

No. 1990-202

AN ACT

HB 365

Providing for the registration and regulation of solicitations by charitable organizations, professional fundraisers and other solicitors; imposing additional powers on the Department of State and the Office of Attorney General; prescribing civil and criminal penalties; and making a repeal.

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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 Solicitation of Funds for Charitable Purposes Act.

Section 2. Legislative intent.

It is the intention of the General Assembly that this act shall not merely require proper registration of charitable organizations, professional fundraisers and professional solicitors, but shall protect the citizens of this Commonwealth by requiring full public disclosure of the identity of persons who solicit contributions from the public, the purposes for which such contributions are solicited and the manner in which they are actually used, by promoting consumer education about charitable concerns, by providing civil and criminal penalties for deception and dishonest statements and conduct in the solicitation and reporting of contributions for or in the name of charitable purposes and by publicizing matters relating to fraud, deception and misrepresentation perpetrated in the name of charity. This act shall not be construed to be exclusive in its purview, and its application shall not operate as a bar or otherwise prevent the contemporaneous or subsequent application of any other relevant act or acts.

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:

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

“Affiliate.” Any chapter, branch, auxiliary or other subordinate unit of any charitable organization, howsoever designated, whose policies, fundraising activities and expenditures are supervised or controlled by such parent organization.

“Bureau.” The Bureau of Charitable Organizations of the Department of State.

“Charitable organization.” Any person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or any person who is or holds himself out to be established for any charitable purpose or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation. An affiliate of a charitable organization which has its principal place of business outside this Commonwealth shall be a charitable organization for the purposes of this act. The term shall not be deemed to include:

- (1) any bona fide duly constituted organization of law enforcement personnel, firefighters or other persons who protect the public safety whose stated purpose in the solicitation does not include any benefit to any person outside the actual active membership of the organization; and

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

(i) such religious institutions, groups or corporations are tax exempt pursuant to the Internal Revenue Code of 1986;

(ii) no part of their net income inures to the direct benefit of any individual; and

(iii) their conduct is primarily supported by government grants or contracts or funds solicited within their own memberships or congregations, or fees charged for services rendered.

(3) Any veterans organization chartered under Federal law and the service foundation of such a veterans organization recognized in the bylaws of the veterans organization.

“Charitable promotion.” Any advertising or sales campaign, event or performance, conducted, produced, promoted, underwritten, arranged or sponsored by a commercial coventurer, which represents that the purchase or use of goods or services or attendance at events or performances offered or sponsored by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.

“Charitable purpose.” Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective, including an objective of any bona fide duly constituted organization of law enforcement personnel, firefighters or other persons who protect the public safety if a stated purpose of the solicitation includes any benefit to any person outside the actual active membership of the organization.

“Commercial coventurer.” Any person who for profit is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization and who advertises that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization.

“Contribution.” The promise, grant or pledge of money, credit, property, financial assistance or other thing of any kind or value in response to a solicitation, including the payment or promise to pay in consideration of a performance, event or sale of a good or service. Payment by members of an organization for membership fees, dues, fines or assessments or for services rendered to individual members, if such fees, dues, fines or assessments confer a bona fide right, privilege, professional standing, honor or other direct benefit, shall not be deemed contributions, provided that membership is not conferred solely as consideration for making a contribution in response to a solicitation. Government grants or contracts shall not be deemed a contribution.

“Department.” The Department of State of the Commonwealth.

“Federated fundraising organization.” A federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a United Way or Community Chest, for purposes of raising and distributing money for and among themselves and where mem-

bership does not confer upon the federated group organization operating authority and control of the individual agencies.

"Firefighters." Any person who is or represents or holds itself out to represent, aid, train or otherwise benefit any paid or volunteer firefighter, active or retired, or their families.

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

"Law enforcement personnel." Any person who is or represents or holds itself out to represent, aid, train or otherwise benefit any police officer, sheriff or deputy sheriff, constable or deputy constable, county detective, fire police or any other person who is empowered to make arrests, serve warrants, issue summons or otherwise enforce the laws of this Commonwealth to include retired law enforcement personnel and the families of law enforcement personnel.

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

"Owner." Any person who has a direct or indirect interest in any professional fundraising counsel or professional solicitor.

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

"Person." Any individual, organization, corporation, association, partnership, trust, foundation or any other entity however styled.

"Professional fundraising counsel." Any person who is retained by a charitable organization for a fixed fee or rate under a written agreement to plan, conduct, manage, carry on, advise, consult or prepare material for or with respect to the solicitation in this Commonwealth of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions and who does not have custody or control of contributions. A bona fide salaried officer or regular, nontemporary employee of a charitable organization maintaining a permanent establishment within this Commonwealth shall not be deemed to be a professional fundraising counsel provided that the individual is not employed or engaged as professional fundraising counsel or as a professional solicitor by any other person.

"Professional solicitor." Any person who is retained for financial or other consideration by a charitable organization to solicit in this Commonwealth contributions for charitable purposes directly or in the form of

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

“Secretary.” The Secretary of the Commonwealth.

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

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

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

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

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

Section 4. Powers and duties of secretary.

The secretary shall have the following powers and duties to:

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

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

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

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

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

(6) Conduct hearings and make adjudications.

(7) Keep a record showing the names and addresses of all registered charitable organizations, professional fundraising counsel and professional solicitors.

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

(9) Delegate to a division director of his office such powers and duties under this act as he may deem appropriate.

(10) Exercise all other authority accorded to him by this act.

Section 5. Registration of charitable organizations; financial reports; fees; failure to file.

(a) Registration and approval required.—A charitable organization, unless exempted from registration requirements pursuant to section 6, shall file a registration statement with the department. This statement must be refiled annually within 135 days after the close of its fiscal year in which the charitable organization was engaged in solicitation activities. The department shall review the statement pursuant to subsection (r). No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

(b) Filing of statement.—It shall be the duty of the president, chairman or principal officer of each charitable organization to file the registration statement, financial report and fee required under this section. The registration statement shall be sworn to by two authorized officers, including the chief fiscal officer of the organization, and shall contain all of the following information:

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

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

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

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

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

(6) A copy of any determination of the organization's tax-exempt status under the Internal Revenue Code of 1986 (Public Law 99-514) and, for organizations granted tax-exempt status under section 501(c)(3), a

copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and parent organization.

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

(8) Whether:

(i) the organization is authorized by any other governmental authority to solicit contributions;

(ii) the organization or any of its present officers, directors, executive personnel or trustees are or have ever been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets;

(iii) the organization's registration or license has been denied, suspended or revoked by any governmental agency together with the reasons for such denial, suspension or revocation; and

(iv) the organization has voluntarily entered into an assurance of voluntary discontinuance or agreement similar to that set forth in section 19(b), together with a copy of that agreement.

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

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

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

(12) Whether any of the organization's officers, directors, trustees or employees are related by blood, marriage or adoption to each other or to any officers, agents or employees of any professional fundraising counsel or professional solicitor under contract to the organization or to any supplier or vendor providing goods or services to the organization, and the names and business and residence addresses of any such related parties.

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

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

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

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

(d) Federal tax exemption determination.—Each charitable organization registered with the department shall file with the department a copy of any

Federal tax exemption determination letter received after the initial registration within 30 days after receipt, and any amendments to its organizational instrument within 30 days after adoption.

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

(f) **Audit of certain financial reports.**—The financial report of every charitable organization which received contributions in excess of \$100,000 shall be audited by an independent public accountant. Except for the charitable organizations described in section 6(a)(3), the financial report of every charitable organization which receives contributions in excess of \$25,000, but less than \$100,000, shall be reviewed or audited by an independent public accountant. An audit or review is optional for any charitable organization which receives contributions less than \$25,000 or for any charitable organization described in section 6(a)(3) which receives contributions less than \$100,000. Audits shall be performed in accordance with the Statement on Auditing Standards of the American Institute of Certified Public Accountants and reviews shall be performed in accordance with the Statement on Standards for Accounting and Review Services of the American Institute of Certified Public Accountants.

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

(h) **Other acceptable reports.**—The Department may accept a copy of a current financial report previously prepared by a charitable organization for a governmental agency in another jurisdiction in compliance with the laws of that jurisdiction, provided that the report filed with such other governmental agency shall be substantially similar in content to the report required by this section.

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

(j) **Optional departmental action.**—The department shall have the discretion to require that an audit or review be submitted by any charitable organization which files a registration statement. The department shall also have the discretion to accept the financial statement submitted by the organization in lieu of an audit or review where special facts and circumstances are presented.

(k) **Time extension for filings.**—For good cause shown, the department may extend the time for the annual filing of a registration statement or finan-

cial report for a period not to exceed 180 days during which time the previous registration remains in effect.

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

(m) Reports by affiliates.—

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

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

(n) Federated organizations.—An independent member agency of a federated fundraising organization shall independently comply with the provisions of this section unless specifically exempted.

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

(p) Annual registration fees.—A charitable organization which submits a short form registration statement pursuant to section 7 or receives contributions of less than \$25,000 during the immediately preceding fiscal year shall pay an annual registration fee of \$15. A charitable organization which receives contributions in excess of \$25,000, but less than \$100,000 during the immediately preceding fiscal year shall pay an annual registration fee of \$50. A charitable organization which receives contributions in excess of \$100,000 during the immediately preceding fiscal year shall pay an annual registration fee of \$100. A parent organization filing on behalf of one or more affiliates and a federated fundraising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such other affiliates or member agencies included in the registration statement.

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

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

Section 6. Exemptions from registration.

(a) **General rule.**—The following charitable organizations shall be exempt from the registration requirements of this act:

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

(2) Hospitals which are subject to regulation by the Department of Health.

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

(i) a bona fide veterans' organization which issues charters to such local elements throughout this Commonwealth;

(ii) a bona fide organization of volunteer firemen;

(iii) a bona fide ambulance association;

(iv) a bona fide rescue squad association; or

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

provided that all fundraising activities of an organization or association under subparagraph (i), (ii), (iii), (iv) or (v) are carried on by volunteers, members or an auxiliary or affiliate thereof, and those volunteers, members or affiliates receive no compensation directly or indirectly for the fundraising activities.

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

(5) Senior citizen centers which are nonprofit and charitable and which have been granted tax-exempt status under the Internal Revenue

Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), provided that all fundraising activities are carried on by volunteers, members or officers of the Senior Citizen Center and those volunteers, members or officers receive no compensation, directly or indirectly, for the fundraising activities.

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

(7) Any corporation established by an act of Congress of the United States that is required by Federal law 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.

(b) Effect of exemption.—Exemption from the registration requirements of this act shall in no way limit the applicability of other provisions of the act to a charitable organization.

Section 7. Short form registration.

(a) Organizations required to file.—The following charitable organizations shall be required to file short form annual registration statements with the department:

(1) Persons or charitable organizations accepting contributions for the relief of any individual specified by name at the time of acceptance or solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use; provided that all contributions collected shall be held in trust and shall be subject to the provisions of 20 Pa.C.S. Ch. 71 (relating to trust estates). The secretary, the Attorney General, any contributor or any person who provides any goods or services for which funds are expressly or implicitly solicited shall have the right to petition the court of common pleas of the county in which the trust is located for an accounting of all contributions. For purposes of this paragraph, the trust shall be deemed to be located in the county where the principal place of business of the charitable organization is located. If a charitable organization has its principal place of business outside this Commonwealth, all of the following shall apply:

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

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

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

(2) Organizations which only solicit within the membership of the organization by the members of the organization; provided that the term "membership" shall not include those persons who are granted a membership solely upon making a contribution as the result of solicitation. For the purpose of this paragraph, "member" means a person having membership

in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization and having bona fide rights and privileges in the organization such as the right to vote, to elect officers and directors, to hold office or position as ordinarily conferred on members of such organizations.

(3) Charitable organizations whose fundraising activities are carried on by volunteers, members, officers or permanent employees and which do not receive contributions in excess of \$25,000 during a fiscal year, if no part of their assets or income inures to the benefit of or is paid to any officer or member, professional fundraising counsel, professional solicitor or commercial coventurer. Charitable organizations which do not intend to solicit and receive in excess of \$25,000, but do receive contributions in excess of that amount shall file the financial report required in section 5 within 30 days after contributions are received in excess of that amount.

(4) Organizations described in section 6(a)(3) which do not receive contributions in excess of \$100,000 during a fiscal year if no part of their assets or income inures to the benefit of or is paid to a professional solicitor.

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

Section 8. Registration of professional fundraising counsel and contracts.

(a) Registration and approval required.—No person shall act as a professional fundraising counsel before obtaining department approval of a registration statement pursuant to subsection (c) or after the expiration, suspension or revocation of such registration. A registration application shall be signed and sworn to by the principal officer of the professional fundraising counsel and shall contain all of the following information:

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

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

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

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

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

(b) Registration fee.—The application for registration shall be accompanied by a fee of \$100. A professional fundraising counsel which is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents and employees. Each regis-

tration shall be valid for one year and may be renewed for additional one-year periods upon application to the department and payment of the registration fee.

