

This profile is part of a set of 51 profiles, including all U.S. states and the District of Columbia, which outlines state laws, regulations, and requirements that apply to charitable organizations. It covers six areas and highlights ways in which state laws differ from federal laws governing charitable organizations.



Formation, Elections, Operation, and Dissolution

Nonprofit Corporations

Nonprofit Corporation Law of 1988, as amended, 15 Pa. C.S.A. §§ 5101 - 6162.

Nonprofit Unincorporated Associations

15 Pa. C.S.A. § 9101 et seq.

Election of Directors

"Except as otherwise provided in this section, directors of a nonprofit corporation, other than those constituting the first board of directors, shall be elected by the members." 15 Pa. C.S.A. § 5725.

Director Term

"Directors...shall be selected for the term of office provided in the bylaws. In the absence of a provision fixing the term, it shall be one year." 15 Pa. C.S.A. § 5724.

Meeting and Quorum Requirements

Quorum (Members): The presence of members entitled to cast at least a majority of the votes that all members are entitled to cast on a particular matter to be acted upon at the meeting constitutes a quorum, unless otherwise provided in the bylaws. 15 Pa. Cons. Stat. Ann. § 5756.

Quorum (Directors): "Unless otherwise provided in the bylaws, a majority of the directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors." 15 Pa. C.S.A. §§ 5727.

Unless otherwise provided in the bylaws, at least one meeting shall be held in each calendar year for the election of directors. 15 Pa. C.S.A. §§ 5727, 5755.

Officer Requirements

"Every nonprofit corporation shall have a president, a secretary, and a treasurer, or persons who shall act as such, regardless of the name or title by which they may be designated." 15 Pa. C.S.A. § 5732.

Officer Term

"The officers and assistant officers shall be elected or appointed...for such terms as may be fixed by or pursuant to the bylaws. Unless otherwise provided by or pursuant to the bylaws, each officer shall hold office for a term of one year." 15 Pa. C.S.A. § 5732.

Dissolution

15 Pa. C.S.A. § 5971 et seq. govern the dissolution of a Pennsylvania nonprofit corporation.

Duties, Indemnification, and Interested Transactions

Director Duties

Duties of Care and Loyalty. 15 Pa. C.S.A. § 5712. A director shall perform his duties "in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances."

Officer Duties

Duties of Obedience, Care, and Loyalty. 15 Pa. C.S.A. § 5712. "An officer shall perform his duties as an officer in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances."

Board Independence Requirements

No relevant statute found.

Interested Transactions

An interested transaction is generally permitted if the material facts concerning the interested party's relationship are disclosed in good faith by the interested party prior to execution, the transaction is approved by a disinterested majority of the board, and if the transaction is fair to the corporation at the time of execution. 15 Pa. C.S.A. § 5728.

Indemnification of Directors/Officers

Indemnification of directors and officers is permitted. "To the extent that a representative of a nonprofit corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in section 5741 (relating to third-party actions) or 5742 (relating to derivative and corporate actions) or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith." 15 Pa. C.S.A. § 5743 et seq.

Loans to Directors, Officers, or Employees

Lending to directors and officers is not specifically addressed, however a Pennsylvania nonprofit corporation is permitted "to make loans or advances to its members and patrons" in furtherance of its exempt purpose(s). 15 Pa. C.S.A. § 7711(9).

Notable Departures from Federal Law

Religious/Church Exemption

Pennsylvania Constitution Article VIII, Section 2(a)(i) exempts from property taxation "places of religious worship." Pennsylvania religious organizations are not automatically exempt; a religious organization seeking exemption from Pennsylvania sales tax must apply to the Pennsylvania Department of Revenue.

See tax sections below.

Healthcare "Plus Factors"

Pennsylvania's Institutions of Purely Public Charity Act requires that in order to be deemed an "institution of purely public charity," (requirement for sales/property tax exemption) a hospital must do all of the following: advance a charitable purpose, operate free from any private profit motive, donate a substantial portion of its services to benefit the community, "benefit a substantial and indefinite class of persons who are legitimate subjects of charity," and relieve government of some of its burden. 10 Pa. C.S.A. §375 (a)-(f).

General

Rebuttable Presumption of Reasonableness - Delegation to Disinterested "Others"

15 Pa. C.S.A. § 5103 authorizes the creation of an "[o]ther body" consisting of a person or group, other than the board of directors or a committee thereof, who may be vested with authority traditionally exercised by the board of directors.

Charitable Solicitation Requirements

Pennsylvania requires a nonprofit to register under the Solicitation of Funds for Charitable Purposes Act within 30 days of receiving greater than \$25,000 in gross national contributions or prior to soliciting contributions in Pennsylvania. 10 Pa. Cons. Stat. §§ 162.1-.24.

State-Specific Retention Policies

15 Pa. C.S.A. § 107 governs the form in which corporate records must be kept, however Pennsylvania law does not prescribe a record schedule for nonprofit corporations.

Personal Information Collection and Protection Laws

No statutory protection found, however the Pennsylvania Association of Nonprofit Organizations recommends that "charitable nonprofits should respect the privacy of donors and safeguard the confidentiality of information which a donor reasonably would expect to be private." See Pennsylvania Association of Nonprofit Organizations, Standards for Excellence - An Ethics and Accountability Code for the Nonprofit Sector (January 2014).

Whistleblower Protection

In addition to the public policy exception to the at-will employment doctrine, 43 Pa. C.S.A. § 1421 prohibits retaliation against an employee who has made, or is about to make, a good faith report to the employer or to an "appropriate authority" about an instance of "wrongdoing or waste."

State Volunteer Liability Law

A volunteer who renders services for a non-profit or government agency is not liable for civil damages. 42 Pa. C.S.A. § 8332.4.

Independent Audit Requirements

A charitable organization with annual contributions of \$300,000 or more must file an audited financial statement prepared by an independent CPA. A charitable organization with annual contributions less than \$300,000 and at least \$100,000 must file a financial statement that is reviewed or audited by an independent CPA. A charitable organization with annual contributions less than \$100,000 and at least \$50,000 must have a compilation, review, or audit of its financial statements prepared by an independent CPA. 10 Pa. Cons. Stat. § 162.5(f).

State Filing Requirements

Pennsylvania nonprofit corporations are required to file an Annual Report with the Department of State each year. 15 Pa. C.S.A. § 5110. Pennsylvania nonprofits must file a Decennial Report of Association Continued Existence once every ten years with the Corporation Bureau. Finally, Pennsylvania nonprofits must annually file a Charitable Organization Registration Statement with the Pennsylvania Bureau of Charitable Organizations.

Model Acts

Uniform Prudent Management of Institutional Funds Act

Not adopted

Uniform Prudent Investor Act

Adopted

Tax Exemptions

Income Tax

Nonprofit corporations are not subject to the Pennsylvania capital stock/franchise tax if they qualify as exempt organization as defined by Section 501 of the Internal Revenue Code. See The Institutions of Purely Public Charity Act, 10 Pa. C.S.A. § 371. et seq.

Sales and Use Taxation

A Pennsylvania nonprofit seeking exemption from sales taxes must submit an application for sales tax exemption along with a copy of the organization's IRS form 990 and a copy of the organizations bylaws or articles of incorporation, including a dissolution statement, to the Pennsylvania Department of Revenue. It is not mandated that a nonprofit organization be qualified by the federal government in order to be eligible for a Pennsylvania sales tax exemption. See Form REV-72.

Property Tax Exemption

Article VII, Section 2 of the Pennsylvania Constitution exempts from taxation "[i]nstitutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution." Additionally, Pennsylvania's General County Assessment Law, 53 Pa. C.S.A. § 8801. et seq., provides property tax exemption for "purely public charities."

Miscellaneous Exemptions

N/A.

General Resource:

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&t1=15>

Disclaimer

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