

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1318

By: Bastin, Boyd (Laura),
Davis, Seikel, Smith
(Dale) and Stites of the
House

and

Stipe of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to telemarketing; amending 15 O.S. 1991, Section 753, as last amended by Section 3, Chapter 8, O.S.L. 1996, Section 6, Chapter 235, O.S.L. 1994, and Section 8, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1996, Sections 753, 775A.2, and 775A.4), which relate to commercial telephone solicitation; placing violations of telemarketing under the Consumer Protection Act; modifying certain exemption from definition of commercial telephone seller; adding to unlawful telemarketing practices; providing certain limitation of prosecution for violations; amending 18 O.S. 1991, Sections 552.3, as amended by Section 9, Chapter 235, O.S.L. 1994, 552.5, as amended by Section 10, Chapter 235, O.S.L. 1994, 552.6, as amended by Section 11, Chapter 235, O.S.L. 1994, 552.7, as amended by Section 12, Chapter 235, O.S.L. 1994, 552.8, as amended by Section 13, Chapter 235, O.S.L. 1994, 552.9, as amended by Section 14, Chapter 235, O.S.L. 1994, 552.13, as amended by Section 15, Chapter 235, O.S.L. 1994, 552.14, as amended by Section 16, Chapter 235, O.S.L. 1994 and 552.15 (18 O.S. Supp. 1996, Sections 552.3, 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; transferring powers, duties, responsibilities and fees charged for certain purposes under act from the Office of the Attorney General to the Office of the Secretary of State; requiring the Office of the Secretary of State to provide certain forms; providing that certain report be filed in the Office of the Secretary of State; requiring such reports to be open for inspection by the Office of the Secretary of State; requiring certain registration with the Office of the Secretary of State; requiring certain bonds to run to the Secretary of State; requiring certain contracts and agreements to be filed with the Office of the Secretary of State and providing rights and procedures related thereto; modifying registration requirements of professional fund raisers; authorizing the Secretary of State to enter into certain reciprocal agreements; providing for certain prosecution and procedures related thereto; modifying process for service of process; providing certain limitation of prosecution

for violations; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 15 O.S. 1991, Section 753, as last amended by Section 3, Chapter 8, O.S.L. 1996 (15 O.S. Supp. 1996, Section 753), is amended to read as follows:

Section 753. A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act, Section 751 et seq. of this title, when, in the course of the person's business, the person:

1. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular make or brand, when it is of another;
2. Makes a false or misleading representation, knowingly or with reason to know, as to the source, sponsorship, approval, or certification of the subject of a consumer transaction;
3. Makes a false or misleading representation, knowingly or with reason to know, as to affiliation, connection, association with, or certification by another;
4. Makes a false or misleading representation or designation, knowingly or with reason to know, of the geographic origin of the subject of a consumer transaction;
5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;
6. Represents, knowingly or with reason to know, that the subject of a consumer transaction is original or new if the person knows that it is reconditioned, reclaimed, used, or secondhand;

7. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another;

8. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;

9. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity;

10. Advertises under the guise of obtaining sales personnel when in fact the purpose is to sell the subject of a consumer transaction to the sales personnel applicants;

11. Makes false or misleading statements of fact, knowingly or with reason to know, concerning the price of the subject of a consumer transaction or the reason for, existence of, or amounts of price reduction;

12. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:

- a. refusal to show the subject of a consumer transaction advertised,
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale,
- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction,
- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time,
- e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement,

- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item, or
- g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in this act, Section 751 et seq. of this title;

14. Resumes the business for which the closing out sale was conducted within one (1) year from the expiration date of the closing out sale license;

15. Falsely states, knowingly or with reason to know, that services, replacements or repairs are needed;

16. Violates any provision of the Oklahoma Health Spa Act, Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

17. Violates any provision of the Home Repair Fraud Act, Section 765.1 et seq. of this title;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma Statutes;

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title; ~~or~~

21. Violates any provision of Section ~~1~~ 169.1 of ~~this act~~ Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act; or

22. Violates any provision involving telemarketing pursuant to Sections 775A.1 through 775A.4 of this title.

SECTION 2. AMENDATORY Section 6, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1996, Section 775A.2), is amended to read as follows:

Section 775A.2 As used in this act, unless the context otherwise requires:

1. "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include the following:

- a. a person offering or selling a security as defined in Section 2 of Title 71 of the Oklahoma Statutes if:
 - (1) the security is either registered with the Oklahoma Securities Commission under Sections 301 through 307 of Title 71 of the Oklahoma Statutes, or exempt from registration under Section 401 of Title 71 of the Oklahoma Statutes, and
 - (2) the person is registered by the securities commission as a broker-dealer as defined in Section 2 of Title 71 of the Oklahoma Statutes, an agent as defined in Section 2 of Title 71 of the Oklahoma Statutes, or an investment adviser representative as defined in Section 2 of Title 71 of the Oklahoma Statutes, unless expressly excluded from such definitions, or such person is exempted from registration under Section 201 of Title 71 of the Oklahoma Statutes,
- b. a person soliciting the sale of any book, record, audio tape, compact disc or video if the person allows the purchaser to review the merchandise without obligation for at least seven (7) days and provides a full refund for the return of undamaged merchandise within thirty (30) days or if the person solicits such sale on behalf of a membership club operating in conformity with 16 Code of Federal Regulations 425,

- c. a person making telephone calls to a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions or votes, or a person soliciting solely for a political or religious cause or purpose,
- d. a paid solicitor or charitable organization which is required to and which has complied with the notice and reporting requirements of Section 552.3 of Title 18 of the Oklahoma Statutes or a person who is excluded from such notice and reporting requirements by Section 552.4 of Title 18 of the Oklahoma Statutes,
- e. a supervised financial organization, as defined in Section 1-301 of Title 14A of the Oklahoma Statutes, and its employees, when acting within the scope of their employment,
- f. a supervised lender, as defined in subsection (2) of Section 3-501 of Title 14A of the Oklahoma Statutes, and its employees, when acting within the scope of their employment,
- g. a person or an affiliate of a person who is regulated by the Insurance Commission pursuant to Title 36 of the Oklahoma Statutes,
- h. a person soliciting without the intent to complete and who does not in fact complete the sales transaction during the telephone solicitation or another telephone solicitation and who only completes the sales transaction at a later face-to-face meeting between the solicitor and the prospective purchaser, excluding a face-to-face meeting, the sole purpose of which is to collect the payment or deliver any item purchased, or a person soliciting a purchaser with whom the person has had a previous face-to-face meeting in the course of such person's business,

- i. any governmental entity or employee thereof, acting in the employee's official capacity,
- j. a person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser,
- k. a person or an affiliate of a person whose business is regulated by the Oklahoma Real Estate Commission,
- l. a person whose conduct is within the exclusive jurisdiction of the federal Commodity Futures Trading Commission as granted under the federal "Commodity Exchange Act", as amended,
- m. a seller of food for immediate consumption when the sale to one purchaser does not exceed Three Hundred Dollars (\$300.00),
- n. a person who initially contacts the purchaser with a retail sales catalog requesting a telephone call response, when the person allows the purchaser to review the merchandise without obligation for at least seven (7) days and provides a full refund for the return of undamaged merchandise within thirty (30) days after receipt of the returned merchandise,
- o. an issuer or a subsidiary of an issuer that has a class of securities which is subject to Section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. 781, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) (2) of that section,
- p. a person who has been operating for at least three (3) years a retail business establishment in Oklahoma under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis, the majority of the seller's business involves the purchaser

receiving the seller's goods and services at the seller's business location,

- q. a person who has conducted business for at least three (3) years under the same name and in the same state and offers potential purchasers satisfaction guaranteed by the sending of the product or providing the service and the purchaser has an unqualified right to review and return or cancel for at least thirty (30) days,
- r. any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) or more of its services are performed on behalf of sellers exempt from this section. ~~This exemption shall not apply to that portion of a telephone marketing service company's services performed on behalf of nonexempt sellers,~~
- s. a person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling,
- t. a person or an affiliate of a person whose business is regulated by the Corporation Commission, or
- u. a person soliciting the sale of any newspaper, magazine, or other periodical of general circulation if such sales constitute a majority of such person's business and business revenues;

2. "Commercial telephone solicitation" means:

- a. unsolicited telephone calls to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine with or without a recorded message device, for the purpose of inducing the person to purchase or invest in goods, services or property or offering an extension of credit,

b. any other communication by a commercial telephone seller in which:

(1) a gift, award, prize or contest is offered and a telephone call response from the intended purchaser is invited,

(2) a loan, credit card or other extension of credit is offered to a purchaser who has not previously purchased from the person initiating the communication, and a telephone call response from the intended purchaser is invited, or

(3) a sale is to be completed or an agreement to purchase is to be entered into during the course of the telephone call response, or

c. any other communication by a commercial telephone seller which includes representations about the price, quality or availability of goods, services or property and which invites a response by telephone, including pay-per-call service calls, or which is followed by a telephone call to the intended purchaser by a salesperson;

3. "Pay-per-call" means the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number;

4. "Principal" means an owner, an officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, a trustee of a trust or any other individual with similar supervisory functions with respect to any person;

5. "Purchaser" means a person who receives or responds to a commercial telephone solicitation;

6. "Salesperson" means any person employed or authorized by a commercial telephone seller to cause or attempt to cause a commercial telephone solicitation to be made; and

7. "Telephone sales transaction" means any payment of money by a purchaser in exchange for the promise of goods, services, property or an extension of credit by a commercial telephone

seller and includes all communications which precede such payment of money.

SECTION 3. AMENDATORY Section 8, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1996, Section 775A.4), is amended to read as follows:

Section 775A.4 A. A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

1. Conducts business as a commercial telephone seller without having registered with the Attorney General, as required by Section 7 775A.3 of this ~~act~~ title;

2. Fails to provide the purchaser a written contract to be executed prior to the sale becoming final or to allow the purchaser in any telephone sales transaction to cancel any purchase or agreement to purchase goods, services or property at any time before the expiration of three (3) business days after the purchaser's receipt of such goods, services or property by delivering or mailing to the commercial telephone seller written notice of cancellation. Notice of cancellation, if sent by mail, is deemed to be given as of the date the mailed notice was postmarked;

3. Fails to refund all payments made by any purchaser in any telephone sales transaction within thirty (30) days after the commercial telephone seller receives notice of cancellation from the purchaser, except that:

- a. if the purchaser has received goods or property from the commercial telephone seller, other than an item represented as free, the commercial telephone seller shall refund all payments made by the purchaser within thirty (30) days after the commercial telephone seller's receipt of the returned goods or property, and
- b. if the purchaser has received services during the course of a pay-per-call service call, which services cannot, by their nature, be returned, the

commercial telephone seller is not required to
refund payments to the purchaser;

4. Fails to disclose to the purchaser during a telephone solicitation that the purchaser has the cancellation rights set forth in paragraph 2 of this subsection;

5. Misrepresents to any person that the person has won a contest, sweepstakes or drawing, or that the person will receive free goods, services or property;

6. Represents that the seller's goods, services or property are "free" if the commercial telephone seller charges or collects a fee from the purchaser in exchange for providing or delivering such goods, services or property;

7. Makes any reference to the commercial telephone seller's compliance with this act to any purchaser without also disclosing that compliance with this act does not constitute approval by any governmental agency of the seller's marketing, advertisements, promotions, goods or services; ~~or~~

8. Directly accesses any purchaser's or potential purchaser's bank, savings, trust, stock, or bond account as a method of collecting payment for goods or services; or

9. Engages in any deceptive trade practice defined in Section 752 of this title.

B. Paragraphs 2 and 4 of subsection A of this section do not apply to a transaction in which the consumer obtains a full refund for the return of undamaged or unused goods or a cancellation of services by giving notice to the seller within seven (7) days after receipt by the consumer and the seller processes the refund or cancellation within thirty (30) days after receipt of the returned merchandise or the consumer's request for refund for services not performed or a pro rata refund for any services not yet performed for the consumer. The availability and terms of the return and refund privilege shall be disclosed to the consumer orally by telephone and in writing with any advertising or promotional material or with the delivery of the product or service. If a seller offers consumers an unconditional guarantee, a clear disclosure of such guarantee by using the words

"satisfaction guaranteed", "free inspection" or "no-risk guarantee" satisfy the disclosure requirements of this subsection.

C. The unlawful telemarketing practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

D. Any violations of Sections ~~5~~ 775A.1 through ~~7~~ 775A.4 of this ~~act~~ title are violations of the Oklahoma Consumer Protection Act.

E. Prosecution for violation of any provisions of Sections 775A.1 through 775A.4 of this title shall be commenced within five (5) years after the commission of the violation.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 552.3, as amended by Section 9, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, Section 552.3), is amended to read as follows:

Section 552.3 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 Office of the ~~Attorney General~~ Secretary of State 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). 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 ~~Attorney General~~ Secretary of State 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 ~~Attorney General~~ Secretary of State;

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 ~~Attorney General~~ Secretary of State in the public interest or for the specific protection of contributors.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 552.5, as amended by Section 10, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, 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 Office of the ~~Attorney General~~ Secretary of State:

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.

B. A charitable organization which maintains its books on other than a calendar year basis may upon application to the ~~Attorney General~~ Office of the Secretary of State 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 Office of the ~~Attorney General~~ Secretary of State.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 552.6, as amended by Section 11, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, 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 Office of the ~~Attorney General~~ Secretary of

State and its employees, and upon demand shall be presented to that office for inspection.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 552.7, as amended by Section 12, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, Section 552.7), is amended to read as follows:

Section 552.7 No person shall act as a professional fund raiser for any charitable organization, including those organizations listed under Section 552.4 of this title, until ~~he~~ the person has first registered with the ~~Attorney General~~ Office of the Secretary of State. 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). The applicant shall, at the time of making application, file with and have approved by the ~~Attorney General~~ Secretary of State 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~~ shall at least equal the said sum. The said bond shall run to the ~~Attorney General~~ Secretary of State 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 or her 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.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 552.8, as amended by Section 13, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, 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 solicitation of contributions provided for therein

actually commences. Such contracts shall be available for inspection and examination by the ~~Attorney General~~ Office of the Secretary of State 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 ~~Attorney General~~ Secretary of State may require the use of standard contract forms and no contract shall be valid unless prior approval thereof is given by that office.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 552.9, as amended by Section 14, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, Section 552.9), is amended to read as follows:

Section 552.9 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 ~~Attorney General~~ Office of the Secretary of State. Application for such registration shall be in writing, under oath, 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.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 552.13, as amended by Section 15, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, Section 552.13), is amended to read as follows:

Section 552.13 The ~~Attorney General~~ Secretary of State 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 ~~Attorney General~~ Secretary of State. Pursuant to such agreements the ~~Attorney General~~ Secretary of State 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 11. AMENDATORY 18 O.S. 1991, Section 552.14, as amended by Section 16, Chapter 235, O.S.L. 1994 (18 O.S. Supp. 1996, Section 552.14), is amended to read as follows:

Section 552.14 A. 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 or she 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 ~~Attorney General~~ Office of the Secretary of State.

B. 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.

C. Prosecution for violations of the Oklahoma Solicitation of Charitable Contributions Act shall be commenced within five (5) years after the commission of the violation.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 552.15, is amended to read as follows:

Section 552.15 Any charitable organization, professional fundraiser or professional solicitor, resident or having his, her or its principal place of business without the State of Oklahoma or organized under and by virtue of the laws of a foreign state who or which shall solicit contributions from people in this state, shall be deemed to have irrevocably appointed the Secretary of State as his or its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, or any partner, principal, officer, or director thereof or to such professional solicitor, in any action or proceeding brought by a district attorney or the Attorney General 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 or her or an assistant Secretary of State a copy thereof at the office of the Secretary of State in the city of Oklahoma City, and such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent by the district attorney or the Attorney General to such charitable organization, professional fundraiser or professional solicitor by registered mail with return receipt requested, at his, her or its office as set forth in the registration form required to be filed by this act or, in default of the filing of such form, at the last address known to the district attorney, Attorney General or the Secretary of State. Service of such process shall be complete ten (10) days after the receipt by the district attorney or Attorney General of a return receipt purporting to be signed by the addressee or a person qualified to receive his, her or its registered mail, in accordance with the rules and customs of the post office department, or, if acceptance was refused by the addressee or his, her or its agent, ten (10) days after the return to the district

attorney or Attorney General of the original envelope bearing a notation by the postal authorities that receipt thereof was refused.

SECTION 13. This act shall become effective July 1, 1997.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-7439

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