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

(d) Written contract.—There shall be a written contract between a charitable organization and a professional fundraising counsel which shall be filed by the professional fundraising counsel with the department at least ten working days prior to the performance by the professional fundraising counsel of any service. No solicitation pursuant to the contract shall begin before the department has approved the contract pursuant to subsection (e). The contract must be signed by two authorized officials of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer for the professional fundraising counsel. The contract shall contain all of the following provisions:

- (1) A statement of the charitable purpose for which the solicitation campaign is being conducted.
- (2) A statement of the respective obligations of the professional fundraising counsel and the charitable organization.
- (3) A clear statement of the fees which will be paid to the professional fundraising counsel.
- (4) The effective and termination dates.
- (5) A statement that the professional fundraising counsel will not at any time have custody of contributions.
- (6) Any other information required by the regulations of the department.

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

Section 9. Registration of professional solicitors; contract and disclosure requirements; bonds; records; books.

(a) **Registration and approval required.**—No person shall act as a professional solicitor before obtaining department approval of a registration statement pursuant to subsection (d) or after the expiration, suspension or revocation of such registration. A registration application shall be signed and sworn to by the principal officer of the professional solicitor, and shall contain all of the following information:

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

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

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

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

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

(b) **Registration fee.**—The application for registration shall be accompanied by a fee of \$100. A professional solicitor which is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents and employees. Each registration shall be valid for one year and may be renewed for additional one-year periods upon application to the department and payment of the registration fee.

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

(d) **Department review of registration statement.**—The department shall examine each registration statement and supporting documents filed by a professional solicitor and shall determine whether the registration requirements are satisfied. If the department determines that registration requirements are not satisfied, the department must notify the professional solicitor within ten working days of its receipt of its registration statement; otherwise

the registration statement is deemed to be approved. Within seven days after receipt of a notification that the regulation requirements are not satisfied, the professional solicitor may request a hearing. The hearing must be held within seven days of receipt of the request, and a determination must be rendered within three working days of the hearing.

(e) **Contract filing.**—No less than ten working days prior to the commencement of each solicitation campaign, a professional solicitor shall file with the department a copy of the contract described in subsection (f) and a written solicitation notice. No solicitation pursuant to the contract shall begin before the department has approved the contract pursuant to subsection (g). The solicitation notice shall be accompanied by a fee of \$25, shall be signed and sworn to by the authorized contracting officer for the professional solicitor and shall contain all of the following information:

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

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

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

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

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

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

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

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

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

(2) A statement of the respective obligations of the professional solicitor and the charitable organization.

(3) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization, if any, or, if the solicitation involves the sale of goods, services or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charitable organization, if any. Any stated percentage shall exclude any amount which the charitable organization is to pay as fundraising costs.

(4) A statement of the percentage of the gross revenue which the professional solicitor will be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the

amount of revenue received, his compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor.

(5) The effective and termination dates of the contract.

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

(g) Department review of contract.—The department shall examine each contract and solicitation notice filed by a professional solicitor and shall determine whether the contract and notice contain the required information. If the department determines that the requirements are not satisfied, the department must notify the professional solicitor within ten working days of its receipt of the contract and notice; otherwise the contract and notice are deemed to be approved. Within seven days after receipt of a notification that the requirements are not satisfied, the professional solicitor may request a hearing. The hearing must be held within seven days of receipt of the request, and a determination must be rendered within three working days of the hearing.

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

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

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

(3) The name of the charitable organization and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose or, if there is no charitable organization, a description as to how the contributions raised by the solicitation will be utilized for a charitable purpose.

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

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

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

A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 000-0000. Registration does not imply endorsement.

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

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

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

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

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

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

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

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

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

(o) **Deposit of contributions.**—Each contribution in the control or custody of the professional solicitor shall, in its entirety and within five days of its receipt, be deposited in an account at a bank or other federally insured financial institution. The account shall be in the name of the charitable organization with whom the professional solicitor has contracted, and the charitable organization shall have sole control over all withdrawals from the account.

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

(q) **Restrictions.**—No person may act as a professional solicitor if such person, any officer or director thereof, any person with a controlling interest therein, or any person the professional solicitor employs, engages or procures to solicit for compensation, has been convicted by a court of any state or the United States of any felony, or of any misdemeanor involving dishon-

esty or arising from the conduct of a solicitation for a charitable organization or purpose.

Section 10. Contracts voidable by charitable organizations.

(a) **Contracts with registered groups.**—No professional fundraising counsel or professional solicitor shall contract with a charitable organization unless such professional fundraising counsel or professional solicitor is registered with the department. A contract with an unregistered professional fundraising counsel or professional solicitor shall be voidable at the option of the charitable organization.

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

(c) **Manner of cancellation.**—A charitable organization may cancel a contract pursuant to subsection (b) by a written notice of cancellation. If mailed, cancellation shall be deemed effective when deposited with the United States Postal Service, properly addressed and postage prepaid. The notice shall be sufficient if it indicates that the charitable organization does not intend to be bound by the contract.

(d) **Cancellation notice to department.**—Whenever a charitable organization cancels a contract pursuant to the provisions of this section, it shall mail a duplicate copy of the notice of cancellation to the department.

(e) **Status of funds after cancellation.**—Any funds collected after a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for cost or expenses of any nature. A charitable organization shall be entitled to recover all funds collected after the date of cancellation.

Section 11. Information filed to become public records.

Except as otherwise provided in section 12, registration statements and applications, reports, notices, contracts or agreements between charitable organizations and professional fundraising counsel, professional solicitors and commercial coventurers, and all other documents and information required to be filed under this act with the department shall become public records in the office of the bureau and shall be open to the general public at such time and under such conditions as the department may prescribe.

Section 12. Records to be kept by charitable organizations, professional fundraising counsels and professional solicitors; inspection; retention.

Every charitable organization, professional fundraising counsel and professional solicitor subject to the provisions of this act shall, in accordance with the rules and regulations prescribed by the department, keep true fiscal records as to its activities in this Commonwealth as may be covered under this act, in such form as will enable them accurately to provide the information required under this act. Such records shall be made available for inspection upon demand by the department or the Office of Attorney General.

However, names, addresses and identities of contributors and amounts contributed by them shall not be considered a matter of public record and, therefore, shall not generally be made available for public inspection, shall not be used for a purpose inconsistent with this act and shall be removed from the records in the custody of the department at such time that such information is no longer necessary for the enforcement of this act. Such records shall be maintained for a period of at least three years after the end of the period of registration to which they relate.

Section 13. Limitation on activities of charitable organizations; disclosure requirements.

(a) **Solicitation limitation.**—A charitable organization may only solicit contributions for the charitable purpose expressed in solicitation for contributions or the registration statement of the charitable organization and may only apply contributions in a manner substantially consistent with that purpose.

(b) **Solicitation disclosures.**—A charitable organization soliciting in this Commonwealth shall include all of the following disclosures at the point of solicitation:

(1) Its identity and location and, if different, the name and address of the charitable organization on whose behalf the solicitation is being conducted.

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

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

(4) If requested, the source from which a financial statement may be obtained. Such financial statement shall be consistent with the annual financial report requested under section 5 and shall disclose assets, liabilities, fund balances, revenue and expenses for the preceding fiscal year. Expenses shall be separated into program services, administrative costs and fundraising costs.

(c) **Notice on printed solicitation.**—On every printed solicitation or written confirmation, receipt or reminder of a contribution, the following statement must be conspicuously printed:

A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 000-0000. Registration does not imply endorsement.

(d) **Misrepresentation.**—A charitable organization may not misrepresent its purpose or nature or the purpose or beneficiary of a solicitation. A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact.

(e) **Control over fundraising activities.**—A charitable organization must establish and exercise control over fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must assure that fundraising activities are conducted without coercion.

(f) Restrictions on certain contracts.—A charitable organization shall not enter into any contract or agreement with or employ any professional fundraising counsel or professional solicitor unless that professional fundraising counsel or professional solicitor is registered with the department.

(g) Registration with department required.—A charitable organization shall not enter into any contract or agreement with or raise any funds for any charitable organization required to be registered pursuant to this act unless such charitable organization is registered with the department.

Section 14. Reciprocal agreements.

The secretary may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fundraising counsel and professional solicitors. Pursuant to such agreements, the secretary may accept information filed by a charitable organization, professional fundraising counsel or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with this act, if such information is substantially similar to the information required under this act. The secretary may also grant exemptions from the requirements for the filing of annual registration statements with the department to charitable organizations organized under the laws of another state having their principal place of business outside this Commonwealth whose funds are derived principally from sources outside this Commonwealth and which have been exempted from the filing of registration statements by the statute under whose laws they are organized if such state has a statute similar in substance to the provisions of this act.

