

No. 246

AN ACT

HB 1446

Amending the act of August 9, 1963 (P.L.628), entitled "An act relating to charitable organizations; requiring the registration of such organizations; and regulating the solicitation of money and property by or on behalf of charitable organizations," clarifying the definition of "professional solicitor" and defining "solicitation," changing the registration fee, further providing for limitations on amount of expenditures for solicitation and fund-raising activities, changing the fee for registration by professional fund-raising counsel or professional solicitor, providing for examination by the Secretary of the Commonwealth of applications to solicit funds, and providing penalties.

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

Section 1. The act of August 9, 1963 (P.L.628), known as the "Solicitation of Charitable Funds Act," is amended by adding a section to read:

Section 1.1. Legislative Intent.—It is the intention of the Legislature that this shall not be a mere registry statute but an act intended not only to require proper registration of charitable organizations, professional fund-raisers and professional solicitors but also to regulate the soliciting of money and property by or on behalf of charitable organizations, professional fund-raisers, professional solicitors and to require proper accounting for the use and distribution of said funds.

Section 2. Clause (8) of section 2 of the act is amended to read:

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

* * *

(8) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through their agents, servants or employes or through agents, servants or employes specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant, *whether directly or indirectly*, to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this act. A bona fide *full-time* salaried officer or employe of a charitable organization maintaining a permanent establishment within the Commonwealth shall not be deemed to be a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, shall be deemed, as the result of such advice, to be a professional fund-raising counsel or a professional solicitor.

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Section 3. Section 2 of the act is amended by adding a clause to read:

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

* * *

(10) “Solicitation” means the asking, seeking, appealing, requesting, directly or indirectly by means of mail, personal contact, written material, radio, television, news media, magazines or other periodicals or any other means of communication, of money or property of any kind or value or pledges for the same.

Section 4. Subsection (d) of section 3 of the act is amended to read:

Section 3. Registration of Charitable Organizations.—* * *

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

Section 5. Section 3 of the act is amended by adding three subsections to read:

Section 3. Registration of Charitable Organizations.—* * *

(a.1) The Secretary of the Commonwealth or his designee shall examine each initial application of charitable organizations for the right to solicit funds and each renewal application of charitable organizations for the right to solicit funds and if found to be in conformity with the requirements of this act and all relevant rules and regulations it shall be approved for registration. Any applicant who is denied approved registration may, within fifteen days from the date of notification of such denial, request in writing a hearing before the commission, which hearing shall be held within fifteen days from the date of the request.

* * *

(e) Both the chapter, branch, area office or similar affiliate

soliciting in this Commonwealth as well as the parent of a charitable organization which has its principal place of business outside of the Commonwealth shall be subject to all of the provisions hereof.

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

(1) That one or more of the statements in the application are not true.

(2) That the applicant is or has engaged in a fraudulent transaction or enterprise.

(3) That a solicitation would be a fraud upon the public.

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

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

(6) That such activities to be financed will be incompatible with the health, safety or welfare of the citizens of the Commonwealth of Pennsylvania.

Section 6. Section 6 and subsection (a) of section 8 of the act are amended to read:

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

(a.1) No charitable organization shall incur solicitation and fund-raising expenses (including not only payments to professional solicitors, but also payments to professional fund-raisers, and internal fund-raising and solicitation salaries and expenses) in excess of thirty-five per cent of total moneys, pledges or other property raised or received by reason of any solicitation, gift and/or fund-raising activities or campaigns. As used in this subsection, the term "internal fund-raising and expenses" shall include, but not be limited to, such portions of the charitable organization's salary and overhead expenses as are fairly allocable (on a time or other appropriate basis) to its solicitation and/or fund-raising expense. In the event special facts or circumstances are presented showing expenses higher than thirty-five per cent, the commission has the discretion to allow such higher funds and may impose such conditions as the commission or the Secretary of the Commonwealth shall deem necessary for such exemption.

(b) For purposes of this section, the total moneys, funds, pledges or other property raised or received shall not include the actual cost to the charitable organization or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.

(c) Every contract or written agreement between professional fund-raising counsel and a charitable organization shall be filed with the Secretary of the Commonwealth within ten days after such contract or written agreement is concluded.

(d) Every contract or a written statement of the nature of the arrangement to prevail in the absence of a contract between a professional solicitor and a charitable organization shall be filed with the Secretary of the Commonwealth within ten days after such contract or written agreement is concluded. If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the commission shall examine the contract to ascertain whether the compensation to be paid in such circumstances is likely to exceed fifteen per cent of the total moneys, pledges or other property raised or received as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed fifteen per cent of the total moneys, pledges or other property, the secretary shall disapprove the contract or

arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of disapproval, be given a hearing before the commission within thirty days after such request is filed.

Section 8. Registration of Professional Fund-Raising Counsel and Professional Solicitor; Bonds; Records; Books.—(a) No person shall act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this act, unless he has first registered with the department. Applications for such registration shall be in writing under oath or affirmation in the form prescribed by the department and contain such information as the commission may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of **[fifty dollars (\$50)] one hundred dollars (\$100)**. A partnership or corporation, which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employes. However, the names and addresses of all officers, agents and employes of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employes employed to work under the direction of a professional solicitor must be listed in the application.

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Section 7. Subsection (f) of section 14 of the act is amended to read:
Section 14. Enforcement and Penalties.—* * *

(f) Whenever the Attorney General or any district attorney shall have reason to believe **[that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this act or has knowingly and wilfully made any false statement in any registration application or statement, report or other information required]** *or shall be advised by the Secretary of the Commonwealth (who shall have given due notice and full hearing to the charitable organization, professional fund-raiser or professional solicitor) that the said fund-raising counsel, charitable organization or professional solicitor is operating in violation of the provisions of this act or has knowingly and wilfully made any false statements in any initial or any renewal application to solicit or in any other information required* to be filed by this act or whenever a charitable organization, professional fund-raising counsel or professional solicitor has failed to file a registration statement required by this act, or whenever there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or whenever the

officers or representatives of any charitable organization, professional fund-raising counsel or professional solicitor have refused or failed after notice to produce any records of such organization, or whenever the funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization, in addition to all other actions authorized by law, the Attorney General or district attorney may bring an action in the name of the Commonwealth of Pennsylvania against such charitable organization and its officers, such professional fund-raising counsel or professional solicitor or any other person who has violated this act or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin such charitable organization or professional fund-raising counsel or professional solicitor or other person from continuing such violation, solicitation or collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as to the court deems appropriate.

Section 8. Section 14 of the act is amended by adding a subsection to read:

Section 14. Enforcement and Penalties.—* * *

(g) The commission may refuse to grant an initial application to solicit, may refuse to renew an application and may revoke a registration of any charitable organization, professional fund-raising counsel or professional solicitor which or who knowingly makes a false statement in any initial registration application or renewal application or statement, annual report or other information required to be filed by the department or the act.

APPROVED—The 26th day of October, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 246.



Secretary of the Commonwealth.