

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1339

By: Boyd (Laura), Cotner and
Widener of the House

and

Shedrick and Williams
(Penny) of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to charitable organizations; amending 18 O.S. 1991, Sections 552.3, 552.4, 552.5, 552.6, 552.7, 552.8, 552.9, 552.13 and 552.14, which relate to the Oklahoma Solicitation of Charitable Contributions Act; modifying registration fees for charitable organizations; requiring fees to be deposited in certain fund and be used for certain purposes; modifying exempt persons and organizations; updating reference to bank; modifying contents of certain reports; requiring certain disclosures; modifying registration fees for professional fund raisers; requiring fees to be deposited in certain fund and be used for certain purposes; requiring professional solicitor to disclose certain information; providing exception; requiring fees to be deposited in certain fund and be used for certain purposes; creating the Charitable Organization Revolving Fund; transferring powers, duties and responsibilities under act from Oklahoma Tax Commission to the Attorney General; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 18 O.S. 1991, Section 552.3, is amended to read as follows:

Section 552.3 A. No charitable organization, except those specifically exempt under Section 552.4 of this title, shall solicit or accept contributions from any person in this state by any means whatsoever until such charitable organization shall have registered with the ~~Oklahoma Tax Commission~~ Office of the Attorney General and filed information, as required by this act, on forms approved by that office. At the time of such registration, each

charitable organization shall pay a fee of ~~Fifteen Dollars~~
~~(\$15.00)~~ Forty Dollars (\$40.00). Such registration shall be valid
for a period of one (1) year, and shall be subject to annual
renewal. This registration shall not be deemed to constitute
endorsement by the state or by the ~~Oklahoma Tax Commission~~
Attorney General of the charitable organizations so registered,
and that office shall immediately revoke the registration of any
person who directly or indirectly misrepresents the effect of
registration hereunder to any donor or prospective donor. The
information so filed shall be available to the general public as a
matter of public record. The forms containing such information
shall be sworn to and shall include the following:

1. The name under which the charitable organization intends
to solicit or accept contributions, and the identity of the
charitable organization by or for whom the solicitation is to be
conducted;

2. The address of the charitable organization and the names
and addresses of officers, directors, trustees and executive
personnel;

3. The purposes for which the contributions solicited or
accepted are to be used; provided, however, no contribution or any
portion thereof shall enure to the private benefit of any
voluntary solicitor;

4. A copy of Internal Revenue Form 990 as filed by the
charitable organization for the most recent tax year;

5. The person who will have custody of the contributions;

6. The persons responsible for the distribution of funds
collected;

7. The period of time during which such solicitation is to be
conducted;

8. A description of the method or methods of solicitation in
such detail as may from time to time be determined by the ~~Oklahoma~~
~~Tax Commission~~ Attorney General;

9. Whether such solicitation is to be conducted by voluntary
unpaid solicitors, by paid solicitors, or both;

10. If in whole or in part by paid solicitors, the name and address of each professional fund raiser supplying such solicitors, the basis of payment and the nature of the arrangement, including a copy of the contract or other agreement between the charitable organization and the professional fund raiser, the specific amount or percentage of compensation, or property of any kind or value to be paid or paid to the professional fund raiser, the percentage value of such compensation as compared (a) to the total contributions received and (b) to the net amount of the total contributions received; and

11. Such additional information as may be deemed necessary and appropriate by the ~~Oklahoma Tax Commission~~ Attorney General in the public interest or for the specific protection of contributors.

