

No. 1997-55

AN ACT

HB 55

Providing for the tax exemption of institutions of purely public charity; exempting real property owned by State-related universities or Federal Government instrumentalities from taxation; providing for unfair competition; imposing penalties; and making repeals.

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

## Section 1. Short title.

This act shall be known and may be cited as the Institutions of Purely Public Charity Act.

## Section 2. Legislative intent.

(a) Findings.—The General Assembly finds and declares as follows:

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

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

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

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

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

(6) Recognizing the interest of the taxpayers in a fair and equitable system of property tax assessment and the attendant statutory requirements for the political subdivision responsible for maintaining real property assessment rolls<sup>1</sup> to administer the system of property assessment, this act shall not in any way limit the responsibilities, prerogatives or abilities of political subdivisions with respect to the determination of or challenges to the taxable status of a parcel of property based on the use of the parcel or part of the parcel of property.

(7) Institutions of purely public charity benefit substantially from local government services. These institutions have significant value to the Commonwealth and its citizens, and the need exists for revenues to maintain local government services provided for the benefit of all citizens, including institutions of purely public charity. It is the intent of this act to encourage financially secure institutions of purely public charity to enter into voluntary agreements or maintain existing or continuing agreements for the purpose of defraying some of the cost of various local government services. Payments made under such agreements shall be deemed to be in compliance with any fiduciary obligation pertaining to such institutions of purely public charity, its officers or directors.

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

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<sup>1</sup>"roles" in enrolled bill.

**Section 3. Definitions.**

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

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

**"Annual return."** The annual information return required to be filed with the Internal Revenue Service by institutions exempt from tax under section 501(a) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(a)). The annual information return consists of Internal Revenue Service Form 990 or Form 990EZ and Schedule A or any succeeding form used for the same or similar purpose. For an institution which is not required to file such returns, the institution's annual financial statement with reported income shall constitute its annual return.

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

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

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

**"Goods or services."** Goods or services which promote any of the enumerated purposes under section 5(b) and which are valued in accordance with generally accepted accounting principles applicable to the institution.

**"Government agency."** Any Commonwealth agency or any political subdivision or municipal or other local authority or any officer or agency of any political subdivision or local authority.

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

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

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

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

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

“Small business.” Any self-employed individual, sole proprietorship, firm, corporation, partnership, association or other entity that:

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

“Total operating expenses.” The costs related to the provision of goods or services associated with the institution’s charitable purpose, as determined in accordance with generally accepted accounting principles applicable to the institution.

“Voluntary agreement.” An agreement, contract or other arrangement for the purpose of receiving contributions pursuant to section 7 between a political subdivision and an institution seeking or possessing an exemption as an institution of purely public charity. These contributions are for the purpose of defraying some of the cost of various local government services. The term includes the establishment of public service foundations by institutions of purely public charity.

#### Section 4. State-related universities.

(a) General rule.—It is the intent of the General Assembly to recognize that the State-related universities provide a direct public benefit and serve the public purposes of this Commonwealth by declaring the real property of State-related universities to be public property for purposes of exemption from State and local taxation when the property is actually and regularly used for public purposes, provided that nothing in this section is intended or shall be construed to affect the title to real property of State-related universities or the power and authority of the governing bodies of State-related universities with respect to such real property. Further, nothing in this section is intended or shall be construed to affect, impair or terminate any contract or agreement in effect on or before the effective date of this section by and between a State-related university and any political subdivision wherein the State-related university pays real estate taxes, amounts in lieu of real estate taxes or other charges, fees or contributions for government services.

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

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

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

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

“**State-related universities.**” The Pennsylvania State University and its affiliate, the Pennsylvania College of Technology, the University of Pittsburgh, Temple University and its subsidiaries Temple University Hospital, Inc., and Temple University Children’s Hospital, Inc., and Lincoln University.

**Section 5. Criteria for institutions of purely public charity.**

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

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

(1) Relief of poverty.

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

(3) Advancement of religion.

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

(5) Government or municipal purposes.

