

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1955, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Paddack

Senator-FA-SJ-SB1955
2/26/2008 6:16 PM

STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 1955

By: Paddack of the Senate

and

Hilliard of the House

FLOOR SUBSTITUTE

[charitable contributions - Oklahoma Solicitation of Charitable
Contributions Act – requiring certain bond - effective date]

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

SECTION 1. AMENDATORY 18 O.S. 2001, Section 552.3, as amended by Section 1,
Chapter 366, O.S.L. 2005 (18 O.S. Supp. 2007, 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 the charitable organization shall have registered with the Office of the Secretary of
State and filed information, as required by this act, on forms approved by that office. At the time of
registration, each charitable organization shall pay a fee of Fifteen Dollars (\$15.00), which shall be
deposited to the ~~General Revenue Fund of the State~~ Revolving Fund for the Office of the Secretary
of State. Registration shall be valid for a period of one (1) year from the date of filing with the
Secretary of State, and shall be subject to annual renewal. This registration shall not be deemed to
constitute endorsement by the state or by the Secretary of State of the charitable organizations so

registered. The information so filed shall be available ~~to~~ for inspection by the general public as a matter of public record and such information shall be provided on its website. The forms containing the information shall be signed and acknowledged by a party duly authorized to sign on behalf of the charitable organization and shall include the following:

1. The legal name of the charitable organization, any other name the organization may be identified as or known as, and any distinctive names the organization uses for purposes of public solicitation;

2. The street address and the mailing address, if different, of the charitable organization;

3. The name and street address of:

- a. each officer, including each principal salaried executive staff officer,
- b. each director,
- c. each trustee,
- d. each person who will have custody of the contributions, and
- e. each person responsible for the distribution of funds collected;

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

5. A copy of Internal Revenue Form 990 as filed by the charitable organization for the most recently completed fiscal year; or, for the initial registration of a newly formed organization, a copy of a letter from the Internal Revenue Service, or other evidence, showing the tax exempt status of the charitable organization;

6. The period of time during which the solicitation is to be conducted;

7. A description of the specific method or methods of solicitation;

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

9. If in whole or in part by paid solicitors, the name and address of each professional fund-raiser supplying the solicitors, which includes any professional fund-raising counsel who is acting or has agreed to act on behalf of the organization; 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 or fund-raising counsel relating to financial compensation or profit to be derived by the fund-raisers or fund-raising counsel, 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 compensation as compared:

- a. to the total contributions received, and
- b. to the net amount of the total contributions received; and

10. Additional information as may be deemed necessary and appropriate by the Secretary of State in the public interest or for the specific protection of contributors.

B. The charitable organization shall report in writing to the Secretary of State any material change in the registration statement occurring after filing. The report shall be filed within seven (7) calendar days after the change occurs.

C. Any fraternal or membership organization not based in Oklahoma which solicits contributions from any person of this state by telephone, or contracts with professional fund-raisers to solicit such contributions, shall be required to have at least one member or employee of the fraternal or membership organization residing within the county where the call is received.

SECTION 2. AMENDATORY 18 O.S. 2001, Section 552.5, is amended to read as follows:

Section 552.5 A. Every charitable organization subject to the provisions of ~~Section 552.1 et seq. of this title~~ the Oklahoma Solicitation of Charitable Contributions Act which has received contributions during the previous calendar year shall file a statement with the Secretary of State

executed and signed by a party duly authorized to act on behalf of the charitable organization, which contains the most recent information, as follows:

1. The name, street address, and telephone number of the charitable organization;
2. The gross amount of the contributions pledged or collected;
3. The gross amount given or to be given to the charitable purpose represented;
4. The aggregate amount paid and to be paid for the expenses of solicitation; and
5. The aggregate amount paid to and to be paid to professional ~~fund-raisers~~ fund-raisers and solicitors.

B. The financial statement prescribed in subsection A of this section shall be submitted with the initial registration, and with each annual renewal, thereafter. Such information filed shall be available for inspection by the general public as a matter of public record and the Secretary of State shall provide such information on its website.

C. Every charitable organization registered with the Secretary of State to solicit contributions in the State of Oklahoma which shall change its name or the mailing address of its principal office, prior to its annual renewal date shall file with the Secretary of State a statement executed by an authorized officer of the organization setting forth its new name and/or mailing address and pay a filing fee of Fifteen Dollars (\$15.00) which shall be deposited to the Revolving Fund for the Office of the Secretary of State.

SECTION 3. AMENDATORY 18 O.S. 2001, Section 552.7, is amended to read as follows:

Section 552.7 A. ~~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 the person has first registered with the Office of the Secretary of State. Applications for registrations, signed and acknowledged by a party duly authorized to act on behalf of the fund-raiser, shall state the A~~ professional fund-raiser shall file a registration statement with and obtain the approval of the

Secretary of State before acting as a professional fund-raiser. The registration statement shall be attested to by the professional fund-raiser, if the fund-raiser is an individual, or by the principal officer of the professional fund-raiser, if the fund-raiser is a business entity and made in accordance with Section 552.3a of this title. The statement shall be accompanied by a fee of Three Hundred Dollars (\$300.00), plus the costs of a background investigation as provided for in subsection F of this section. The fees shall be deposited in the Revolving Fund for the Office of the Secretary of State. If a professional fund-raiser is a corporation or partnership, a single fee shall cover all its partners, members, employees, directors, agents, or officers.

B. The registration statement shall be filed in a form prescribed by the Secretary of State and shall include:

1. The full, legal name of the professional fund-raiser, the street address of the principal place of business of the fund-raiser, the full, legal names and street addresses of the charitable organizations with which it has entered into contracts or agreements; and ~~shall be accompanied by an annual fee in the sum of Fifty Dollars (\$50.00), to be deposited to the General Revenue Fund of the State Treasury. The applicant~~ the agent authorized to accept service of process in this state;

2. The names in which the professional fund-raiser is doing business in Oklahoma and any names used in the past;

3. The names and addresses of any charity sharing in the charitable contributions received in this state;

4. A copy of any articles of incorporation and bylaws of the professional fund-raiser, if applicable, and any tax-exempt status letter from the Internal Revenue Service;

5. The names, addresses, and occupations of persons employed by or who have contracted with the professional fund-raiser in regard to fund-raising and a statement of whether those persons have been convicted of a felony or a misdemeanor involving moral turpitude or arising from their conduct regarding professional fund-raising activities for a charitable organization or purpose;

6. A copy of the financial statement for the professional fund-raiser's preceding fiscal year, which shall set out the total profits and revenue from all fund-raising activities, the balance sheet, the kind and amounts of funds raised, specific costs in raising funds, the percentage of funds raised on behalf of the charitable organization which are actually paid to the organization for charitable purposes, and the location of the original financial records;

7. A statement of whether the professional fund-raiser has ever been enjoined by any court or otherwise prohibited from doing the business of professional fund-raising as defined in this act in any jurisdiction;

8. A statement indicating the methods by which the professional fund-raiser will use by its employed or retained professional solicitors, a description of the promotional plan together with copies of all advertisements, the location of all telephones being used by employed or retained professional solicitors, and the time period during and the areas in which the employed or retained professional solicitors will make solicitations; and

9. Any other information which may be required by the Secretary of State for the public interest or for the protection of contributors.

C. The professional fund-raiser shall, at the time of making application, file with the Secretary of State a bond, approved by the Secretary of State, in which the applicant professional fund-raiser shall be the principal obligor, in the sum of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00), with one or more sureties whose liability in the aggregate as sureties shall at least equal that sum. The bond shall ~~run to the 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 the bond for any malfeasance or misfeasance of the obligor or any professional solicitor employed by him or her in the conduct of the solicitation~~ be in favor of the Secretary of State and shall be held for any person having prevailed in a cause of action against the

professional fund-raiser for liabilities resulting from a violation of the Oklahoma Solicitation of Charitable Contributions Act or any rule promulgated by the Secretary of State necessary to implement the provisions of this act. The bond shall be in a form prescribed by the Secretary of State. If a surety bond is issued, it shall be issued by an insurer authorized to transact surety insurance in this state. The Secretary of State may require that any cash offered as security for a full cash bond be held in escrow by a financial institution located in the state, subject to an escrow agreement approved by the Secretary of State.

D. Registration shall be valid for a period of one (1) year from the date of ~~filing with approval~~ by the Secretary of State, and may be renewed annually upon the filing of a renewal application accompanied by the bond and fee prescribed herein.

~~B.~~ No professional fund-raiser or solicitor shall engage in fund-raising activities for a charitable organization which is not registered with the Secretary of State unless the organization is exempt from registration.

~~C.~~ E. Every professional fund-raiser registered with the Secretary of State ~~which shall change its name or the mailing address of its principal office, prior to its annual renewal date~~ report in writing to the Secretary of State any material change in the registration statement occurring after filing. The report shall be filed within seven (7) calendar days after the change occurs. Such report shall file with the Secretary of State a statement ~~be~~ executed by an authorized officer of the organization setting forth its new name or mailing address and pay ~~and shall be accompanied by a filing fee of Twenty-five Dollars (\$25.00)~~ Fifteen Dollars (\$15.00) which shall be deposited in the Revolving Fund for the Office of the Secretary of State.

F. No person shall act as a professional fund-raiser if the officers, directors, or any person with a controlling interest in the business, or any person the professional fund-raiser employs or retains to solicit charitable contributions or to advise, consult, plan, or manage in regard to the solicitation campaign, has been convicted by a court of any state or the United States of a felony or a

misdemeanor involving moral turpitude or arising from his or her conduct regarding fund-raising. A background check on each of the officers, directors, or any person with a controlling interest in the business, or any person the professional fund-raiser employs to solicit charitable contributions shall be performed by the Secretary of State. The actual cost of the investigation shall be added to the registration fee. The professional fund-raiser shall be responsible for conducting background checks of nonemployee professional solicitors it hires to solicit charitable contributions and persons it hires to advise, consult, plan, or manage in regard to the solicitation campaign.

SECTION 4. AMENDATORY 18 O.S. 2001, Section 552.8, is amended to read as follows:

Section 552.8 A. All contracts or other agreements entered into by 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. ~~These contracts shall be available for inspection and examination by the Office of the Secretary of State and other authorized agencies~~ The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization's governing body and the authorized contracting officer for the professional fund-raiser. At least one copy of every contract or other agreement shall be on file at all times in ~~that office~~ the Office of the Secretary of State, and ~~shall be available to the general public as a matter of public record~~ such contract shall be available for inspection by the general public as a matter of public record, and the Secretary of State shall provide such information on its website.

B. The contract shall clearly state:

1. The respective obligations of each party;

2. The percentage of the gross revenue from the campaign that the charitable organization will receive;

3. The goods or services to be offered to the public;
4. The geographic area where the campaign will take place;
5. The date the campaign will begin and end;
6. A fund-raising budget; and
7. Provisions for a final accounting.

The contract shall also identify the services to be provided by the professional fund-raiser and shall indicate whether the professional fund-raiser shall, at any time, have custody of any contributions. The contract may further be defined by rule promulgated by the Secretary of State pursuant to this section.

C. At least fourteen (14) calendar days prior to the performance of any service pursuant to the contract, a professional fund-raiser shall file with the Secretary of State a copy of the contract. No solicitation pursuant to the contract shall begin until the Secretary of State has certified that the contract meets the statutory requirements.

D. A contract with an unregistered professional fund-raiser or if a registered professional fund-raiser provides services through an unregistered professional solicitor shall be voidable at the option of the charitable organization.

SECTION 5. AMENDATORY 18 O.S. 2001, 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 the professional fund-raiser, register with the Office of the Secretary of State. An application for registration, signed by the professional solicitor and acknowledged, shall state the full, legal name and street address of the professional solicitor and professional fund-raiser fund-raiser that employs or retains the professional solicitor, whether or not the professional solicitor has been convicted by a court of any state or the United States of a felony or a misdemeanor involving moral turpitude or arising from his or her

conduct as a professional solicitor and shall be accompanied by a fee in the sum of ~~Ten Dollars~~ (~~\$10.00~~) Twenty-five Dollars (\$25.00), to be deposited to the ~~General Revenue~~ Revolving Fund of the State Treasury for the Office of the Secretary of State. Registration shall be for a period of one (1) year from the date of filing by the Secretary of State, and may be renewed annually upon the filing of a renewal application accompanied by a payment of the fee prescribed herein.

B. The professional solicitor shall report in writing to the Secretary of State any material change in the registration statement occurring after filing. The report shall be filed within seven (7) calendar days after the change occurs and shall be accompanied by a filing fee of Fifteen Dollars (\$15.00) which shall be deposited in the Revolving Fund for the Office of the Secretary of State.

C. No person shall act as a professional solicitor if he or she has been convicted by a court of any state or the United States of a felony or a misdemeanor involving moral turpitude or arising from his or her conduct as a professional solicitor. A background check on each registering professional solicitor shall be performed by the Office of the Secretary of State. The actual cost of the investigation shall be added to the registration fee.

D. Prior to orally requesting a contribution or when requesting a contribution in writing, the professional solicitor shall clearly disclose the following:

1. The name of the professional fund-raiser the professional solicitor is employed or retained by as set out in the registration statement filed with the Secretary of State and the fact that the professional fund-raiser is being paid for his or her services;

2. The name of the charitable organization he or she represents and a description of how the contributions raised by the solicitation will be used for a charitable or civic purpose; and

3. The percentage of the contributions solicited that the professional fund-raiser is to receive if requested by the person being solicited.

SECTION 6. This act shall become effective November 1, 2008.

51-2-3647

SJ

2/26/2008 6:16:00 PM