

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

2ND CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1318

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

and

Stipe of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to telemarketing; 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 and 552.14, as amended by Section 16, Chapter 235, O.S.L. 1994 (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; providing an effective date; and declaring an emergency.

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

SECTION 1. 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 2. 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 3. 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 4. 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 5. 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 6. 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 7. 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 8. 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

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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.

SECTION 9. This act shall become effective July 1, 1997.

SECTION 10. 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.

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