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

(c) **Private profit motive.**—The institution must operate entirely free from private profit motive. Notwithstanding whether the institution’s revenues exceed its expenses, this criterion is satisfied if the institution meets all of the following:

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

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

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

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

(d) Community service.—

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

(i) Goods or services to all who seek them without regard to their ability to pay for what they receive if all of the following apply:

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

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

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

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

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

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

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

(D) No individuals<sup>1</sup> receiving goods or services from the institution pay<sup>2</sup> a fee which is equal to or greater than the cost of the goods or services provided to them, or the goods or services provided to the individuals described in clause (B) are comparable in quality and quantity to the goods or services provided to those individuals who pay a fee which is equal to or greater than the cost of the goods or services provided to them.

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<sup>1</sup>"individual" in enrolled bill.

<sup>2</sup>"pays" in enrolled bill.

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

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

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

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

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

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

(I) Sections 1905(d) and 1915(c) of<sup>1</sup> the Social Security Act (49 Stat. 620, 42 U.S.C. §§ 1396d(d) and 1396n(c)).

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

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

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

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

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<sup>1</sup>"Sections 1315(c) and 1905(d) of" in enrolled bill.

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

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

(VIII) 55 Pa. Code Chs. 3170 (relating to allowable costs and procedures for county children and youth), 3680 (relating to administration and operation of a children and youth social service agency), 4300 (relating to county mental health and mental retardation fiscal manual), 6400 (relating to community homes for individuals with mental retardation), 6500 (relating to family living homes), 6210 (relating to participation requirements for the intermediate care facilities for the mentally retarded program), 6211 (relating to allowable cost reimbursement for non-State operated intermediate care facilities for the mentally retarded) and 6600 (relating to intermediate care facilities for the mentally retarded).

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

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

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

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

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

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

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

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



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

“Net donation.” In the case of a donation of money, property or identical goods and services made by a secondary donor, the difference between the value of the donation made by the secondary donor and the value of the donation made by the primary donor, provided such value is positive.

“Primary donor.” An institution which makes a donation of any money, property, goods or services to an institution of purely public charity.

“Secondary donor.” An institution which receives a donation of any money, property, goods or services from a primary donor and then makes a donation back to that primary donor within three years of having received such donation.

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

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

(viii) The value of any voluntary agreement as set forth in section 7(c).

(e) Charity to persons.—

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

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

“Legitimate subjects of charity.” Those individuals who are unable to provide themselves with what the institution provides for them.

“Substantial and indefinite class of persons.” Persons not predetermined in number, provided that, where the goods or services are received primarily by members of the institution, membership cannot be predetermined in number and cannot be arbitrarily denied by a vote of the existing members. This subsection specifically recognizes that the use of admissions criteria and enrollment limitations by educational institutions

does<sup>1</sup> not constitute predetermined membership or arbitrary restrictions on membership so as to violate this section and recognizes that an institution may reasonably deny membership based on the types of services it provides, as long as denial is not in violation of Federal or State antidiscrimination laws, such as the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act.

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

(4) An institution which operates exclusively on a voluntary basis to provide emergency health and safety services to the community or an institution which provides funds and support exclusively to volunteer institutions which provide emergency health and safety services to the community shall be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

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

(i) the institution is not qualified under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)); and

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

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

(B) A labor organization.

(C) An agricultural or horticultural organization.

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

(E) A club organized for pleasure or recreation.

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

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

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<sup>1</sup>"do" in enrolled bill.

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

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

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

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

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

(6) Has a voluntary agreement under section 7.

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

(1) Each subsidiary:

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

(ii) meets the requirements of this section.

(2) The parent:

(i) is a nonstock corporation;

(ii) is qualified by the Internal Revenue Service as meeting the requirements of section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3));

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

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

(h) Parcel review.—

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

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

(i) Standards.—An institution of purely public charity may conduct activities intended to influence legislation provided that no substantial part of the activities of an institution of purely public charity shall consist of carrying on propaganda, except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(h)), or participating in or intervening in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office as such limitations are interpreted under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501).

#### Section 6. Presumption process.

(a) Presumption determination.—An institution of purely public charity possessing a valid exemption from the tax imposed by Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall be entitled to assert a rebuttable presumption regarding that institution's compliance with the criteria set forth in section 5 as follows:

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

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

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

(ii) the institution has a voluntary agreement as provided under section 7 with a political subdivision in which that institution conducts substantial business operations.

(3) The presumption pursuant to paragraph (2) may be asserted by an institution of purely public charity only with regard to a challenge made by a political subdivision with which that institution has a voluntary agreement in effect pursuant to section 7.

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

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

(b) **Burden of proof.**—If an institution of purely public charity asserts a presumption under subsection (a), a political subdivision challenging that institution before a government agency or court shall bear the burden, by a preponderance of the evidence, of proving that the institution of purely public charity does not comply with the requirements of section 5.

(c) **Issuance of written order.**—The department shall furnish a written order to any institution applying for exemption under section 204(10) of the Tax Reform Code of 1971 approving or denying the exemption. An order denying an exemption shall include specific information concerning that institution's failure to comply with at least one of the criteria under section 5.

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

(e) **Department involvement.**—A determination made under this section shall not in any way subject the department to participation in any controversy, discovery or litigation between a political subdivision and an institution claiming the exemption as an institution of purely public charity, other than providing a copy of its written order and any supporting documentation supplied to the department by that institution.

#### Section 7. Voluntary agreements.

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

(b) **Public service foundations.**—Institutions of purely public charity may establish a public service foundation, upon mutual agreement with a political subdivision, for the purpose of receiving contributions from institutions of purely public charity. Upon agreement, the foundation shall make distributions or grants to a participating political subdivision to help ensure that essential governmental, public or community services will continue to be provided in a manner that will permit an institution to continue to fulfill its

charitable mission. A political subdivision which receives a distribution or grant from a public service foundation shall not assess or seek a separate contribution for services from institutions of purely public charity participating in a foundation.

(c) Additional credit for voluntary agreements.—An institution which has entered into a voluntary agreement may credit the following percentage of the reasonable value of its contribution for purposes of computing the community service criteria set forth in section 5(d)(4)(viii):

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

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

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

(d) Existing agreements.—Nothing in this act shall be construed to affect, impair, terminate or supersede any contract, agreement or other arrangement in effect on or before the effective date of this section between an institution and a political subdivision which authorizes or requires payment of taxes, amounts in lieu of taxes or other charges or fees for the services of a political subdivision.

(e) New agreements.—Nothing in this act shall be construed to impair or otherwise inhibit the right or ability of any institution seeking or possessing an exemption as an institution of purely public charity, a public service foundation or a political subdivision from executing voluntary agreements after the effective date of this section.

#### Section 8. Unfair competition with small businesses.

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

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

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

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

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

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

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

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

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

(h) Existing business arrangements.—An institution of purely public charity that prior to the effective date of this section funded, capitalized, guaranteed the indebtedness of, leased obligations of or subsidized a commercial business may continue to own and operate such businesses without violating subsection (b) as long as the institution does not substantially expand the scope of the commercial business. In the event an injunction is issued under subsection (i), the effect of such injunction shall be limited to restraining the substantial expansion of the scope of the commercial business which was initiated after the effective date of this section.

(i) Remedies.—The Department of State shall establish a system of mandatory arbitration for the purpose of receiving all complaints from aggrieved small businesses relating to an institution of purely public charity's alleged violation of this section. Upon receipt of such complaint, the department shall direct that the complaint be resolved as provided in this subsection.

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

(2) Within ten days of filing the complaint with the department, the aggrieved small business shall serve a copy of the complaint on the institution of purely public charity against which the complaint is filed. The institution of purely public charity must respond to the complaint within 30 days of its receipt by the institution of purely<sup>1</sup> public charity.

(3) Within 30 days following the period of time allotted to the institution of purely public charity to respond to the complaint, the

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<sup>1</sup>"of the purely" in enrolled bill.

department shall provide an unbiased and qualified arbitrator who possesses sufficient knowledge regarding such institutions to adjudicate the matter. If the institution of purely public charity does not participate in the arbitration, the arbitrator may issue an order to compel such participation. Such an order shall be enforceable by the court of common pleas in the judicial district where the arbitration takes place.

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

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

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

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

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

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

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

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

(12) The cost of an arbitration proceeding, including the arbitrator's fee, shall be borne by the complainant, unless the arbitrator directs



otherwise. Each party shall be responsible for its attorney fees and other costs incurred.

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

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

#### Section 9. Accountability and disclosure.

(a) Reporting.—An institution of purely public charity that does not register with the Department of State under the act of December 19, 1990 (P.L.1200, No.202), known as the Solicitation of Funds for Charitable Purposes Act, including institutions exempted from registration under section 6(a) of the Solicitation of Funds for Charitable Purposes Act, shall file an annual report with the bureau. The report shall be filed within 135 days after the close of the institution's fiscal year unless an extension is granted by the department. The report shall be in a format approved by the department and shall include:

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

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

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

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

(i) The name and type of organization.

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

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

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

(b) Regulations.—The department shall promulgate regulations to require institutions of purely public charity which register under section 5 of the Solicitation of Funds for Charitable Purposes Act to include the information set forth in subsection (a).

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

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

(1) A bona fide duly constituted religious institution and such separate groups or corporations which form an integral part of a religious institution

and are exempt from filing an annual return pursuant to the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

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

(c) Filing fee.—An institution of purely public charity which is required to file a report under subsection (a) shall pay an annual filing fee of \$15. All fees collected under this act and under the Solicitation of Funds for Charitable Purposes Act shall be deposited in the State Treasury. The amount of the filing fee under this subsection may be adjusted by the department by regulation. All fines, penalties, attorney fees and costs of investigation collected under this act and under the Solicitation of Funds for Charitable Purposes Act shall be paid as follows:

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

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

(f) Paperwork reduction.—The department shall allow an institution of purely public charity to certify that the information required in subsection (a)(2) through (5) has not changed since the prior report in lieu of providing the same information in the report required by subsection (a). The department may obtain from the Internal Revenue Service copies of annual returns of institutions of purely public charity which file annual returns with the Internal Revenue Service on computer disk or other electronic or paper media.

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

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

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

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

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

Section 10. Exemption for Federal Government instrumentality.

All real property owned by any corporation established by an act of the Congress of the United States that is required to submit annual reports of its activities to Congress containing itemized accounts of all receipts and

expenditures after being fully audited by the Department of Defense, for purposes of the Constitution of Pennsylvania and the laws of this Commonwealth relating to the assessment and taxation of real estate, is deemed to be property of a Federal Government instrumentality and thus exempt from all State and local taxation.

**Section 11. Prohibited act.**

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

**Section 12. Compliance.**

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

**Section 13. Civil penalty.**

In addition to any penalties authorized by the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for violations of that act, the Department of Revenue may impose an administrative penalty not to exceed \$500 for any willful and knowing violation of this act. This section shall not apply to any violation of section 8.

**Section 14. Repeals.**

(a) Absolute.—Section 24 of the act of December 19, 1990 (P.L.1200, No.202), known as the Solicitation of Funds for Charitable Purposes Act, is repealed.

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

**Section 15. Applicability.**

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

(b) Existing sales and use tax exemptions.—An exemption from tax under section 204(10) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, existing on the effective date of this section shall remain in effect until the expiration of that exemption.

(c) Presumption.—No institution of purely public charity may assert a presumption pursuant to section 6 until that institution's exemption under section 204(10) of the Tax Reform Code of 1971 is granted or renewed on or after the effective date of this section.

**Section 16. Effective date.**

This act shall take effect as follows:

- (1) Sections 8 and 9 shall take effect in 120 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 26th day of November, A.D. 1997.

THOMAS J. RIDGE