

No. 2001-45

AN ACT

HB 672

Amending the act of December 19, 1990 (P.L.1200, No.202), entitled "An act 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," further providing for reports by charitable organizations, for registration of professional fundraising counsel and contracts, for registration of professional solicitors, for contract and disclosure requirements and for restriction on materials.

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

Section 1. Section 5(b) and (f) of the act of December 19, 1990 (P.L.1200, No.202), known as the Solicitation of Funds for Charitable Purposes Act, are amended to read:

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

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(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] *made* by two authorized officers *subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)*, 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. Where the number of employees or vendors renders it impractical for the registrant to contact them on an individual basis regarding the existence of any of the relationships set forth under this section, the registrant may file an affidavit stating which relationships, if any, exist to the best of the affiant's information and belief.

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

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(f) Audit of certain financial reports.—The financial report of every charitable organization which [received] *receives annual* contributions [in excess of \$100,000] *of \$125,000 or more* shall be audited by an independent *certified public accountant or* public accountant. Except for the charitable organizations described in section 6(a)(3), [the financial report of] every charitable organization which receives *annual* contributions [in excess] of *at least* [\$25,000] *\$50,000*, but less than

~~[\$100,000]~~ *\$125,000*, shall be ~~[reviewed or audited]~~ *required to have a review or audit of their financial statements performed* by an independent *certified* public accountant *or public accountant*. An audit or review is optional for any charitable organization which receives *annual* contributions *of less than* ~~[\$25,000]~~ *\$50,000* or for any charitable organization described in section 6(a)(3) which receives *annual* contributions *of less than* ~~[\$100,000]~~ *\$125,000*. Audits shall be performed in accordance with the ~~[Statement]~~ *Statements* on Auditing Standards of the American Institute of Certified Public Accountants ~~[and]~~, *whereas* reviews shall be performed in accordance with the ~~[Statement]~~ *Statements* on Standards for Accounting and Review Services of the American Institute of Certified Public Accountants.

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Section 2. Sections 8(a) and (d) and 9(a) and (f) of the act, amended July 9, 1992 (P.L.436, No.92), are amended to read:

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]~~ *be made* by the principal officer of the professional fundraising counsel *subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)* 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.

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

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(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 or services 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) The legal name and address of the charitable organization as registered with the department unless that charitable organization is exempt from registration.

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

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

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

(5) The effective and termination dates of the contract **[and the], or, if the contract does not have a set termination date, the contract shall contain a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this Commonwealth of contributions for a charitable organization.**

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

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

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

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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] made** by the principal officer of the professional solicitor[,] **subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)** 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.

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

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

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

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

(4) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to or retained by 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.

(5) A statement of the percentage of the gross revenue which the professional solicitor will be compensated. The stated percentage shall include any amount which the professional solicitor is to be reimbursed as payment for fundraising costs. 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.

(6) The effective and termination dates of the contract **[and], or, if the contract does not have a set termination date, the contract shall contain a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to**

renew. The contract shall also contain the date solicitation activity is to commence within this Commonwealth.

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

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Section 3. This act shall take effect in 60 days.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE