which receives
14 annual contributions of less than ~~\$50,000~~ \$100,000. Audits shall <--
15 be performed in accordance with generally accepted auditing
16 standards, including the Statements on Auditing Standards of the
17 American Institute of Certified Public Accountants. Reviews
18 shall be performed in accordance with the Statements on
19 Standards for Accounting and Review Services of the American
20 Institute of Certified Public Accountants.

21 (g) Governmental audits.--Government audits of government
22 grants shall be accepted and shall be included as part of the
23 financial statements.

24 (h) Other acceptable reports.--The department may accept a
25 copy of a current financial report previously prepared by a
26 charitable organization for a governmental agency in another
27 jurisdiction in compliance with the laws of that jurisdiction if
28 the report filed with the other governmental agency shall be
29 substantially similar in content to the report required by this
30 section.

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

4 (j) Optional departmental action.--The department shall have
5 the discretion to:

6 (1) Require that an audit or review be submitted by a
7 charitable organization which files a registration statement.

8 (2) Accept the financial statement submitted by the
9 organization in lieu of an audit or review if special facts
10 and circumstances are presented.

11 (k) Time extension for filings.--For good cause shown, the
12 department may extend the time for the annual filing of a
13 registration statement or financial report for a period TO A <--
14 MAILING DATE not to exceed ~~180 days~~ THE FIFTEENTH DAY OF THE <--
15 ELEVENTH MONTH FOLLOWING THE CLOSE OF THE FISCAL YEAR during
16 which time the previous registration remains in effect.

17 (l) Cancellation of registration.--The registration of a
18 charitable organization may not continue in effect after the
19 date the charitable organization should have filed, but failed
20 to file, its financial report in accordance with this section. A
21 charitable organization may not file a new registration
22 statement until the charitable organization has filed the
23 required financial report with the department.

24 (m) Reports by affiliates.--

25 (1) Each affiliate whose parent organization has its
26 principal place of business in this Commonwealth may
27 separately file the registration statement or financial
28 information required by this section, or report the required
29 information to its parent organization which shall then file
30 a combined registration statement and financial report for

1 its Pennsylvania affiliates. There shall be appended to each
2 combined report a schedule, containing information as
3 prescribed in the regulations of the department, reflecting
4 the activities of each affiliate, which shall contain a
5 certification, under oath, by an official of the
6 organization, that the information contained in the schedule
7 is true. The failure of a parent organization to file a
8 combined registration statement and financial report shall
9 not excuse either the parent organization or its affiliates
10 from complying with the requirements of this section.

11 (2) If an affiliate is soliciting in this Commonwealth
12 but its parent organization has its principal place of
13 business outside this Commonwealth, both the affiliate and
14 the parent organization shall independently comply with the
15 registration requirements of this section.

16 (n) Federated organizations.--An independent member agency
17 of a federated fundraising organization shall independently
18 comply with the provisions of this section unless specifically
19 exempted or unless it receives allocations solely from the
20 federated fundraising organization and does not independently
21 solicit contributions. Donor choice programs are deemed to be
22 independent solicitations.

23 (o) Retention of records.--Each charitable organization
24 required to register shall maintain records, books and reports
25 for at least three years after the end of the period of
26 registration to which the charitable organizations relate, which
27 shall be available for inspection upon demand by the department
28 and Office of Attorney General.

29 (p) Annual registration fees.--A charitable organization
30 which submits a short form registration statement under section

1 1307 (relating to short form registration) or receives
2 contributions of \$25,000 or less during the immediately
3 preceding fiscal year shall pay an annual registration fee of
4 \$15. A charitable organization which receives contributions in
5 excess of \$25,000, but less than \$100,000, during the
6 immediately preceding fiscal year shall pay an annual
7 registration fee of \$100. A charitable organization which
8 receives contributions in excess of \$100,000, but not exceeding
9 \$500,000, during the immediately preceding fiscal year shall pay
10 an annual registration fee of \$150. A charitable organization
11 which receives contributions in excess of \$500,000 during the
12 immediately preceding fiscal year shall pay an annual
13 registration fee of \$250. A parent organization filing on behalf
14 of one or more affiliates and a federated fundraising
15 organization filing on behalf of its member agencies shall pay a
16 single annual registration fee for itself and other affiliates
17 or member agencies included in the registration statement.

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

24 (r) Department review.--The department shall examine each
25 registration statement and supporting documents filed by a
26 charitable organization and shall determine whether the
27 registration requirements are satisfied. If the department
28 determines that the registration requirements are not satisfied,
29 the department must notify the charitable organization within 10<--
30 15 working days of its receipt of the registration statement. <--

1 Otherwise, the registration statement is deemed to be approved.
2 Within ~~seven~~ 15 days after receipt of a notification that the <--
3 registration requirements are not satisfied, the charitable
4 organization may request a hearing. The hearing must be held
5 within ~~seven~~ 15 days of receipt of the request, and a <--
6 determination must be rendered within three working days of the
7 hearing.

8 (s) Administration of charitable contributions.--A
9 charitable organization shall maintain and administer the
10 contributions raised on the charitable organization's behalf
11 through an account in the name of the charitable organization
12 and under the charitable organization's sole control.

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

17 § 1306. Exemptions from registration.

18 (a) General rule.--The following charitable organizations
19 shall be exempt from the registration requirements of this
20 chapter:

21 (1) Educational institutions, the curricula of which, in
22 whole or in part, are registered with or approved by the
23 Department of Education, either directly or by acceptance of
24 accreditation by an accrediting body recognized by the
25 Department of Education, and any auxiliary associations,
26 foundations and support groups that are directly responsible
27 to educational institutions.

28 (2) Hospitals which are subject to regulation by the
29 Department of Health or the Department of Human Services and
30 the hospital foundation, if any, which is an integral part of

1 the hospitals.

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

4 (i) any veterans' organization chartered under
5 Federal law and any service foundation recognized in the
6 bylaws of the organization;

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

8 (iii) a bona fide ambulance association;

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

10 (v) a bona fide auxiliary or affiliate of any
11 organization or association under subparagraph (i), (ii),
12 (iii) or (iv);

13 provided that all fundraising activities are carried on by
14 volunteers, members or an auxiliary or affiliate of the
15 organization or association and that they receive no
16 compensation directly or indirectly for the fundraising
17 activities.

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

21 (5) Senior citizen centers and nursing homes which are
22 nonprofit and charitable and which have been granted tax-
23 exempt status under the Internal Revenue Code of 1986,
24 provided that all fundraising activities are carried on by
25 volunteers, members or officers of the senior citizen center
26 and that those volunteers, members or officers receive no
27 compensation, directly or indirectly, for the fundraising
28 activities.

29 (6) Bona fide parent-teacher associations or parent-
30 teacher organizations as recognized in a notarized letter

1 from the school district in which they are located.

2 (7) Any corporation established by an act of the
3 Congress of the United States that is required by Federal law
4 to submit annual reports of its activities to Congress
5 containing itemized accounts of all receipts and expenditures
6 after being fully audited by the Department of Defense.

7 (8) Any charitable organization which receives
8 contributions of \$25,000 or less annually, provided that the
9 organization does not compensate any person who conducts
10 solicitations. Charitable organizations that receive more
11 than \$25,000 in contributions shall file the appropriate
12 registration statement within 30 days after the contributions
13 are received.

14 (b) Effect of exemption.--Exemption from the registration
15 requirements of this chapter shall in no way limit the
16 applicability of other provisions of this part to a charitable
17 organization or any professional solicitor or professional
18 fundraising counsel acting on its behalf, except that written
19 notice under sections 1309(k) (relating to registration of
20 professional solicitors and contracts) and 1313(c) (relating to
21 limitation on activities of charitable organizations and
22 disclosure requirements) shall not apply.

23 § 1307. Short form registration.

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

30 (1) Persons or charitable organizations accepting

1 contributions for the relief of any individual specified by
2 name at the time of acceptance or solicitation when all of
3 the contributions collected without any deductions whatsoever
4 are turned over to the named beneficiary for the
5 beneficiary's use, provided that all contributions collected
6 shall be held in trust and shall be subject to the provisions
7 of 20 Pa.C.S. Ch. 77 (relating to trusts). The secretary, the
8 Attorney General, any contributor or any person who provides
9 any goods or services for which funds are expressly or
10 implicitly solicited shall have the right to petition the
11 court of common pleas of the county in which the trust is
12 located for an accounting of all contributions. For purposes
13 of this paragraph, the trust shall be deemed to be located in
14 the county where the principal place of business of the
15 charitable organization is located. If a charitable
16 organization has its principal place of business outside this
17 Commonwealth, all of the following shall apply:

18 (i) If an affiliate is soliciting contributions
19 within this Commonwealth, the trust shall be deemed to be
20 located in the county where the principal place of
21 business of the affiliate is located.

22 (ii) If a person is soliciting contributions within
23 this Commonwealth, the trust shall be deemed to be
24 located in the county where the principal place of
25 business or the residence of the person is located.

26 (iii) If there is no place of business or residence
27 within this Commonwealth, the trust shall be deemed to be
28 located in Dauphin County.

29 (2) Organizations which only solicit within the
30 membership of the organization by the members of the

1 organization provided that the term "membership" shall not
2 include those persons who are granted a membership solely
3 upon making a contribution as the result of solicitation. For
4 the purpose of this paragraph, "member" means a person having
5 membership in a nonprofit corporation, or other organization,
6 in accordance with the provisions of its articles of
7 incorporation, bylaws or other instruments creating its form
8 and organization and having bona fide rights and privileges
9 in the organization such as the right to vote, to elect
10 officers and directors or to hold office or position as
11 ordinarily conferred on members of the organizations.

