

No. 1982-90

## AN ACT

HB 704

Amending the act of August 9, 1963 (P.L.628, No.337), entitled "An act relating to charitable organizations; requiring the registration of such organizations; and regulating the solicitation of money and property by or on behalf of charitable organizations," further providing for investigations, audits or reviews of certain charitable organizations and changing registration procedures.

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

Section 1. Section 2, act of August 9, 1963 (P.L.628, No.337), known as the "Solicitation of Charitable Funds Act," is amended by adding definitions to read:

Section 2. Definitions.—As used in this act:

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(11) "*Gross contributions*" means the aggregate amount of money, pledges or other property raised or received by reason of any solicitation activities or campaigns.

(12) "*Actual contributions*" means gross contributions minus the actual cost to the charitable organization or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.

Section 2. Clause (6) of subsection (a), subsection (d) and clauses (4) and (5) of subsection (f) of section 3 of the act, subsection (d) amended and subsection (f) added October 26, 1972 (P.L.1011, No.246), are amended to read:

Section 3. Registration of Charitable Organizations.—(a) Every charitable organization which intends to solicit contributions within this Commonwealth, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the department upon forms prescribed by the commission, which shall be good for one full year and which shall be refiled in the next and each following year in which such charitable organization is engaged in solicitation activities. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this act. Such statements shall be sworn to and shall contain the following information:

\* \* \*

[(6) A copy of a balance sheet and income and expense statement audited by an independent public accountant for the organization's immediately preceding fiscal year, or a copy of a financial statement audited by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing kind and amount of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised.]

(6) (i) *A copy of the financial statements of the charitable organization's immediately preceding fiscal year. If the gross contributions of the organization exceeds fifteen thousand dollars (\$15,000), but is less than fifty thousand dollars (\$50,000), the financial statements shall be audited or reviewed by an independent public accountant or an independent certified public accountant. If the gross contributions of the organization exceeds fifty thousand dollars (\$50,000), the financial statements shall be audited by an independent public accountant or an independent certified public accountant. In the event that the gross contributions of the organization is less than fifteen thousand dollars (\$15,000), the submission of an audit or review is optional. The financial statements shall be completed in accordance with the accounting standards set forth in the rules and regulations promulgated by the commission.*

(ii) *Government audits of government grants shall be accepted and shall be included as part of the financial statements.*

(iii) *The commission shall have the discretion to require that an audit or review be submitted by any charitable organization which files a registration statement. The commission shall have the discretion to accept the financial statements submitted by the organization in lieu of the audit or review in the event that special facts and circumstances are presented.*

(iv) *For purposes of this clause all audits shall be performed in accordance with the American Institute of Certified Public Accountants Statements on auditing standards and reviews shall be the same as and performed in accordance with the standards and procedures set forth in the American Institute of Certified Public Accountants Statement on Standards for Accounting and Review Services.*

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(d) [Every charitable organization which does not engage a professional solicitor or professional fund-raising counsel, expends less than seven per cent of the contributions received for administration purposes and submits a proper registration to the department shall pay an annual registration fee of ten dollars (\$10).] *Every charitable organization which submits a short form registration statement pursuant to section 4(b) or receives less than fifteen thousand dollars (\$15,000) in gross contributions shall pay an annual registration fee of ten dollars (\$10).* Every [other] charitable organization which submits a [proper] full registration statement to the department shall pay an annual registration fee of twenty-five dollars (\$25) if the charitable organization solicits and receives gross contributions from the public [of] *which exceed fifteen thousand dollars (\$15,000) but are less than twenty-five thousand dollars (\$25,000) [or less]* during the immediate preceding fiscal year. Every charitable organization which submits a [proper] full registration statement to the department shall pay an annual registration fee of one hundred dollars (\$100) if the charitable organization solicits and receives gross contributions in excess of twenty-five thousand dollars (\$25,000) during the immediate preceding fiscal year. A parent organization filing on behalf of one or more chapters, branches or affiliates and a federated

fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such chapters, branches, affiliates or member agencies included in the registration statement.

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(f) Upon receipt of a request from the Secretary of the Commonwealth or upon its own initiative the commission shall make or cause to be made such investigation of any applicant as it shall deem necessary. As a result of its investigation and action, the commission shall certify to the Secretary of the Commonwealth its approval or disapproval of the application. No applicant shall be approved if one or more of the following facts is found to exist:

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(4) That solicitation and fund-raising expenses (including not only payments to professional solicitors, but also payments to professional fund-raisers, and internal fund-raising and solicitation salaries and expenses) during any of the three years immediately preceding the date of application have exceeded thirty-five per cent of the **[total moneys, pledges, or other property raised or received by reason of any solicitation and/or fund-raising activities or campaigns] actual contributions received**. As used in this subsection, the term "internal fund-raising and expenses" shall include, but not be limited to, such portions of the charitable organization's salary and overhead expenses as were fairly allocable (on a time or other appropriate basis) to its solicitation and/or fund-raising expense. In the event special facts or circumstances are presented showing that expenses higher than thirty-five per cent were not unreasonable, the commission has the discretion to allow such higher expense.

(5) That the expected cost of solicitation and fund-raising expenses for the specific year in which the application is submitted (including not only payments to professional solicitors, but also payments to professional fund-raisers, and internal fund-raising and solicitation salaries and expenses) will exceed thirty-five per cent of the **[total money, pledges or other property to be raised or received by reason of any solicitation and/or fund-raising activities or campaigns] actual contributions received**. As used in this subsection, the term "internal fund-raising and expenses" shall include, but not be limited to, such portions of the charitable organizations salary and overhead expenses as will be fairly allocable (on a time or other appropriate basis) to its solicitation and/or fund-raising expense. In the event special facts or circumstances are presented, showing that expenses higher than thirty-five per cent will not be unreasonable, the commission has the discretion to allow such higher expense.

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Section 3. Section 4 of the act, amended December 10, 1974 (P.L.903, No.297) and July 25, 1975 (P.L.98, No.50), is amended to read:

Section 4. **[Certain Persons and Organizations Exempt from Registration] Exclusions and Short Form Registration.**—(a) **[The following**

charitable organizations shall not be required to file an annual registration statement with the department:] *The following charitable organizations shall be excluded from the registration requirements in this act:*

(1) Educational institutions, the curriculums of which in whole or in part are registered or approved by the State [Council] Board of Education of the Commonwealth of Pennsylvania, either directly or by acceptance of accreditation by an accrediting body recognized by the State [Council] Board of Education. [ : Provided, That such educational institutions simultaneously file with the Commission on Charitable Organizations duplicates of such annual fiscal reports as are filed with the Department of Public Instruction of the Commonwealth of Pennsylvania.

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

(3) Charitable organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of seven thousand five hundred dollars (\$7,500) during a calendar year or do not receive contributions from more than ten persons during a calendar year, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such is or is not received by any charitable organization during any calendar year, shall be in excess of seven thousand five hundred dollars (\$7,500), it shall, within thirty days after the date it shall have received total contributions in excess of seven thousand five hundred dollars (\$7,500), register with and report to the department as required by this act.

(4) (2) Hospitals which are nonprofit and charitable and are required by law to file financial reports at least annually with the Auditor General of the Commonwealth of Pennsylvania: Provided, That a copy of the annual fiscal report so filed is also filed simultaneously with the Commission on Charitable Organizations.

[(5) Organizations which solicit only within the membership of the organization by the members thereof.

The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(6) (3) A local post, camp, chapter or similarly designated element or a county unit of such elements of a bona fide veterans' organization which issues charters to such local elements throughout this State, a bona fide organization of volunteer firemen, a bona fide ambulance association or bona fide rescue squad association or a bona fide auxiliary or affiliate of any such organization, provided all its fund-raising activities are carried on by members of such an organization or an affiliate thereof, and such members receive no compensation directly or indirectly therefor.

**[(7)] (4) Public nonprofit library organizations which receive financial aid from municipal and State governments and file an annual fiscal report with the State Library System. [and the Commission on Charitable Organizations.**

**(b) Any charitable organization claiming to be exempt from the registration provisions of this act and which is about to or does solicit charitable contributions shall submit, annually, to the department on forms to be prescribed by the commission the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. If exempted, the department shall issue, annually, a letter of exemption which may be exhibited to the public. No registration fee shall be required of any exempt organization.]**

**(b) *The following charitable organizations shall be required to file a short form annual registration statement with the department:***

**(1) *Persons requesting contributions for the relief of any individual specified by name at the time of solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.***

**(2) *Charitable organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of fifteen thousand dollars (\$15,000) during a calendar year and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public exceed fifteen thousand dollars (\$15,000), the charitable organization shall, within thirty days after the date it has received said amount, file a full registration statement with the department.***

**(3) *Organizations which solicit only within the membership of the organization by the members thereof. The term "membership" shall not include persons who are granted a membership upon making a contribution as the result of solicitation.***

Section 4. Subsections (a), (a.1), (b) and (d) of section 6 of the act, amended or added October 26, 1972 (P.L.1011, No.246), are amended to read:

Section 6. Limitations on Amount of Payments for Solicitation or Fund-Raising Activities.—(a) No charitable organization shall pay or agree to pay to a professional solicitor or his agents, servants or employes in the aggregate a total amount in excess of fifteen per cent (including reimbursement for expenses incurred and direct payment of expenses incurred) of the [total moneys, pledges or other property raised or received by reason of any solicitation activities or campaigns] *actual contributions received.*

(a.1) No charitable organization shall incur solicitation and fund-raising expenses (including not only payments to professional solicitors, but also payments to professional fund-raisers, and internal fund-raising and solicitation salaries and expenses) in excess of thirty-five per cent of [total moneys, pledges or other property raised or received by reason of any solicitation, gift and/or fund-raising activities or campaigns] *the*

*actual contributions received.* As used in this subsection, the term "internal fund-raising and expenses" shall include, but not be limited to, such portions of the charitable organization's salary and overhead expenses as are fairly allocable (on a time or other appropriate basis) to its solicitation and/or fund-raising expense. In the event special facts or circumstances are presented showing expenses higher than thirty-five per cent, the commission has the discretion to allow such higher funds and may impose such conditions as the commission or the Secretary of the Commonwealth shall deem necessary for such exemption.

**(b) [For purposes of this section, the total moneys, funds, pledges or other property raised or received shall not include the actual cost to the charitable organization or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.] Fund-raising expenses shall not include the actual amount the charitable organization paid to the United States Postal Service for postage in connection with the solicitation of contributions. The postage costs shall be allocated (on a time or other appropriate basis) to program service costs or management in general costs.**

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**(d)** Every contract or a written statement of the nature of the arrangement to prevail in the absence of a contract between a professional solicitor and a charitable organization shall be filed with the Secretary of the Commonwealth within ten days after such contract or written agreement is concluded. If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the commission shall examine the contract to ascertain whether the compensation to be paid in such circumstances is likely to exceed fifteen per cent of the **[total moneys, pledges or other property raised or] actual contributions received** as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed fifteen per cent of the **[total moneys, pledges or other property] actual contributions received**, the secretary shall disapprove the contract or arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of disapproval, be given a hearing before the commission within thirty days after such request is filed.

Section 5. Section 13 of the act is repealed.

Section 6. Subsection (b) of section 14 of the act is amended to read:

Section 14. Enforcement and Penalties.—\* \* \*

**(b)** The commission, upon its own motion or upon complaint of any person, may, if it has reasonable ground to suspect a violation, investigate *or request an audit of* any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or profes-

sional solicitor has violated the provisions of this act or has filed any application or other information required under this act which contains false or misleading statements. If the commission finds that any application or other information contains false or misleading statements, or that a registrant under this act has violated the provisions thereof, it may recommend to the department that the registration be suspended or cancelled and the department may so order.

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Section 7. This act shall take effect immediately and shall be retroactive to January 1, 1982.

APPROVED—The 9th day of April, A. D. 1982.

DICK THORNBURGH