Section 15. Prohibited acts.

(a) General rule.—Regardless of a person's intent or the lack of injury, the following acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act, regulations of the department or an order of the secretary, or soliciting contributions after registration with the department has expired or has been suspended or revoked or soliciting contributions prior to the solicitation notice and contract having been approved by the department.

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

(3) Utilizing any representation that implies the contribution is for or on behalf of a charitable organization, or utilizing any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization.

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

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

(6) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses or approves such solicitation or charitable sales promotion when such other person has not given consent in writing to the use of his name for these purposes.

(7) Misrepresenting or misleading anyone in any manner to believe that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have.

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

A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 000-0000. Registration does not imply endorsement.

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

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

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

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

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

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

(ii) Where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall present the purchaser with the same disclosures, in written form and in conspicuous type.

(12) Representing that any part of the contributions received will be given or donated to any other charitable organization unless such organization has consented to the use of its name prior to the solicitation. The written consent shall be signed by any two authorized officers, directors or trustees of the charitable organization.

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

(i) The charitable organization or professional solicitor shall have commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

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

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

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

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

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

Section 16. Investigation; subpoenas; injunctions; court orders.

(a) Permissible investigations.—The Attorney General, the secretary or the district attorney may make or cause to be made an investigation of any person as deemed necessary. In conducting such investigation, he may:

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

(2) Administer oaths or affirmations.

(3) Take testimony under oath.

(4) Require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents, audits and files relating to any solicitation or any practice subject to this act or the regulations of the department.

(5) Issue subpoenas.

(6) Conduct private or public hearings.

(7) Examine witnesses and receive evidence during any investigation or public or private hearings.

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

(c) Contents of notice.—Each notice shall:

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

- (2) State the statute thereof, if any, of the alleged violation which is under investigation and state the general subject matter of the investigation.
 - (3) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded.
 - (4) Prescribe a return date within which the documentary material is to be produced.
 - (5) Identify the members of the Office of Attorney General's staff, the secretary's staff or the district attorney's staff to whom such documentary material is to be made available for inspection and copying.
- (d) **Restrictions on notices.**—No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the Commonwealth.
- (e) **Restriction on materials.**—
- (1) Except as provided in paragraph (2), any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by any court of competent jurisdiction for good cause shown, be produced for inspection or copying by or be disclosed to any person other than the authorized representative of the Attorney General, the secretary or the district attorney without the consent of the person who produced such material.
 - (2) Under such reasonable terms and conditions that the Attorney General, the secretary or the district attorney shall prescribe, documentary material in paragraph (1) shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The Attorney General, the secretary or the district attorney or his duly authorized representative may use such documentary material or copies thereof as he determines necessary in the enforcement of this act, including presentation in any subsequent administrative or judicial proceeding.
- (f) **Compliance.**—Any person upon whom a notice is served pursuant to this section shall comply with the terms thereof unless otherwise provided by an order of court. Any person who fails to appear or, with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigation under this act, removes from any place, conceals, withholds or destroys, mutilates, alters or by any other means falsifies any documentary material in the possession, custody or control of any person subject to any notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than \$5,000. The Attorney General or the district attorney may petition for an order of court for enforcement of this section. Additionally, the secretary may take appropriate action to petition for an order of court for the enforcement of this section in accordance with the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act. Any disobedience of any final order entered under this section by any court shall be punished as contempt thereof.

(g) Service.—Service of a subpoena may be made in any one of the following ways:

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

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

(3) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at his principal place of business in this Commonwealth or if said person has no place of business in this Commonwealth, to the last address of such person known to the secretary.

(4) Any charitable organization, fundraising counsel, or professional solicitor having its principal place of business other than within this Commonwealth, or organized under and by virtue of the laws of a foreign state, which is subject to the provisions of this act, shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena duces tecum or other process directed to such charitable organization, fundraising counsel, professional solicitor, or any partner, principal officer or director of any of them, in any action or proceeding brought under the provisions of this act. Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof at his office in the city of Harrisburg, Pennsylvania, and such service shall be sufficient service, provided notice of such service and a copy of such process shall be forthwith sent by said secretary to such charitable organization, fundraising counsel, professional solicitor or other person to whom it is directed by registered mail, with return receipt requested, at the last address known to said secretary.