12 (3) Charitable organizations whose fundraising
13 activities are carried out by volunteers, members, officers
14 or permanent employees and which do not receive contributions
15 in excess of \$25,000 during a fiscal year, if no part of
16 their assets or income inures to the benefit of or is paid to
17 any officer or member, professional fundraising counsel,
18 professional solicitor or commercial coventurer. Charitable
19 organizations which do not intend to solicit and receive in
20 excess of \$25,000, but do receive contributions in excess of
21 that amount, shall file the financial report required in
22 section 1305 within 30 days after contributions are received
23 in excess of that amount.

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

29 (b) Contents of statement.--The short form annual
30 registration statements required to be filed under this section

1 shall include any information required by the regulations of the
2 department.

3 (c) Financial report.--Charitable organizations which file a
4 short form registration statement need not file the financial
5 report required under section 1305.

6 (d) Updating of information.--Any material change in any
7 information filed with the department under this section shall
8 be reported in writing by the registrant to the department not
9 more than 30 days after the change occurs.

10 § 1308. Registration of professional fundraising counsel and
11 contracts.

12 (a) Registration and approval required.--No person shall act
13 as a professional fundraising counsel before obtaining
14 department approval of a registration statement under subsection
15 (c) or after the expiration, suspension or revocation of
16 registration. A registration application shall be signed and
17 made by the principal officer of the professional fundraising
18 counsel subject to 18 Pa.C.S. § 4904 (relating to unsworn
19 falsification to authorities) and shall contain all of the
20 following information:

21 (1) The address of the principal place of business of
22 the applicant and any addresses within this Commonwealth, if
23 the principal place of business is located outside this
24 Commonwealth.

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

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

29 (4) Whether any of the owners, directors, officers or
30 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 any person who is 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
13 fundraising counsel that is a partnership or corporation may
14 register for and pay a single fee on behalf of all of its
15 partners, members, officers, directors, agents and employees.
16 Each registration shall be valid for one year and may be renewed
17 for additional one-year periods upon application to the
18 department and payment of the registration fee.

19 (c) Department review of registration statement.--The
20 department shall examine each registration statement and
21 supporting document filed by a professional fundraising counsel
22 and shall determine whether the registration requirements are
23 satisfied. If the department determines that the registration
24 requirements are not satisfied, the department must notify the
25 professional fundraising counsel within ~~10~~ 15 working days of <--
26 the receipt of its registration statement, otherwise the
27 registration statement is deemed to be approved. Within ~~seven~~ 15 <--
28 days after receipt of a notification that the registration
29 requirements are not satisfied, the professional fundraising
30 counsel may request a hearing. The hearing must be held within

1 seven 15 days of receipt of the request, and a determination
2 must be rendered within three working days of the hearing.

3 (d) Written contract.--There shall be a written contract
4 between a charitable organization and a professional fundraising
5 counsel which shall be filed by the professional fundraising
6 counsel with the department at least 10 working days prior to
7 the performance by the professional fundraising counsel of any
8 service. No solicitation or services pursuant to the contract
9 shall begin before the department has approved the contract
10 under subsection (e). The contract must be signed by two
11 authorized officials of the charitable organization, one of whom
12 must be a member of the charitable organization's governing
13 body, and the authorized contracting officer for the
14 professional fundraising counsel. The contract shall contain all
15 of the following provisions:

16 (1) The legal name and address of the charitable
17 organization as registered with the department unless that
18 charitable organization is exempt from registration.

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

21 (3) A statement of the respective obligations of the
22 professional fundraising counsel and the charitable
23 organization.

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

26 (5) The effective and termination dates of the contract.
27 If the contract does not have a set termination date, the
28 contract shall contain a clause allowing either party a
29 reasonable period of time to terminate the contract or notify
30 the other party if either party chooses not to renew. The

1 contract shall also contain the date services will commence
2 with respect to solicitation in this Commonwealth of
3 contributions for a charitable organization.

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

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

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

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

24 § 1309. Registration of professional solicitors and contracts.

25 (a) Registration and approval required.--No person shall act
26 as a professional solicitor before obtaining department approval
27 of a registration statement under subsection (d) or after the
28 expiration, suspension or revocation of registration. A
29 registration application shall be signed and made by the
30 principal officer of the professional solicitor subject to 18

1 Pa.C.S. § 4904 (relating to unsworn falsification to
2 authorities) and shall contain all of the following information:

3 (1) The address of the principal place of business of
4 the applicant and any addresses within this Commonwealth, if
5 the principal place of business is located outside this
6 Commonwealth.

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

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

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

19 (5) The name of all persons in charge of any
20 solicitation activity.

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

23 (b) Registration fee.--The application for registration
24 shall be accompanied by a fee of \$250. A professional solicitor
25 that is a partnership or corporation may register for and pay a
26 single fee on behalf of all of its partners, members, officers,
27 directors, agents and employees. Each registration shall be
28 valid for one year and may be renewed for additional one-year
29 periods upon application to the department and payment of the
30 registration fee.

1 (c) Bond.--A professional solicitor shall, at the time of
2 making application for registration or renewal of registration,
3 file with and have approved by the department a bond, in which
4 it shall be the principal obligor, in the sum of \$25,000, or a
5 greater amount as prescribed by the regulations of the
6 department, and which shall have one or more sureties
7 satisfactory to the department whose liability in the aggregate
8 as sureties will at least equal that sum and maintain the bond
9 in effect as long as the registration is in effect. The bond
10 shall run to the Commonwealth for use of the secretary, Attorney
11 General and any person who may have a cause of action against
12 the obligor for any losses resulting from malfeasance,
13 nonfeasance or misfeasance in the conduct of solicitation
14 activities. A professional solicitor that is a partnership or
15 corporation may file one \$25,000 bond or an amount specified by
16 regulation of the department on behalf of all of its partners,
17 members, officers, directors, agents and employees.

18 (d) Department review of registration statement.--The
19 department shall examine each registration statement and
20 supporting documents filed by a professional solicitor and shall
21 determine whether the registration requirements are satisfied.
22 If the department determines that the registration requirements
23 are not satisfied, the department must notify the professional
24 solicitor within ~~10~~ 15 working days of its receipt of the <--
25 registration statement. Otherwise, the registration statement is
26 deemed to be approved. Within ~~seven~~ 15 days after receipt of a <--
27 notification that the regulation requirements are not satisfied,
28 the professional solicitor may request a hearing. The hearing
29 must be held within ~~seven~~ 15 days of receipt of the request and <--
30 a determination must be rendered within three working days of

1 the hearing.

2 (e) Contract filing.--No less than 10 working days prior to
3 the commencement of each solicitation campaign, event or
4 services, a professional solicitor shall file with the
5 department a copy of the contract described in subsection (f)
6 and a written solicitation notice. No solicitation or services
7 pursuant to the contract shall begin before the department has
8 approved the contract under subsection (g). The solicitation
9 notice shall be accompanied by a fee of \$25 and shall be signed
10 and sworn to by the authorized contracting officer for the
11 professional solicitor. If more than one event or campaign is
12 conducted under a contract, then a solicitation notice addendum
13 must be filed no less than 10 working days prior to the
14 commencement of each additional event or campaign. No additional
15 fee is required to file the addendum. The solicitation notice
16 and addendum shall contain all of the following information:

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

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

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

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

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

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

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

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

6 (f) Written contract.--There shall be a written contract
7 between a professional solicitor and a charitable organization
8 for each solicitation campaign which shall be signed by two
9 authorized officials of the charitable organization, one of whom
10 must be a member of the charitable organization's governing
11 body, and the authorized contracting officer for the
12 professional solicitor. The contract shall contain all of the
13 following provisions:

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

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

19 (3) A statement of the respective obligations of the
20 professional solicitor and the charitable organization.

21 (4) A statement of the guaranteed minimum percentage of
22 the gross receipts from contributions which will be remitted
23 to or retained by the charitable organization, if any, or, if
24 the solicitation involves the sale of goods, services or
25 tickets to a fundraising event, the percentage of the
26 purchase price which will be remitted to the charitable
27 organization, if any. Any stated percentage shall exclude any
28 amount which the charitable organization is to pay as
29 fundraising costs.

30 (5) A statement of the percentage of the gross revenue

1 which the professional solicitor will be compensated. The
2 stated percentage shall include any amount which the
3 professional solicitor is to be reimbursed as payment for
4 fundraising costs. If the compensation of the professional
5 solicitor is not contingent upon the number of contributions
6 or the amount of revenue received, the compensation shall be
7 expressed as a reasonable estimate of the percentage of the
8 gross revenue, and the contract shall clearly disclose the
9 assumptions upon which the estimate is based. The stated
10 assumptions shall be based upon all of the relevant facts
11 known to the professional solicitor regarding the
12 solicitation to be conducted by the professional solicitor.

13 (6) The effective and termination dates of the contract.
14 If the contract does not have a set termination date, the
15 contract shall contain a clause allowing either party a
16 reasonable period of time to terminate the contract or notify
17 the other party if either party chooses not to renew. The
18 contract shall also contain the date solicitation activity is
19 to commence within this Commonwealth.

20 (7) Any other information required by the regulations of
21 the department.

22 (g) Department review of contract.--The department shall
23 examine each contract and solicitation notice filed by a
24 professional solicitor and shall determine whether the contract
25 and notice contain the required information. If the department
26 determines that the requirements are not satisfied, the
27 department must notify the professional solicitor within 10
28 working days of its receipt of the contract and notice.
29 Otherwise, the contract and notice are deemed to be approved.
30 Within seven days after receipt of a notification that the

1 requirements are not satisfied, the professional solicitor may
2 request a hearing. The hearing must be held within seven days of
3 receipt of the request, and a determination must be rendered
4 within three working days of the hearing.

5 (h) Required disclosures.--Prior to orally requesting a
6 contribution or contemporaneously with a written request for a
7 contribution, a professional solicitor shall be responsible for
8 clearly and conspicuously disclosing:

9 (1) The name of the professional solicitor on file with
10 the department and that the solicitation is being conducted
11 by a professional solicitor who is being paid for the
12 solicitor's services.

13 (2) If the individual acting on behalf of the
14 professional solicitor is identified by name, the
15 individual's legal name.

16 (3) The legal name of the charitable organization as
17 registered with the department and a description of how the
18 contributions raised by the solicitation will be utilized for
19 a charitable purpose or, if there is no charitable
20 organization, a description as to how the contributions
21 raised by the solicitation will be utilized for a charitable
22 purpose.

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

26 (j) Information on disclosure.--In the case of a
27 solicitation campaign conducted orally, whether by telephone or
28 otherwise, any written confirmation, receipt and reminder sent
29 to any person who has contributed or has pledged to contribute
30 shall include a clear and conspicuous disclosure of the

1 information required by subsection (h).

2 (k) Notice.--In addition to the information required by
3 subsection (j), any written confirmation, receipt and reminder
4 of a contribution made under an oral solicitation and any
5 written solicitation shall conspicuously state verbatim:

6 The official registration and financial information of
7 (insert the legal name of the charity as registered with
8 the department) may be obtained from the Pennsylvania
9 Department of State. Registration does not imply
10 endorsement.

11 (l) Financial reports.--Within 90 days after a solicitation
12 campaign or event has been completed and on the anniversary of
13 the commencement of a solicitation campaign lasting more than
14 one year, a professional solicitor shall file with the
15 department a financial report for the campaign, including gross
16 revenue and an itemization of all expenses incurred. This report
17 shall be signed and sworn to by the authorized contracting agent
18 for the professional solicitor and two authorized officials of
19 the charitable organization.

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

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

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

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

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

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

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

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

17 (o) Deposit of contributions.--Each contribution in the
18 control or custody of the professional solicitor shall, in its
19 entirety and within five days of its receipt, be deposited in an
20 account at a bank or other federally insured financial
21 institution which shall be in the name of the charitable
22 organization. The charitable organization shall maintain and
23 administer the account and shall have sole control of all
24 withdrawals.

25 (p) Updating of information.--Any material change in any
26 information filed with the department under this section shall
27 be reported in writing by the professional solicitor to the
28 department not more than seven days after the change occurs.

29 (q) Restrictions.--

30 (1) No person may act as a professional solicitor if the

1 person, any officer or director, any person with a
2 controlling interest or any person the professional solicitor
3 employs, engages or procures to solicit for compensation has
4 been convicted, by a court of any state or the United States,
5 of any felony or of any misdemeanor involving dishonesty or
6 arising from the conduct of a solicitation for a charitable
7 organization or purpose.

8 (2) A professional solicitor shall not solicit in this
9 Commonwealth on behalf of a charitable organization unless
10 that charitable organization is registered or is exempt from
11 registration with the department.

12 § 1310. Contracts voidable by charitable organizations.

13 (a) Contracts with registered groups.--No professional
14 fundraising counsel or professional solicitor shall contract
15 with a charitable organization unless the professional
16 fundraising counsel or professional solicitor is registered with
17 the department. A contract with an unregistered professional
18 fundraising counsel or professional solicitor shall be voidable
19 at the option of the charitable organization.

20 (b) Cancellation of contract.--Whenever a charitable
21 organization contracts with a professional fundraising counsel
22 or professional solicitor, the charitable organization shall
23 have the right to cancel the contract without cost, penalty or
24 liability for a period of 10 days following the date on which
25 that contract is executed. Any provision in the contract that is
26 intended to waive this right of cancellation shall be void and
27 unenforceable.

28 (c) Manner of cancellation.--A charitable organization may
29 cancel a contract under subsection (b) by serving a written
30 notice of cancellation on the professional fundraising counsel

1 or professional solicitor. If mailed, service shall be by
2 certified mail, return receipt requested, and cancellation shall
3 be deemed effective upon receipt by the professional fundraising
4 counsel or professional solicitor. The notice shall be
5 sufficient if it indicates that the charitable organization does
6 not intend to be bound by the contract.

7 (d) Cancellation notice to department.--Whenever a
8 charitable organization cancels a contract under the provisions
9 of this section, it shall mail a duplicate copy of the notice of
10 cancellation to the department.

11 (e) Status of funds after cancellation.--Any funds collected
12 after effective notice that a contract has been canceled shall
13 be deemed to be held in trust for the benefit of the charitable
14 organization without deduction for costs or expenses of any
15 nature. A charitable organization shall be entitled to recover
16 all funds collected after the date of cancellation.

17 § 1311. Information filed to become public records.

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

29 § 1312. Records to be kept by charitable organizations,
30 professional fundraising counsels and professional

1 solicitors.

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

10 (b) Availability for inspection.--Except as provided in
11 subsection (c), the records shall be made available for
12 inspection upon demand by the department or the Office of
13 Attorney General.

14 (c) Nonpublic records.--Notwithstanding subsection (b),
15 names, addresses and identities of contributors and amounts
16 contributed by them shall not be considered a matter of public
17 record. This information shall:

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

19 (2) Not be used for a purpose inconsistent with this
20 chapter.

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

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

27 § 1313. Limitation on activities of charitable organizations
28 and disclosure requirements.

29 (a) Solicitation limitation.--A charitable organization may
30 only solicit contributions for the charitable purpose expressed

1 in a solicitation for contributions or the registration
2 statement of the charitable organization and may only apply
3 contributions in a manner substantially consistent with that
4 purpose.

5 (b) Solicitation disclosures.--A charitable organization
6 soliciting in this Commonwealth shall disclose the following at
7 the point of solicitation:

8 (1) Its legal name and address as registered with the
9 department. If different, the legal name and address of the
10 charitable organization, as registered with the department,
11 on whose behalf the solicitation is being conducted. Any use
12 of a project or program name in a solicitation must be
13 followed immediately by a disclosure of the legal, registered
14 name of the charitable organization.

15 (2) If requested, the name and address or telephone
16 number of a representative to whom inquiries could be
17 addressed.

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

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

23 (i) Be consistent with the annual financial report
24 requested under section 1305 (relating to registration of
25 charitable organizations; financial reports; fees;
26 failure to file).

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

29 (iii) List expenses separately, under the categories
30 of program services, administrative costs and fundraising

1 costs.

2 (c) Notice on printed solicitation.--On every printed
3 solicitation or written confirmation, receipt and reminder of a
4 contribution, the following statement must be printed
5 conspicuously, verbatim:

6 The official registration and financial information of
7 (insert the legal name of the charity as registered with
8 the department) may be obtained from the Pennsylvania
9 Department of State. Registration does not imply
10 endorsement.

11 (d) Misrepresentation.--A misrepresentation is accomplished
12 by words, conduct or failure to disclose a material fact. A
13 charitable organization may not misrepresent any of the
14 following:

15 (1) Its purpose.

16 (2) Its nature.

17 (3) The purpose of a solicitation.

18 (4) The beneficiary of a solicitation.

19 (e) Control over fundraising activities.--A charitable
20 organization must establish and exercise control over
21 fundraising activities conducted for the charitable
22 organization's benefit, including approval of all written
23 contracts and agreements, and must assure that fundraising
24 activities are conducted without coercion.

25 (f) Restrictions on certain contracts.--A charitable
26 organization shall not enter into a contract or agreement with
27 or employ any professional fundraising counsel or professional
28 solicitor unless the counsel or solicitor is registered with the
29 department.

30 (g) Registration with department required.--A charitable

1 organization shall not enter into a contract or agreement with
2 or raise any funds for a charitable organization required to be
3 registered under this chapter unless both charitable
4 organizations are registered with the department.

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

12 § 1314. Reciprocal agreements.

13 (a) Authorization.--The secretary may enter into reciprocal
14 agreements with the appropriate authority of any other state for
15 the purpose of exchanging information with respect to charitable
16 organizations, professional fundraising counsel and professional
17 solicitors.

18 (b) Effect.--Pursuant to any reciprocal agreement, the
19 secretary may accept information filed by a charitable
20 organization, professional fundraising counsel or professional
21 solicitor with the appropriate authority of another state in
22 lieu of the information required to be filed in accordance with
23 this chapter if the information is substantially similar to the
24 information required under this chapter.

25 (c) Annual registration exemption.--The secretary may grant
26 exemptions from the requirements for the filing of annual
27 registration statements with the department to a charitable
28 organization if the following apply:

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

30 (2) It has its principal place of business outside this

1 Commonwealth.

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

4 (4) It has been exempted from the filing of registration
5 statements by the state in which it is organized if the state
6 has a statute similar in substance to the provisions of this
7 chapter.

8 § 1315. Prohibited acts.

9 (a) General rule.--Notwithstanding a person's intent or the
10 lack of injury, the following are prohibited in the planning,
11 conduct or execution of a solicitation or charitable sales
12 promotion:

13 (1) Operating in violation of or failing to comply with
14 any requirement of this chapter, regulation of the department
15 or order of the secretary.

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

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

20 (4) Utilizing any unfair or deceptive acts or practices
21 or engaging in any fraudulent conduct which creates a
22 likelihood of confusion or misunderstanding.

23 (5) Conveying any representation that implies the
24 contribution is for or on behalf of a charitable organization
25 or utilizing an emblem, device or printed matter belonging to
26 or associated with a charitable organization without first
27 being authorized in writing to do so by the charitable
28 organization.

29 (6) Utilizing a name, symbol or statement so closely
30 related or similar to that used by another charitable

1 organization or other person that the use would tend to
2 confuse or mislead a solicited person.

3 (7) Misrepresenting or misleading anyone in any manner
4 to believe that the person on whose behalf a solicitation or
5 charitable sales promotion is being conducted is a charitable
6 organization or that the proceeds of the solicitation or
7 charitable sales promotion will be used for charitable
8 purposes when this is not the fact.

9 (8) Misrepresenting to or misleading anyone in any
10 manner so as to allow the belief that another person
11 sponsors, endorses or approves the solicitation or charitable
12 sales promotion when in fact the other person has not given
13 consent in writing to the use of that person's name for these
14 purposes.

15 (9) Misrepresenting to or misleading anyone in any
16 manner so as to allow the belief that goods or services have
17 sponsorship, approval, characteristics, ingredients, uses,
18 benefits or qualities that they do not have or that a person
19 has a sponsorship, approval, status, affiliation or
20 connection that the person in fact does not have.

21 (10) Utilizing or exploiting the fact of registration so
22 as to lead a person to believe that the registration in any
23 manner constitutes an endorsement or approval by the
24 Commonwealth. The use of the following statement shall not be
25 deemed a prohibited exploitation:

26 The official registration and financial information of
27 (insert the legal name of the charity as registered with
28 the department) may be obtained from the Pennsylvania
29 Department of State. Registration does not imply
30 endorsement.

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

5 (12) With respect to solicitations by professional
6 solicitors on behalf of law enforcement personnel,
7 firefighters or other persons who protect the public safety,
8 issuing, offering, giving, delivering or distributing
9 honorary membership cards, courtesy cards or similar cards or
10 any stickers, emblems, plates or other items which could be
11 used for display on a motor vehicle.

12 (13) Violating the following:

13 (i) Soliciting for advertising to appear in a for-
14 profit publication that relates to, purports to relate to
15 or that could reasonably be construed to relate to any
16 charitable purpose without making the following
17 disclosures at the time of solicitation:

18 (A) The publication is a for-profit, commercial
19 enterprise.

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

22 (C) The publication is not directly affiliated
23 with or sponsored by any charitable organization.

24 (ii) Where a sale of advertising has been made, the
25 solicitor, prior to accepting any money for the sale,
26 shall present the purchaser with the same disclosures as
27 are set forth under subparagraph (i) in written form and
28 in conspicuous type.

29 (14) Representing that a part of contributions received
30 will be given or donated to another charitable organization

1 unless that organization has consented in writing to the use
2 of its name prior to the solicitation. The written consent
3 shall be signed by two authorized officers, directors or
4 trustees of the charitable organization.

5 (15) (i) Representing that tickets to events will be
6 donated for use by another, unless all of the following
7 requirements have been met:

8 (A) The charitable organization or professional
9 solicitor has commitments, in writing, from
10 charitable organizations stating that they will
11 accept donated tickets and specifying the number of
12 tickets they are willing to accept.

13 (B) The charitable organization or professional
14 solicitor does not solicit or accept more
15 contributions of donated tickets than the lesser of:

16 (I) the number of ticket commitments it has
17 received from charitable associations; or

18 (II) the total attendance capacity of the
19 site of the event.

20 (ii) A ticket commitment alone, as described in this
21 paragraph, does not constitute written consent to use the
22 charitable organization's name in the solicitation
23 campaign.

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

30 § 1316. Investigation.

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

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

8 (2) Administer oaths or affirmations.

9 (3) Take testimony under oath.

10 (4) Require the attendance and testimony of witnesses
11 and the production of books, accounts, papers, records,
12 documents, audits and files relating to a solicitation or
13 practice subject to this chapter or the regulations of the
14 department promulgated pursuant to the authority of this
15 chapter.

16 (5) Issue subpoenas.

17 (6) Conduct private or public hearings.

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

20 (b) Notice.--Notice of the time and place for the
21 examination of documentary material shall be given by the
22 Attorney General, the secretary or the district attorney at
23 least 10 days prior to the date of the examination or taking of
24 testimony.

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

26 (1) State the time and place for the taking of testimony
27 or the examination and the name and address of the person to
28 be examined, if known, or, if the name is not known, a
29 general description sufficient to identify the person or the
30 particular class or group to which the person belongs.

1 (2) State the statute, if any, proscribing the alleged
2 violation that is under investigation and the general subject
3 matter of the investigation.

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

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

9 (5) Identify the members of the Office of Attorney
10 General's staff, the secretary's staff or the district
11 attorney's staff to whom the documentary material is to be
12 made available for inspection and copying.

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

16 (e) Restriction on materials.--

17 (1) Except as provided under paragraph (2), any
18 documentary material or other information produced by a
19 person in accordance with this section shall not, unless
20 otherwise ordered by a court of competent jurisdiction for
21 good cause shown, be produced for inspection or copying by or
22 disclosed to a person other than the authorized
23 representative of the Attorney General, the secretary or the
24 district attorney without the consent of the person who
25 produced the material.

26 (2) Under reasonable terms and conditions that the
27 Attorney General, the secretary or the district attorney
28 shall prescribe, documentary material in paragraph (1) shall
29 be available for inspection and copying by the person who
30 produced the material or a duly authorized representative of

1 the person. The Attorney General, the secretary or the
2 district attorney or a duly authorized representative may use
3 the documentary material or copies as the official may
4 determine is necessary in the enforcement of this chapter,
5 including production at a subsequent administrative or
6 judicial proceeding.

7 (f) Compliance.--A person upon whom a notice is served
8 pursuant to this section shall comply with the terms of the
9 notice unless otherwise provided by an order of court. The
10 Attorney General or the district attorney may petition for an
11 order of court for enforcement of this section. Additionally,
12 the secretary may take appropriate action to petition for an
13 order of court for the enforcement of this section in accordance
14 with the act of October 15, 1980 (P.L.950, No.164), known as the
15 Commonwealth Attorneys Act.

16 (g) Contempt of final order.--Any disobedience of a final
17 order entered under this section by a court shall be punishable
18 as contempt.

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

22 (1) Fails to appear.

23 (2) With intent, avoids, evades or prevents compliance
24 with, in whole or in part, any civil investigation under this
25 chapter.

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

30 (4) Knowingly conceals any relevant information.

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

3 (1) Delivering a duly executed copy to the person to be
4 served or to a partner or to any officer or agent authorized
5 by appointment or by law to receive service of process on
6 behalf of the person.

7 (2) Delivering a duly executed copy to the principal
8 place of business in this Commonwealth of the person to be
9 served.

10 (3) Mailing by registered or certified mail a duly
11 executed copy addressed to the person to be served at the
12 person's principal place of business in this Commonwealth or,
13 if the person has no place of business in this Commonwealth,
14 to the last address of the person known to the secretary.

15 (4) Appointing the secretary as its agent if the
16 charitable organization, fundraising counsel or professional
17 solicitor has its principal place of business outside this
18 Commonwealth or is organized under and by virtue of the laws
19 of a foreign state, which is subject to the provisions of
20 this chapter. The secretary shall be deemed its irrevocable
21 agent upon whom may be served any summons, subpoena duces
22 tecum or other process directed to the charitable
23 organization, fundraising counsel or professional solicitor,
24 or any partner, principal officer or director of the
25 charitable organization, in an action or proceeding brought
26 under the provisions of this chapter. Service of process upon
27 the secretary shall be made by personally delivering to and
28 leaving with the secretary a copy of the process at the
29 secretary's office in Harrisburg, Pennsylvania. The service
30 shall be sufficient if notice of service and a copy of the

1 process is sent by the secretary by registered mail to the
2 charitable organization, fundraising counsel, professional
3 solicitor or other person to whom the notice of service and
4 the copy of the process is directed, with return receipt
5 requested, at the last address known to the secretary.

6 § 1317. Administrative enforcement and penalties.

7 (a) General rule.--The secretary may revoke, suspend or
8 refuse to register the registration of a charitable
9 organization, professional fundraising counsel or professional
10 solicitor whenever the secretary finds that a charitable
11 organization, professional fundraising counsel or professional
12 solicitor, or an agent, servant or employee:

13 (1) Has violated or is operating in violation of any
14 provision of this chapter, the regulations of the department
15 promulgated under this chapter or an order issued by the
16 secretary.

17 (2) Has refused or failed, or any of its principal
18 officers has refused or failed, after notice, to produce any
19 records of the organization or to disclose any information
20 required to be disclosed under this chapter or the
21 regulations of the department.

22 (3) Has made a material false statement in an
23 application, statement or report required to be filed under
24 this chapter.

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

28 (1) Revoke a grant of exemption to any of the provisions
29 of this chapter.

30 (2) Issue an order directing that the person cease and

1 desist specified fundraising activities.

2 (3) Impose an administrative fine not to exceed \$1,000
3 for each act or omission which constitutes a violation of
4 this chapter and an additional penalty not to exceed \$100 for
5 each day during which the violation continues. Registration
6 will be automatically suspended upon final affirmation of an
7 administrative fine until the fine is paid or until the
8 normal expiration date of the registration. No registration
9 may be renewed until the fine is paid.

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

12 (c) Administrative procedures.--Actions of the secretary are
13 subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and
14 procedure of Commonwealth agencies) and 7 Subch. A (relating to
15 judicial review of Commonwealth agency action).

16 § 1318. Criminal penalties.

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

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

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

1 § 1319. Civil penalties.

2 (a) General rule.--Whenever the Attorney General or any
3 district attorney shall have reason to believe, or shall be
4 advised by the secretary, that a person is operating in
5 violation of the provisions of this chapter, the Attorney
6 General or district attorney may bring an action in the name of
7 the Commonwealth against that person to enjoin the person from
8 continuing the violation and for other relief as the court deems
9 appropriate. In a proceeding under this subsection, the court
10 may make appropriate orders, including:

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

12 (2) the sequestration of assets;

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

15 (4) the distribution of contributions in accordance with
16 the charitable purpose expressed in the registration
17 statement or in accordance with the representations made to
18 the person solicited;

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

21 (6) the assessment of a civil penalty not exceeding
22 \$1,000 per violation of this act, which penalty shall be in
23 addition to any other relief which may be granted; and

24 (7) the granting of other appropriate relief.

25 (b) Assurance of voluntary compliance.--In any case where
26 the Attorney General or a district attorney has authority to
27 institute an action or proceeding under this chapter, the
28 official may accept an assurance of voluntary compliance through
29 which a person alleged to be engaged in any method, act or
30 practice in violation of this chapter agrees to discontinue the

1 method, act or practice.

2 (1) An assurance of compliance:

3 (i) May, among other terms, include a stipulation of
4 a voluntary payment by the person of the cost of the
5 investigation or of an amount to be held in escrow
6 pending the outcome of an action or as restitution to
7 aggrieved persons, or both.

8 (ii) Shall be in writing.

9 (iii) Shall be filed with a court of the
10 Commonwealth.

11 (2) In the event of an alleged violation of the
12 assurance of voluntary compliance, the Attorney General or a
13 district attorney may either initiate contempt proceedings or
14 proceed as if the assurance of voluntary compliance has not
15 been accepted. Evidence of a violation of the assurance shall
16 be prima facie evidence of a violation of this chapter in a
17 subsequent proceeding brought by the Attorney General or
18 district attorney.

19 (3) Matters closed may be reopened at any time by the
20 court for further proceedings in the public interest.

21 § 1320. Additional regulations by counties, municipalities or
22 consolidated government.

23 Nothing contained in this chapter shall serve to deny the
24 right to a county, municipality or consolidated government to
25 pass ordinances, rules and regulations as may be deemed
26 appropriate to regulate further the soliciting of contributions
27 within the county, municipality or consolidated government. The
28 ordinance may not alter any of the obligations set forth in this
29 chapter or the regulations of the department but may add other
30 requirements and rules as appear to be proper to the county,

1 municipality or consolidated government involved.

2 § 1321. Charitable organizations deemed fiduciary.

3 Every person soliciting, collecting or expending
4 contributions for charitable purposes and every officer,
5 director, trustee and employee of the person concerned with the
6 solicitation, collection or expenditure of the contribution
7 shall be deemed to be a fiduciary and acting in a fiduciary
8 capacity.

9 § 1322. Prior registration unaffected.

10 A person who is registered with the department under the
11 former act of April 30, 1986 (P.L.107, No.36), known as the
12 Charitable Organization Reform Act, prior to February 19, 1991,
13 shall, on and after February 19, 1991, be deemed to be
14 registered with the department as provided for in this chapter.
15 Registration shall be reissued in accordance with this chapter.

16 § 1323. Regulations.

17 Regulations promulgated under the former act of April 30,
18 1986 (P.L.107, No.36), known as the Charitable Organization
19 Reform Act, and in effect on February 19, 1991, shall remain in
20 effect until amended in accordance with the provisions of this
21 chapter.

22 PART IV

23 TAX

24 Chapter

25 19. General Provisions (Reserved)

26 21. Charitable Gift Annuity Exemptions (Reserved)

27 23. Institutions of Purely Public Charity

28 CHAPTER 19

29 GENERAL PROVISIONS

30 (Reserved)

1 CHAPTER 21

2 CHARITABLE GIFT ANNUITY EXEMPTIONS

3 (Reserved)

4 CHAPTER 23

5 INSTITUTIONS OF PURELY PUBLIC CHARITY

6 Sec.

7 2301. Scope of chapter.

8 2302. Legislative intent.

9 2303. Definitions.

10 2304. State-related universities.

11 2305. Criteria for institutions of purely public charity.

12 2306. Presumption process.

13 2307. Voluntary agreements.

14 2308. Unfair competition with small businesses.

15 2309. Accountability and disclosure.

16 2310. Exemption for Federal Government instrumentality.

17 2311. Prohibited act.

18 2312. Compliance.

19 2313. Civil penalty.

20 2314. Repeals.

21 2315. Applicability.

22 § 2301. Scope of chapter.

23 This chapter relates to institutions of purely public
24 charity.

25 § 2302. Legislative intent.

26 (a) Findings.--The General Assembly finds and declares as
27 follows:

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

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

5 (3) Because institutions of purely public charity
6 contribute to the common good or lessen the burden of
7 government, the historic policy of exempting these
8 institutions from taxation should be continued.

9 (4) Lack of specific legislative standards defining the
10 term "institutions of purely public charity" has led to
11 increasing confusion and confrontation among traditionally
12 tax-exempt institutions and political subdivisions to the
13 detriment of the public.

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

18 (6) Recognizing the interest of the taxpayers in a fair
19 and equitable system of property tax assessment and the
20 attendant statutory requirements for the political
21 subdivision responsible for maintaining real property
22 assessment rolls to administer the system of property
23 assessment, this chapter shall not in any way limit the
24 responsibilities, prerogatives or abilities of political
25 subdivisions with respect to the determination of or
26 challenges to the taxable status of a parcel of property
27 based on the use of the parcel or part of the parcel of
28 property.

29 (7) Institutions of purely public charity benefit
30 substantially from local government services. These

1 institutions have significant value to the Commonwealth and
2 its citizens, and the need exists for revenues to maintain
3 local government services provided for the benefit of all
4 citizens, including institutions of purely public charity. It
5 is the intent of this chapter to encourage financially secure
6 institutions of purely public charity to enter into voluntary
7 agreements or to maintain existing or continuing agreements
8 for the purpose of defraying some of the cost of various
9 local government services. Payments made under the agreements
10 shall be deemed to be in compliance with any fiduciary
11 obligation pertaining to the institutions of purely public
12 charity, its officers or directors.

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

25 § 2303. Definitions.

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

29 "Affiliate." The term includes:

30 (1) A domestic or foreign corporation, association,

1 trust or other organization which owns a 10% or greater
2 interest in an institution of purely public charity.

3 (2) A domestic or foreign corporation, association,
4 trust or other organization in which an institution of purely
5 public charity owns a 10% or greater interest.

6 "Annual return." The annual information return required to
7 be filed with the Internal Revenue Service by institutions
8 exempt from tax under section 501(a) of the Internal Revenue
9 Code of 1986 consisting of Internal Revenue Service Form 990 or
10 Form 990EZ and Schedule A or any succeeding form used for the
11 same or similar purpose. For an institution which is not
12 required to file the returns, the institution's annual financial
13 statement with reported income shall constitute its annual
14 return.

15 "Bureau." The Bureau of Corporations and Charitable
16 Organizations of the Department of State of the Commonwealth.

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

20 "Contribution." The promise, grant, pledge or gift of money,
21 property, goods, services, financial assistance or other similar
22 remittance.

23 "Department." Department of State of the Commonwealth.

24 "Goods or services." Goods or services that promote any of
25 the enumerated purposes under section 2305(b) (relating to
26 criteria for institutions of purely public charity) and which
27 are valued in accordance with generally accepted accounting
28 principles applicable to the institution.

29 "Government agency." Any Commonwealth agency or any
30 political subdivision or municipal or other local authority or

1 any officer or agency of any political subdivision or local
2 authority.

3 "Institution." A domestic or foreign nonprofit corporation,
4 association or trust or other similar entity.

5 "Institution of purely public charity." An institution which
6 meets the criteria under section 2305.

7 "Internal Revenue Code of 1986." The Internal Revenue Code
8 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

9 "Net operating income." The amount of funds remaining after
10 all operating expenses related to the provision of goods or
11 services associated with the institution's charitable purpose
12 are deducted from payments received for providing these goods or
13 services, as determined in accordance with generally accepted
14 accounting principles applicable to the institution.

15 "Program service revenue." Income earned from the provision
16 of goods or services, including government fees and contracts
17 associated with the institution's charitable purpose, that is
18 reported on the annual return.

19 "Small business." Any self-employed individual, sole
20 proprietorship, firm, corporation, partnership, association or
21 other entity that:

- 22 (1) has fewer than 101 full-time employees; and
23 (2) is subject to income taxation under the act of March
24 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

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

29 "Voluntary agreement." An agreement, contract or other
30 arrangement for the purpose of receiving contributions under

1 section 2307 (relating to voluntary agreements) between a
2 political subdivision and an institution seeking or possessing
3 an exemption as an institution of purely public charity. These
4 contributions are for the purpose of defraying some of the cost
5 of various local government services. The term includes the
6 establishment of public service foundations by institutions of
7 purely public charity.

8 § 2304. State-related universities.

9 (a) General rule.--It is the intent of the General Assembly
10 to recognize that State-related universities provide a direct
11 public benefit and serve the public purposes of this
12 Commonwealth by declaring the real property of State-related
13 universities to be public property for purposes of exemption
14 from State and local taxation when the property is actually and
15 regularly used for public purposes, provided that nothing in
16 this section is intended or shall be construed to affect the
17 title to real property of State-related universities or the
18 power and authority of the governing bodies of State-related
19 universities with respect to the real property. Nothing in this
20 section is intended or shall be construed to affect, impair or
21 terminate any contract or agreement in effect on or before
22 November 26, 1997, by and between a State-related university and
23 any political subdivision where the State-related university
24 pays real estate taxes, amounts in lieu of real estate taxes or
25 other charges, fees or contributions for government services.

26 (b) Real property.--All real property owned by State-related
27 universities or owned by the Commonwealth and used by a State-
28 related university is and shall be deemed public property for
29 purposes of the Constitution of Pennsylvania and the laws of
30 this Commonwealth relating to the assessment, taxation and

1 exemption of real estate and shall be exempt from all State and
2 local taxation when actually and regularly used for public
3 purposes.

4 (c) Exception.--This section shall not include the property
5 of a State-related university, the possession and control of
6 which has been transferred to a for-profit entity not otherwise
7 entitled to tax-exempt status, irrespective of whether that
8 entity is affiliated with the university. The execution of a
9 management services contract with a third-party entity to
10 provide operational services to the university which would
11 otherwise be provided or conducted directly by the university
12 shall not, however, be considered a transfer of possession and
13 control of real property within the meaning of this section.

14 (d) Definitions.--As used in this section, the following
15 words and phrases shall have the meanings given to them in this
16 subsection unless the context clearly indicates otherwise:

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

22 "State-related universities." The Pennsylvania State
23 University and its affiliates, the Pennsylvania College of
24 Technology, the University of Pittsburgh, Temple University and
25 its subsidiaries, Temple University Hospital, Inc., and Temple
26 University Children's Hospital, Inc., and Lincoln University.

27 § 2305. Criteria for institutions of purely public charity.

28 (a) General rule.--An institution of purely public charity
29 is an institution that meets the criteria set forth in
30 subsections (b), (c), (d), (e) and (f). An institution that

1 meets the criteria of this section shall be considered to be
2 founded, endowed and maintained by public or private charity.

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

7 (1) Relief of poverty.

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

10 (3) Advancement of religion.

11 (4) Prevention and treatment of disease or injury,
12 including intellectual disabilities and mental disorders.

13 (5) Government or municipal purposes.

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

17 (c) Private profit motive.--The institution must operate
18 entirely free from private profit motive. Notwithstanding
19 whether the institution's revenues exceed its expenses, this
20 criterion is satisfied if the institution meets all of the
21 following:

22 (1) Neither the institution's net earnings nor donations
23 that it receives inures to the benefit of private
24 shareholders or other individuals, as the private inurement
25 standard is interpreted under section 501(c)(3) of the
26 Internal Revenue Code of 1986.

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

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

4 (4) The governing body of the institution of purely
5 public charity has adopted as part of its articles of
6 incorporation or, if unincorporated, other governing legal
7 documents a provision that expressly prohibits the use of any
8 surplus funds for private inurement to any person in the
9 event of a sale or dissolution of the institution of purely
10 public charity.

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

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

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

19 (A) The institution has a written policy to this
20 effect.

21 (B) The institution has published this policy in
22 a reasonable manner.

23 (C) The institution provides uncompensated goods
24 or services at least equal to 75% of the
25 institution's net operating income, but not less than
26 3% of the institution's total operating expenses.

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

30 (A) The institution can demonstrate that it has

1 implemented a written policy and a written schedule
2 of fees based on individual or family income. An
3 institution will meet the requirement of this clause
4 if the institution consistently applies a formula to
5 all individuals requesting consideration of reduced
6 fees which is in part based on individual or family
7 income.

8 (B) At least 20% of the individuals receiving
9 goods or services from the institution pay no fee or
10 a fee which is lower than the cost of the goods or
11 services provided by the institution.

12 (C) At least 10% of the individuals receiving
13 goods or services from the institution receive a
14 reduction in fees of at least 10% of the cost of the
15 goods or services provided to them.

16 (D) No individuals receiving goods or services
17 from the institution pay a fee that is equal to or
18 greater than the cost of the goods or services
19 provided to them or the goods or services provided to
20 the individuals described in clause (B) are
21 comparable in quality and quantity to the goods or
22 services provided to those individuals who pay a fee
23 that is equal to or greater than the cost of the
24 goods or services provided to them.

25 (iii) Wholly gratuitous goods or services to at
26 least 5% of those receiving similar goods or services
27 from the institution.

28 (iv) Financial assistance or uncompensated goods or
29 services to at least 20% of those receiving similar goods
30 or services from the institution if at least 10% of the

1 individuals receiving goods or services from the
2 institution either paid no fees or fees which were 90% or
3 less of the cost of the goods or services provided to
4 them, after consideration of any financial assistance
5 provided to them by the institution.

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

9 (vi) Goods or services at no fee or reduced fees to
10 government agencies or goods or services to individuals
11 eligible for government programs if any one of the
12 following applies:

13 (A) The institution receives 75% or more of its
14 gross operating revenue from grants or fee-for-
15 service payments by government agencies and if the
16 aggregate amount of fee-for-service payments from
17 government agencies does not exceed 95% of the
18 institution's costs of providing goods or services to
19 the individuals for whom the fee-for-services
20 payments are made.

21 (B) The institution provides goods or services
22 to individuals with intellectual disabilities, to
23 individuals who need mental health services, to
24 members of an individual's family or guardian in
25 support of the goods or services or to individuals
26 who are dependent, neglected or delinquent children,
27 as long as the institution performs duties that would
28 otherwise be the responsibility of government and the
29 institution is restricted in its ability to retain
30 revenue over expenses or voluntary contributions by

1 any one of the following statutes or regulations or
2 by contractual limitations with county children and
3 youth offices in this Commonwealth:

4 (I) Sections 1905(d) and 1915(c) of the
5 Social Security Act (49 Stat. 620, 42 U.S.C. §§
6 1396d(d) and 1396n(c)).

7 (II) 42 CFR 440.150 (relating to
8 intermediate care facility (ICF/IID) services).

9 (III) 42 CFR Pt. 483 Subpt. I (relating to
10 conditions of participation for intermediate care
11 facilities for individuals with intellectual
12 disabilities).

13 (IV) The act of October 20, 1966 (3rd
14 Sp.Sess., P.L.96, No.6), known as the Mental
15 Health and Intellectual Disability Act of 1966.

16 (V) Articles II, VII, IX and X of the act of
17 June 13, 1967 (P.L.31, No.21), known as the Human
18 Services Code.

19 (VI) 23 Pa.C.S. Ch. 63 (relating to child
20 protective services).

21 (VII) 42 Pa.C.S. Ch. 63 (relating to
22 juvenile matters).

23 (VIII) 55 Pa. Code Chs. 3170 (relating to
24 allowable costs and procedures for county
25 children and youth social service programs), 3680
26 (relating to administration and operation of a
27 children and youth social service agency), 4300
28 (relating to county mental health and
29 intellectual disability fiscal manual), 6210
30 (relating to participation requirements for the

1 intermediate care facilities for the intellectual
2 disability program), 6211 (relating to allowable
3 cost reimbursement for non-State operated
4 intermediate care facilities for individuals with
5 an intellectual disability), 6400 (relating to
6 community homes for individuals with an
7 intellectual disability), 6500 (relating to
8 family living homes) and 6600 (relating to
9 intermediate care facilities for individuals with
10 an intellectual disability).

11 (vii) Fundraising on behalf of or grants to an
12 institution of purely public charity, an entity similarly
13 recognized by another state or foreign jurisdiction, a
14 qualifying religious organization or a government agency
15 and actual contribution of a substantial portion of the
16 funds raised or contributions received to an institution
17 of purely public charity, an entity similarly recognized
18 by another state or foreign jurisdiction, a qualifying
19 religious organization or a government agency.

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

24 (3) For purposes of calculating the number of
25 individuals for use in the percentage calculations in this
26 subsection, educational institutions may use full-time
27 equivalent students as defined by the Department of
28 Education.

29 (4) For purposes of this subsection, the term
30 "uncompensated goods or services" shall be limited to any of

1 the following:

2 (i) The full cost of all goods or services provided
3 by the institution for which the institution has not
4 received monetary compensation or the difference between
5 the full cost and any lesser fee received for the goods
6 or services, including the cost of the goods or services
7 provided to individuals unable to pay.

8 (ii) The difference between the full cost of
9 education and research programs provided by or
10 participated in by the institution and the payment made
11 to the institution to support the education and research
12 programs.

13 (iii) The difference between the full cost of
14 providing the goods or services and the payment made to
15 the institution under any government program, including
16 individuals covered by Medicare or Medicaid.

17 (iv) The difference between the full cost of the
18 community services that the institution provides or
19 participates in and the payment made to the institution
20 to support the community services.

21 (v) The reasonable value of any money, property,
22 goods or services donated by a primary donor to an
23 institution of purely public charity or to a government
24 agency or the reasonable value of the net donation made
25 by a secondary donor to a primary donor. As used in this
26 subparagraph, the following words and phrases shall have
27 the following meanings:

28 (A) "Net donation." In the case of a donation
29 of money, property or identical goods or services
30 made by a secondary donor, the difference between the

1 value of the donation made by the secondary donor and
2 the value of the donation made by the primary donor,
3 provided the value is positive.

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

7 (C) "Secondary donor." An institution which
8 receives a donation of any money, property, goods or
9 services from a primary donor and then makes a
10 donation back to that primary donor within three
11 years of having received the donation.

12 (vi) The reasonable value of volunteer assistance
13 donated by individuals who are involved or assist in the
14 provision of goods or services by the institution. The
15 reasonable value of volunteer assistance, computed on an
16 hourly basis, shall not exceed the Statewide average
17 weekly wage as defined in section 105.1 of the act of
18 June 2, 1915 (P.L.736, No.338), known as the Workers'
19 Compensation Act, divided by 40.

20 (vii) The cost of goods or services provided by an
21 institution licensed by the Department of Health or the
22 Department of Human Services to individuals who are
23 unable to pay, provided that reasonable and customary
24 collection efforts have been made by the institution.

25 (viii) The value of any voluntary agreement as set
26 forth in section 2307(c) (relating to voluntary
27 agreements).

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

29 (1) The institution must benefit a substantial and
30 indefinite class of persons who are legitimate subjects of

1 charity.

2 (2) An institution shall be considered to benefit a
3 substantial and indefinite class of persons who are
4 legitimate subjects of charity if the institution is
5 primarily engaged in fundraising on behalf of or making
6 grants to an institution of purely public charity, an entity
7 similarly recognized by another state or foreign
8 jurisdiction, a qualifying religious organization or a
9 government agency and there is actual contribution of a
10 substantial portion of the funds raised or contributions
11 received to an institution of purely public charity, an
12 entity similarly recognized by another state or foreign
13 jurisdiction, a qualifying religious organization or a
14 government agency.

15 (3) An institution that operates exclusively on a
16 voluntary basis to provide emergency health and safety
17 services to the community or an institution that provides
18 funds and support exclusively to volunteer institutions that
19 provide emergency health and safety services to the community
20 shall be considered to benefit a substantial and indefinite
21 class of persons who are legitimate subjects of charity.

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

25 (i) the institution is not qualified under section
26 501(c)(3) of the Internal Revenue Code of 1986; and

27 (ii) the institution is qualified under section
28 501(c)(4), (5), (6), (7), (8) or (9) of the Internal
29 Revenue Code of 1986 as any of the following:

30 (A) An association of employees, the membership

1 of which is limited to the employees of a designated
2 person or persons.

3 (B) A labor organization.

4 (C) An agricultural or horticultural
5 organization.

6 (D) A business league, chamber of commerce, real
7 estate board, board of trade or professional sports
8 league.

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

10 (F) A fraternal beneficiary society, order or
11 association.

12 (5) As used in this subsection, the following words and
13 phrases shall have the meanings given to them in this
14 paragraph:

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

18 (ii) "Substantial and indefinite class of persons."
19 Persons not predetermined in number, provided that, where
20 the goods or services are received primarily by members
21 of the institution, membership cannot be predetermined in
22 number and cannot be arbitrarily denied by a vote of the
23 existing members. This subsection specifically recognizes
24 that the use of admissions criteria and enrollment
25 limitations by educational institutions does not
26 constitute predetermined membership or arbitrary
27 restrictions on membership so as to violate this section
28 and recognizes that an institution may reasonably deny
29 membership based on the types of services it provides, as
30 long as denial is not in violation of Federal or State

1 antidiscrimination laws, such as the Civil Rights Act of
2 1964 (Public Law 88-352, 78 Stat. 241) and the act of
3 October 27, 1955 (P.L.744, No.222), known as the
4 Pennsylvania Human Relations Act.

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

8 (1) Provides a service to the public that the government
9 would otherwise be obliged to fund or to provide directly or
10 indirectly or to assure that a similar institution exists to
11 provide the service.

12 (2) Provides services in furtherance of its charitable
13 purpose that are either the responsibility of the government
14 by law or that historically have been assumed or offered or
15 funded by the government.

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

20 (4) Provides a service to the public that directly or
21 indirectly reduces dependence on government programs or
22 relieves or lessens the burden borne by government for the
23 advancement of social, moral, educational or physical
24 objectives.

25 (5) Advances or promotes religion and is owned and
26 operated by a corporation or other entity as a religious
27 ministry and otherwise satisfies the criteria set forth in
28 this section.

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

30 (g) Other nonprofit entities.--A nonprofit parent

1 corporation, together with all of its subsidiary nonprofit
2 corporations, may elect to be considered as a single institution
3 in meeting the criteria set forth in this section as long as all
4 of the following are met:

5 (1) Each subsidiary:

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

8 (ii) meets the requirements of this section.

9 (2) The parent:

10 (i) is a nonstock corporation;

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

14 (iii) meets the requirements of subsections (b) and
15 (c); and

16 (iv) except for services that meet the requirements
17 of this section, does not render services for a fee to an
18 individual or entity that does not meet the requirements
19 of paragraph (1).

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

21 (1) Nothing in this chapter shall affect, impair or
22 hinder the responsibilities or prerogatives of the political
23 subdivision responsible for maintaining real property
24 assessment rolls to make a determination whether a parcel of
25 property or a portion of a parcel of property is being used
26 to advance the charitable purpose of an institution of purely
27 public charity or to assess the parcel or part of the parcel
28 of property as taxable based on the use of the parcel or part
29 of the parcel for purposes other than the charitable purpose
30 of that institution.

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

6 (i) Standards.--An institution of purely public charity may
7 conduct activities intended to influence legislation provided
8 that no substantial part of the activities of an institution of
9 purely public charity shall consist of carrying on propaganda,
10 except as otherwise provided in section 501(h) of the Internal
11 Revenue Code of 1986, or participating in or intervening in,
12 including the publishing or distributing of statements, any
13 political campaign on behalf of or in opposition to any
14 candidate for public office as the limitations are interpreted
15 under section 501 of the Internal Revenue Code of 1986.

16 § 2306. Presumption process.

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

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

29 (2) An institution of purely public charity that has
30 annual program service revenue equal to or exceeding

1 \$10,000,000 shall be entitled to assert the presumption if
2 all of the following apply:

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

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

9 (3) The presumption under paragraph (2) may be asserted
10 by an institution of purely public charity only with regard
11 to a challenge made by a political subdivision with which
12 that institution has a voluntary agreement in effect under
13 section 2307.

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

18 (5) Commencing July 1, 1999, and every year thereafter,
19 the Department of Revenue shall increase the amount set forth
20 in paragraphs (1) and (2) by 1%. The department shall
21 transmit notice of the adjustment to the Legislative
22 Reference Bureau for publication in the Pennsylvania
23 Bulletin.

24 (b) Burden of proof.--If an institution of purely public
25 charity asserts a presumption under subsection (a), a political
26 subdivision challenging that institution before a government
27 agency or court shall bear the burden, by a preponderance of the
28 evidence, of proving that the institution of purely public
29 charity does not comply with the requirements of section 2305.

30 (c) Issuance of written order.--The department shall furnish

1 a written order to any institution applying for exemption under
2 section 204(10) of the Tax Reform Code of 1971 approving or
3 denying the exemption. An order denying an exemption shall
4 include specific information concerning that institution's
5 failure to comply with at least one of the criteria under
6 section 2305.

7 (d) Waiver of confidentiality.--An institution of purely
8 public charity asserting a presumption under subsection (a)
9 shall be deemed to have waived any right to confidentiality with
10 regard to all records in the possession of the department
11 relating to the application for exemption. These records shall
12 be deemed public records that the department must furnish to any
13 person upon request. A political subdivision challenging the
14 presumption may request from the institution of purely public
15 charity all relevant financial statements, records and documents
16 used to obtain the exemption under section 204(10) of the Tax
17 Reform Code of 1971. Failure by that institution to supply or,
18 at its option, to permit inspection of the information in its
19 possession within 30 days shall eliminate the presumption with
20 respect to that challenge.

21 (e) Department involvement.--A determination made under this
22 section shall not in any way subject the department to
23 participation in any controversy, discovery or litigation
24 between a political subdivision and an institution claiming the
25 exemption as an institution of purely public charity, other than
26 providing a copy of its written order and any supporting
27 documentation supplied to the department by that institution.
28 § 2307. Voluntary agreements.

29 (a) General rule.--A political subdivision may execute a
30 voluntary agreement with an institution that owns real property

1 within the political subdivision. All contributions received
2 from the voluntary agreements shall be used to help ensure that
3 essential governmental, public or community services will
4 continue to be provided in a manner that will permit an
5 institution to continue to fulfill its charitable mission.
6 Nothing in this section shall be construed to prohibit a
7 political subdivision from sharing with another political
8 subdivision a portion of the proceeds derived from a voluntary
9 agreement upon the mutual agreement of all affected parties.

10 (b) Public service foundations.--Institutions of purely
11 public charity may establish a public service foundation, upon
12 mutual agreement with a political subdivision, for the purpose
13 of receiving contributions from institutions of purely public
14 charity. Upon agreement, the foundation shall make distributions
15 or grants to a participating political subdivision to help
16 ensure that essential governmental, public or community services
17 will continue to be provided in a manner that will permit an
18 institution to continue to fulfill its charitable mission. A
19 political subdivision which receives a distribution or grant
20 from a public service foundation shall not assess or seek a
21 separate contribution for services from institutions of purely
22 public charity participating in a foundation.

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

29 (1) If the reasonable value of the institution's
30 contribution is equal to or less than 0.15% of its program

1 service revenue, the institution may credit the entire
2 contribution at 150% of its value.

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

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

11 (d) Existing agreements.--Nothing in this chapter shall be
12 construed to affect, impair, terminate or supersede any
13 contract, agreement or other arrangement on or before November
14 27, 1997, between an institution and a political subdivision
15 that authorizes or requires payment of taxes, amounts in lieu of
16 taxes or other charges or fees for the services of a political
17 subdivision.

18 (e) New agreements.--Nothing in this chapter shall be
19 construed to impair or otherwise inhibit the right or ability of
20 any institution seeking or possessing an exemption as an
21 institution of purely public charity, a public service
22 foundation or a political subdivision from executing voluntary
23 agreements after November 26, 1997.

24 § 2308. Unfair competition with small businesses.

25 (a) Intent.--It is the policy of this chapter that
26 institutions of purely public charity shall not use their tax-
27 exempt status to compete unfairly with small businesses.

28 (b) General rule.--An institution of purely public charity
29 may not fund, capitalize, guarantee the indebtedness of, lease
30 obligations of or subsidize a commercial business that is

1 unrelated to the institution's charitable purpose as stated in
2 the institution's charter or governing legal documents.

3 (c) Exceptions.--Institutions of purely public charity are
4 not in violation of subsection (b) if any of the following
5 apply:

6 (1) The commercial business is intended only for the use
7 of its employees, staff, alumni, faculty, members, students,
8 clients, volunteers, patients or residents. For purposes of
9 this paragraph, a person shall not be considered an employee,
10 staff, member, alumnus, faculty, student, client, volunteer,
11 patient or resident if the person's only relationship with
12 the institution of purely public charity is to receive
13 products or services resulting from the commercial business.

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

17 (d) Support for other charities.--Nothing in this section
18 shall be construed as prohibiting or limiting the ability of an
19 institution of purely public charity to fund, capitalize,
20 guarantee the indebtedness of or otherwise subsidize another
21 institution of purely public charity.

22 (e) Investments.--The investment in publicly traded stocks
23 and bonds, real estate, whether directly or indirectly, or other
24 investments by an institution of purely public charity does not
25 violate subsection (b).

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

29 (g) Government functions.--An institution of purely public
30 charity may engage in a new commercial business that may

1 otherwise be in violation of subsection (b) if the institution
2 is formally requested to do so by the Commonwealth or a
3 political subdivision.

4 (h) Existing business arrangements.--An institution of
5 purely public charity that prior to March 26, 1998, funded,
6 capitalized, guaranteed the indebtedness of, leased obligations
7 of or subsidized a commercial business may continue to own and
8 operate the businesses without violating subsection (b) as long
9 as the institution does not substantially expand the scope of
10 the commercial business. In the event an injunction is issued
11 under subsection (i), the effect of the injunction shall be
12 limited to restraining the substantial expansion of the scope of
13 the commercial business which was initiated after March 26,
14 1998.

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

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

25 (2) Within 10 days of filing the complaint with the
26 department, the aggrieved small business shall serve a copy
27 of the complaint on the institution of purely public charity
28 against which the complaint is filed. The institution of
29 purely public charity must respond to the complaint within 30
30 days of its receipt.

1 (3) Within 30 days following the period of time allotted
2 to the institution of purely public charity to respond to the
3 complaint, the department shall provide an unbiased and
4 qualified arbitrator who possesses sufficient knowledge
5 regarding the institutions to adjudicate the matter. If the
6 institution of purely public charity does not participate in
7 the arbitration, the arbitrator may issue an order to compel
8 the participation. An order shall be enforceable by the court
9 of common pleas in the judicial district where the
10 arbitration takes place.

11 (4) The arbitration shall take place in the judicial
12 district in which the aggrieved small business is located.
13 The department shall provide the arbitrator all relevant
14 material regarding the complaint, including the original
15 complaint, the institution of purely public charity's
16 response to the complaint and copies of any other relevant
17 information which the department may possess. The arbitration
18 shall be completed within one year from the date on which the
19 arbitrator was assigned.

20 (5) Within 30 days of the arbitrator's assignment, the
21 arbitrator shall determine if the complaint sets forth prima
22 facie evidence that a violation of this section has occurred.
23 If the arbitrator determines that the complaint does not
24 contain prima facie evidence, the arbitrator shall issue a
25 written report detailing the findings and shall terminate the
26 arbitration. A small business may appeal a determination as
27 provided under paragraph (9).

28 (6) The arbitrator shall determine if the activity of
29 the institution of purely public charity is in violation of
30 this section. In making this determination, the arbitrator

1 shall review all relevant law, including previous
2 arbitrators' decisions, regulations and the charter or
3 governing legal documents of the institution of purely public
4 charity.

5 (7) The decision of the arbitrator shall be set forth in
6 a written decision issued to each party specifying findings
7 of fact and conclusions of law. If the arbitrator finds a
8 violation of this section, the arbitrator may include an
9 order or injunction as part of the decision, provided that no
10 damages may be assessed against an institution of purely
11 public charity.

12 (8) Upon agreement of the parties, the decision of the
13 arbitrator shall be final and binding as to all matters of
14 fact and law and shall be entered by the arbitrator as a
15 final judgment in the court of common pleas of the judicial
16 district in which the arbitration took place. A copy of the
17 arbitrator's final decision shall also be filed with the
18 department.

19 (9) Either party may initiate a de novo appeal from the
20 arbitrator's decision in the court of common pleas of the
21 judicial district in which the arbitration took place within
22 30 days of the arbitrator's decision.

23 (10) The department may provide for the system of
24 arbitration by maintaining a list of qualified arbitrators or
25 by contracting for qualified arbitration services.

26 (11) The department may adopt regulations necessary to
27 implement this section.

28 (12) The cost of an arbitration proceeding, including
29 the arbitrator's fee, shall be borne by the complainant,
30 unless the arbitrator directs otherwise. Each party shall be

1 responsible for its attorney fees and other costs incurred.

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

6 (14) The remedies set forth in this subsection shall be
7 the exclusive remedies available to an aggrieved small
8 business.

9 § 2309. Accountability and disclosure.

10 (a) Reporting.--An institution of purely public charity that
11 does not register with the Department of State under Chapter 13
12 (relating to solicitation of funds for charitable purposes),
13 including institutions exempt under section 1306(a) (relating to
14 exemptions from registration), shall file an annual report with
15 the bureau. The report shall be filed within 135 days after the
16 close of the institution's fiscal year unless an extension is
17 granted by the department. The report shall be in a format
18 approved by the department and shall include:

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

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

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

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

27 (i) The name and type of organization.

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

30 (iii) The relationship of each affiliate to the

1 institution of purely public charity making the report.

2 (5) The relationship of the institution of purely public
3 charity with any other nonprofit corporation or
4 unincorporated association if the relationship involves
5 formal governance or the sharing of revenue.

6 (b) Regulations.--The department shall promulgate
7 regulations to require institutions of purely public charity
8 that register under section 1305 (relating to registration of
9 charitable organizations; financial reports; fees; failure to
10 file) to include the information set forth in subsection (a).

11 (c) Amendments to annual returns.--An institution of purely
12 public charity that files an amended annual return with the
13 Internal Revenue Service shall file a copy of the amended annual
14 return with the bureau within 10 days of its filing with the
15 Internal Revenue Service.

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

19 (1) A bona fide duly constituted religious institution
20 and the separate groups or corporations that form an integral
21 part of a religious institution and are exempt from filing an
22 annual return under the Internal Revenue Code of 1986.

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

27 (e) Filing fee.--An institution of purely public charity
28 which is required to file a report under subsection (a) shall
29 pay an annual filing fee of \$15. All fees collected under this
30 chapter and Chapter 13 shall be deposited in the State Treasury.

1 The amount of the filing fee under this subsection may be
2 adjusted by the department by regulation. All fines, penalties,
3 attorney fees and costs of investigation collected under this
4 chapter and under Chapter 13 shall be paid as follows:

5 (1) Amounts collected by the bureau shall be paid to the
6 State Treasury.

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

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

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

22 (h) Utilization of reports.--The department shall make
23 reports submitted under this section available for public
24 inspection to the extent that the information is available for
25 public inspection under section 6104 of the Internal Revenue
26 Code of 1986. The department shall provide any government agency
27 a copy of the report filed under this section upon request.
28 Nothing in this subsection shall prevent a government agency
29 from requiring any institution seeking exemption as an
30 institution of purely public charity to provide the information

1 described under subsection (a) to that agency as part of a
2 determination of the tax-exempt status of the institution.

3 (i) Administrative penalty.--The department may impose an
4 administrative penalty not to exceed \$500 for any of the
5 following:

6 (1) Knowingly failing to file the report required by
7 this section.

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

10 § 2310. Exemption for Federal Government instrumentality.

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

20 § 2311. Prohibited act.

21 No institution may claim an exemption from sales and use tax
22 as an institution of purely public charity unless the
23 institution has received an order from the Department of Revenue
24 approving and authorizing the exemption.

25 § 2312. Compliance.

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

30 § 2313. Civil penalty.

1 In addition to any penalties authorized by the act of March
2 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for
3 violations of that act, the Department of Revenue may impose an
4 administrative penalty not to exceed \$500 for any willful and
5 knowing violation of this chapter. This section shall not apply
6 to any violation of section 2308 (relating to unfair competition
7 with small businesses).

8 § 2314. Repeals.

9 (a) Absolute.--(Reserved).

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

15 § 2315. Applicability.

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

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

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

1 Section 2. Repeals are as follows:

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

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

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

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

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

18 (1) Except as otherwise provided in 10 Pa.C.S. Ch. 13,
19 all activities initiated under the Solicitation of Funds for
20 Charitable Purposes Act shall continue and remain in full
21 force and effect and may be completed under 10 Pa.C.S. Ch.
22 13. Orders, regulations, rules and decisions that were made
23 under the the Solicitation of Funds for Charitable Purposes
24 Act and that are in effect on the effective date of this
25 section shall remain in full force and effect until revoked,
26 vacated or modified under 10 Pa.C.S. Ch. 13. Contracts,
27 obligations and collective bargaining agreements entered into
28 under the Solicitation of Funds for Charitable Purposes Act
29 are not affected nor impaired by the repeal of the
30 Solicitation of Funds for Charitable Purposes Act.

1 (2) Any difference in language between 10 Pa.C.S. Ch. 13
2 and the Solicitation of Funds for Charitable Purposes Act is
3 intended only to conform to the style of the Pennsylvania
4 Consolidated Statutes and is not intended to change or affect
5 the legislative intent, judicial construction or
6 administration and implementation of the Solicitation of
7 Funds for Charitable Purposes Act.

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

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

25 (2) Any difference in language between 10 Pa.C.S. Ch. 23
26 and the Institutions of Purely Public Charity Act is intended
27 only to conform to the style of the Pennsylvania Consolidated
28 Statutes and is not intended to change or affect the
29 legislative intent, judicial construction or administration
30 and implementation of the Institutions of Purely Public

1 Charity Act.

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