B. All fees generated under this section shall be deposited to the Charitable Organization Revolving Fund of the Office of the Attorney General to be used to enforce the provisions of this act and to establish and operate a public awareness campaign regarding this act.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 552.4, is amended to read as follows:

Section 552.4 Except as otherwise specifically provided in this act, the provisions of Sections 552.3 and 552.5 of this title shall not apply to the following persons:

(1) Organizations incorporated for religious purposes ~~and actually engaged in bona fide religious programs, and other organizations directly operated, supervised, or controlled by a religious organization~~ and which are exempt from taxation pursuant to the provisions of Section 501 of the Internal Revenue Code;

(2) Educational institutions which have a faculty, regularly enrolled students and offer courses of study leading to the granting of recognized degrees ~~when solicitations of contributions are confined to its student body and their families, alumni, faculty and trustees;~~

(3) Fraternal organizations, ~~when soliciting from their own members,~~ and patriotic and civic organizations, ~~when solicitation~~

~~of contributions is confined to the membership of said organizations, and the solicitation is managed by their own membership without paid solicitors;~~

(4) Persons soliciting contributions for a named individual person, when such individual person is specified by name at the time of solicitation, the purpose for such contribution is clearly stated, and if the gross contributions collected, without any deductions whatsoever for the benefit of the solicitor or any other person, be deposited directly to an account in the name of the beneficiary established for that purpose at a ~~licensed local~~ bank authorized to engage in banking business in this state, and if such contributions are used for the direct benefit of the named individual person as beneficiary; and

(5) Any organization which collects from charitable solicitations less than Ten Thousand Dollars (\$10,000.00) per year.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 552.5, is amended to read as follows:

Section 552.5 A. On or before March 31 of each year every charitable organization subject to the provisions of this act which has received contributions during the previous calendar year shall file the following information in the manner hereinbefore provided and on forms to be provided by the ~~Oklahoma Tax Commission~~ Office of the Attorney General:

1. The gross amount of the contributions pledged or collected;
2. The amount thereof given or to be given to the charitable purpose represented;
3. The aggregate amount paid and to be paid for the expenses of such solicitation; ~~and~~
4. The aggregate amount paid to and to be paid to professional fund raisers and solicitors; and
5. The gross amount paid or to be paid for administrative and general expenses.

B. A charitable organization which maintains its books on other than a calendar year basis may upon application to the

~~Oklahoma Tax Commission~~ Attorney General be permitted to file its report within ninety (90) days after the close of its fiscal year. In addition, that office may require that within ninety (90) days after the close of any special period of solicitation the charitable organization conducting such solicitation shall file a special report of the information specified in this section for such special period of solicitation. Such report when filed shall be a public record in the ~~Commission~~ Office of the Attorney General.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 552.6, is amended to read as follows:

Section 552.6 Every charitable organization shall keep a full and true record in such form as will enable such charitable organization to accurately provide the information required herein. All records required hereunder shall be open to inspection at all times by the ~~Oklahoma Tax Commission~~ Attorney General and its employees, and upon demand shall be presented to that office for inspection.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 552.7, is amended to read as follows:

Section 552.7 A. No person shall act as a professional fundraiser for any charitable organization, including those organizations listed under Section 552.4 of this title, until he has first registered with the ~~Oklahoma Tax Commission~~ Attorney General. Applications for such registrations shall be in writing, under oath, in the form prescribed by that office and shall be accompanied by an annual fee in the sum of ~~Fifty Dollars (\$50.00)~~ Seventy-five Dollars (\$75.00). The applicant shall, at the time of making application, file with and have approved by the ~~Oklahoma Tax Commission~~ Attorney General a bond in which the applicant shall be the principal obligor, in the sum of Two Thousand Five Hundred Dollars (\$2,500.00), with one or more sureties whose liability in the aggregate as such sureties will at least equal the said sum. The said bond shall run to the ~~Oklahoma Tax Commission~~ Attorney General for the use of the state and to any person, including a charitable organization, who may have a cause

of action against the obligor of said bond for any malfeasance or misfeasance of such obligor or any professional solicitor employed by him in the conduct of such solicitation. Registration when affected shall be for a period of one (1) year, expiring on the thirty-first day of March, and may be renewed upon the filing of the bond and fee prescribed herein for additional one-year periods.

B. All fees generated under this section shall be deposited to the Charitable Organization Revolving Fund of the Office of the Attorney General to be used to enforce the provisions of this act and to establish and operate a public awareness campaign regarding this act.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 552.8, is amended to read as follows:

Section 552.8 All contracts or other agreements entered into by such professional fund raisers and charitable organizations shall be in writing and true and correct copies thereof shall be kept on file in the offices of the charitable organization and the professional fund raiser for a period of three (3) years from the date ~~of~~ on which solicitation of contributions provided for therein actually commences. Such contracts shall be available for inspection and examination by the ~~Oklahoma Tax Commission~~ Attorney General and other authorized agencies. At least one copy of every such contract or other agreement shall be on file at all times in that office and shall be available to the general public as a matter of public record. The ~~Oklahoma Tax Commission~~ Attorney General may require the use of standard contract forms and no contract shall be valid unless prior approval thereof is given by that office.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 552.9, is amended to read as follows:

Section 552.9 A. Every professional solicitor employed or retained by a professional fund raiser required to register shall, before accepting employment by such professional fund raiser, register with the ~~Oklahoma Tax Commission~~ Attorney General.

Application for such registration shall be in writing, under oath,
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in the form prescribed by that office, and shall be accompanied by a fee in the sum of Ten Dollars (\$10.00). Such registration when affected shall be for a period of one (1) year, expiring on the thirty-first day of March, and may be renewed upon the payment of the fee prescribed herein for additional one-year periods.

B. A professional solicitor, prior to orally requesting a contribution and at the same time at which a written request for a contribution is made, shall clearly and conspicuously disclose at the point of solicitation his name as registered with the Attorney General and the fact that he is a professional solicitor.
However, the requirements of this subsection shall not apply when the professional solicitor offers tangible property in exchange for a contribution.

C. All fees generated under this section shall be deposited to the Charitable Organization Revolving Fund of the Office of the Attorney General to be used to enforce the provisions of this act and to establish and operate a public awareness campaign regarding this act.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 552.13, is amended to read as follows:

Section 552.13 ~~The Oklahoma Tax Commission~~ Attorney General may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the ~~Oklahoma Tax Commission~~ Attorney General. Pursuant to such agreements the ~~Oklahoma Tax Commission~~ Attorney General may accept information filed by a charitable organization with another state in lieu of the information required to be filed by a charitable organization in accordance with the provisions of Section 552.3 of this title, if such information is substantially similar to the information required to be filed under Section 552.3 of this title.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 552.14, is amended to read as follows:

Section 552.14 An action for violation of this act may be prosecuted by any district attorney of this state or by the Attorney General.

Whenever a district attorney or the Attorney General of this state shall have reason to believe that any person, charitable organization, professional fund raiser or professional solicitor is operating in violation of these provisions or 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 for obtaining money or property by means of any false pretense, representation or promise, in addition to any other action authorized by law, he shall institute in any district court of this state an injunctive action in the name and on behalf of the people of the state against such person or charitable organization and any other person who has participated or is about to participate in such solicitation or collection by employing such device, scheme, artifice, false representation or promise. Said action shall be for the purpose of enjoining such person or charitable organization or other participant from continuing such solicitation or collecting or engaging therein or doing any acts in furtherance thereof, or to cancel any registration statement previously filed with the ~~Oklahoma Tax Commission~~ Attorney General.

Any district attorney or the Attorney General shall exercise the authority granted in this section against any charitable organization which operates under the guise or pretense of being an organization exempted by the provisions of Section 552.4 of this title and is not in fact an organization entitled to such exemption.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 552.19 of Title 18, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General, to be designated the "Charitable Organization Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Office of the Attorney General for deposit in the fund. All monies accruing to the

credit of said fund are hereby appropriated and may be budgeted and expended by the Office of the Attorney General for the purpose of enforcing the provisions of the Oklahoma Solicitation of Charitable Contributions Act and to establish and operate a public awareness campaign regarding this act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 552.20 of Title 18, unless there is created a duplication in numbering, reads as follows:

All the powers, duties and responsibilities of the Oklahoma Tax Commission under the provisions of the Oklahoma Solicitation of Charitable Contributions Act are hereby transferred to the Office of the Attorney General.

SECTION 12. This act shall become effective September 1, 1993.

44-1-7140

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