Section 17. Administrative enforcement and penalties.

(a) General rule.—The secretary may refuse to register or revoke or suspend the registration of any charitable organization, professional fundraising counsel or professional solicitor whenever he finds that a charitable organization, professional fundraising counsel or professional solicitor, or an agent, servant or employee thereof:

(1) Has violated or is operating in violation of any of the provisions of this act, the regulations of the department, or an order issued by the secretary.

(2) Has refused or failed or any of its principal officers has refused or failed, after notice, to produce any records of such organization or to disclose any information required to be disclosed under this act or the regulations of the department.

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

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

- (1) Revoke a grant of exemption to any of the provisions of this act.
- (2) Issue an order directing that the person cease and desist specified fundraising activities.

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

(4) Place the registrant on probation for such period of time and subject to such conditions as he may decide.

(c) *Administrative procedures.*—All actions of the secretary shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 18. Criminal penalties.

(a) *Deceit or fraud violation.*—Any person who willfully and knowingly violates any provisions of this act with intent to deceive or defraud any charity or individual, commits a misdemeanor of the first degree and shall, upon conviction, be sentenced to pay a fine not exceeding \$10,000 or imprisonment for not more than five years, or both.

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

(c) *Location of offense.*—Any offense committed under this act involving a solicitation may be deemed to have been committed at either the place at which the solicitation was initiated or at the place where the solicitation was received.

Section 19. Civil penalties.

(a) *General rule.*—Whenever the Attorney General or any district attorney shall have reason to believe, or shall be advised by the secretary, that the person is operating in violation of the provisions of this act, the Attorney General or district attorney may bring an action in the name of the Commonwealth against such person who has violated this act, to enjoin such person from continuing such violation and for such other relief as the court deems appropriate. In any proceeding under this subsection, the court may make appropriate orders, including:

- (1) the appointment of a master or receiver;
- (2) the sequestration of assets;
- (3) the reimbursement of persons from whom contributions have been unlawfully solicited;
- (4) the distribution of contributions in accordance with the charitable purpose expressed in the registration statement or in accordance with the representations made to the person solicited;
- (5) the reimbursement of the Commonwealth for attorney fees and the costs of investigation, including audit costs;

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

(7) the granting of other appropriate relief.

(b) Assurance of voluntary compliance.—In any case where the Attorney General or district attorney has authority to institute an action or proceeding under this act, he may accept an assurance of voluntary compliance through which any person alleged to be engaged in any method, act or practice in violation of this act agrees to discontinue such method, act or practice. Such assurance may, among other terms, include a stipulation of a voluntary payment by such person of the cost of the investigation or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons, or both. Any such assurance of compliance shall be in writing and shall be filed with a court of the Commonwealth. Matters closed may at any time be reopened by the court for further proceedings in the public interest. In the event of an alleged violation of the assurance of voluntary compliance, the Attorney General or district attorney may, at his discretion, either initiate contempt proceedings or proceed as if the assurance of voluntary compliance has not been accepted. Evidence of a violation of such assurance shall be prima facie evidence of a violation of this act in any subsequent proceeding brought by the Attorney General or district attorney.

Section 20. Additional regulations by counties, municipalities or consolidated government.

Nothing contained in this act shall serve to deny the right to any county, municipality or consolidated government to pass such ordinances, rules and regulations as may be deemed appropriate to regulate further the soliciting of contributions within such county, municipality or consolidated government. Such ordinance may not alter any of the obligations set forth in this act or the regulations of the department but may add thereto other requirements and rules as appear to be proper to the county, municipality or consolidated government involved.

Section 21. Charitable organizations deemed fiduciary.

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

Section 22. Prior registration unaffected.

Any person who is registered with the department under the act of April 30, 1986 (P.L.107, No.36), known as the Charitable Organization Reform Act, prior to the effective date of this act shall, on and after the effective date hereof, be deemed to be registered with the department as provided for in this act. Registration shall be reissued in accordance with this act.

Section 23. Repeals.

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

Section 24. Appropriation.

All fees shall be paid to the State Treasurer and are appropriated to the Department of State for the administration and enforcement of this act, and all fines, penalties, attorney fees and costs of investigation shall be paid to the governmental agency that conducted the litigation.

Section 25. Effective date.

This act shall take effect as follows:

- (1) Sections 9(j) and 13(c) shall take effect in 120 days.
- (2) The remaining provisions of this act shall take effect in 60 days.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY