

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1955

By: Paddack

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5
6 AS INTRODUCED

7 An Act relating to the charitable contributions;
8 amending 18 O.S. 2001, Sections 552.3, as amended by
9 Section 1, Chapter 366, O.S.L. 2005, 552.5, 552.6,
10 552.7, 552.8, and 552.9 (18 O.S. Supp. 2007, Section
11 552.3), which relate to the Oklahoma Solicitation of
12 Charitable Contributions Act; providing for
13 registration and reporting fees; requiring certain
14 fees be deposited in revolving fund; requiring
15 certain information be made available; requiring
16 certain reports; requiring approval before acting as
17 a professional fund-raiser or professional solicitor;
18 requiring background investigation; requiring certain
19 bond; restricting certain persons from acting as a
20 professional fund-raiser or professional solicitor;
21 providing certain information be provided in certain
22 contracts; requiring filing of certain contracts;
23 making certain contracts voidable by charitable
24 organization; requiring certain information be
provided in registration statement; requiring certain
disclosure by professional solicitors; and providing
an effective date.

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

20 SECTION 1. AMENDATORY 18 O.S. 2001, Section 552.3, as
21 amended by Section 1, Chapter 366, O.S.L. 2005 (18 O.S. Supp. 2007,
22 Section 552.3), is amended to read as follows:

23 Section 552.3 A. No charitable organization, except those
24 specifically exempt under Section 552.4 of this title, shall solicit

1 or accept contributions from any person in this state by any means
2 whatsoever until the charitable organization shall have registered
3 with the Office of the Secretary of State and filed information, as
4 required by this act, on forms approved by that office. At the time
5 of registration, each charitable organization shall pay a fee of
6 Fifteen Dollars (\$15.00), which shall be deposited to the ~~General~~
7 ~~Revenue Fund of the State~~ Revolving Fund for the Office of the
8 Secretary of State. Registration shall be valid for a period of one
9 (1) year from the date of filing with the Secretary of State, and
10 shall be subject to annual renewal. This registration shall not be
11 deemed to constitute endorsement by the state or by the Secretary of
12 State of the charitable organizations so registered. The
13 information so filed shall be available ~~to~~ for inspection by the
14 general public as a matter of public record and such information
15 shall be provided on its website. The forms containing the
16 information shall be signed and acknowledged by a party duly
17 authorized to sign on behalf of the charitable organization and
18 shall include the following:

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

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

1 3. The name and street address of:

2 a. each officer, including each principal salaried
3 executive staff officer,

4 b. each director,

5 c. each trustee,

6 d. each person who will have custody of the contributions,
7 and

8 e. each person responsible for the distribution of funds
9 collected;

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

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

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

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

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

3 9. If in whole or in part by paid solicitors, the name and
4 address of each professional fund-raiser supplying the solicitors,
5 which includes any professional fund-raising counsel who is acting
6 or has agreed to act on behalf of the organization; the basis of
7 payment and the nature of the arrangement, including a copy of the
8 contract or other agreement between the charitable organization and
9 the professional fund-raiser or fund-raising counsel relating to
10 financial compensation or profit to be derived by the fund-raisers
11 or fund-raising counsel, the specific amount or percentage of
12 compensation, or property of any kind or value to be paid or paid to
13 the professional fund-raiser, the percentage value of compensation
14 as compared:

15 a. to the total contributions received, and

16 b. to the net amount of the total contributions received;

17 and

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

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

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

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

9 Section 552.5 A. Every charitable organization subject to the
10 provisions of ~~Section 552.1 et seq. of this title~~ the Oklahoma
11 Solicitation of Charitable Contributions Act which has received
12 contributions during the previous calendar year shall file a
13 statement with the Secretary of State executed and signed by a party
14 duly authorized to act on behalf of the charitable organization,
15 which contains the most recent information, as follows:

16 1. The name, street address, and telephone number of the
17 charitable organization;

18 2. The gross amount of the contributions pledged or collected;

19 3. The gross amount given or to be given to the charitable
20 purpose represented;

21 4. The aggregate amount paid and to be paid for the expenses of
22 solicitation; and

23 5. The aggregate amount paid to and to be paid to professional
24 fund_raisers and solicitors.

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

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

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

18 Section 552.7 A. ~~No person shall act as a professional fund-~~
19 ~~raiser for any charitable organization, including those~~
20 ~~organizations listed under Section 552.4 of this title, until the~~
21 ~~person has first registered with the Office of the Secretary of~~
22 State A professional fund-raiser shall file a registration statement
23 with and obtain the approval of the Secretary of State before acting
24 as a fund-raiser. The registration statement shall be attested to

1 by the professional fund-raiser, if the fund-raiser is an
2 individual, or by the principal officer of the professional fund-
3 raiser, if the fund-raiser is a business entity and made in
4 accordance with Section 552.3a of this title. The statement shall
5 be accompanied by a fee of Fifty Dollars (\$50.00), plus the costs of
6 a background investigation as provided for in subsection C of this
7 section. The fees shall be deposited in the Revolving Fund for the
8 Office of the Secretary of State. If a professional fund-raiser is
9 a corporation or partnership, a single fee shall cover all its
10 partners, members, employees, directors, agents, or officers.
11 ~~Applications for registrations, signed and acknowledged by a party~~
12 ~~duly authorized to act on behalf of the fund-raiser, The~~
13 registration statement shall state the full, legal name of the
14 professional fund-raiser, the street address of the principal place
15 of business of the fund-raiser, the full, legal names and street
16 addresses of the charitable organizations with which it has entered
17 into contracts or agreements, ~~and shall be accompanied by an annual~~
18 ~~fee in the sum of Fifty Dollars (\$50.00), to be deposited to the~~
19 ~~General Revenue Fund of the State Treasury. The applicant~~
20 professional fund-raiser shall, at the time of making application,
21 file with the Secretary of State a bond, approved by the Secretary
22 of State, in which the applicant professional fund-raiser shall be
23 the principal obligor, in the sum of ~~Two Thousand Five Hundred~~
24 ~~Dollars (\$2,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00), with

1 one or more sureties whose liability in the aggregate as sureties
2 shall at least equal that sum. ~~The bond shall run to the Secretary~~
3 ~~of State for the use of the state and to any person, including a~~
4 ~~charitable organization, who may have a cause of action against the~~
5 ~~obligor of the bond for any malfeasance or misfeasance of the~~
6 ~~obligor or any professional solicitor employed by him or her in the~~
7 ~~conduct of the solicitation~~ The bond shall be in favor of the
8 Secretary of State and shall be held for any person having prevailed
9 in a cause of action against the professional fund-raiser for
10 liabilities resulting from the solicitor's violation of the Oklahoma
11 Solicitation of Charitable Contributions Act or any rule promulgated
12 by the Secretary of State necessary to implement the provisions of
13 this act. The bond shall be in a form prescribed by the Secretary
14 of State. If a surety bond is issued, it shall be issued by an
15 insurer authorized to transact surety insurance in this state. The
16 Secretary of State may require that any cash offered as security for
17 a full cash bond be held in escrow by a financial institution
18 located in the state, subject to an escrow agreement approved by the
19 Secretary of State.

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

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

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

16 C. No person shall act as a professional fund-raiser if the
17 officers, directors, or any person with a controlling interest in
18 the business, or any person the professional fund-raiser employs or
19 procures to solicit for compensation or to advise, consult, plan, or
20 manage in regards to the solicitation campaign, has been convicted
21 by a court of any state or the United States of a felony or a
22 misdemeanor involving moral turpitude or arising from his or her
23 conduct as a fund-raiser for a charitable organization or purpose.
24 A background check on each person set out in this subsection shall

1 be performed by the Secretary of State. The actual cost of the
2 investigation shall be added to the registration fee.

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

5 Section 552.8 A. All contracts or other agreements entered
6 into by professional fund_raisers and charitable organizations shall
7 be in writing and true and correct copies thereof shall be kept on
8 file in the offices of the charitable organization and the
9 professional fund_raiser for a period of three (3) years from the
10 date of solicitation of contributions provided for therein actually
11 commences. ~~These contracts shall be available for inspection and~~
12 ~~examination by the Office of the Secretary of State and other~~
13 ~~authorized agencies~~ The contract shall be signed by two authorized
14 officials of the charitable organization, one of whom shall be a
15 member of the organization's governing body and the authorized
16 contracting officer for the professional fund-raiser. At least one
17 copy of every contract or other agreement shall be on file at all
18 times in ~~that office~~ the Office of the Secretary of State and ~~shall~~
19 ~~be available to the general public as a matter of public record~~ such
20 contract shall be available for inspection by the general public as
21 a matter of public record and the Secretary of State shall provide
22 such information on its website.

23 B. The contract shall clearly state:

24 1. The respective obligations of each party;

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

3 3. The goods or services to be offered to the public;

4 4. The geographic area where the campaign will take place;

5 5. The date the campaign will begin and end;

6 6. A fund-raising budget; and

7 7. Provisions for a final accounting.

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

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

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

23 SECTION 5. AMENDATORY 18 O.S. 2001, Section 552.9, is
24 amended to read as follows:

1 Section 552.9 ~~Every professional solicitor employed or retained~~
2 ~~by a professional fund raiser required to register shall, before~~
3 ~~accepting employment by the professional fund raiser, register with~~
4 ~~the Office of the Secretary of State. An application for~~
5 ~~registration, signed by the solicitor and acknowledged, shall state~~
6 ~~the full, legal name and street address of the professional fund~~
7 ~~raiser that employs the solicitor and shall be accompanied by a fee~~
8 ~~in the sum of Ten Dollars (\$10.00), to be deposited to the General~~
9 ~~Revenue Fund of the State Treasury.~~

10 A. A professional solicitor shall file a registration statement
11 with, and obtain the approval of, the Secretary of State before
12 acting as a professional solicitor. The registration statement
13 shall be attested to by the professional solicitor, if an
14 individual, or by the principal officer of the professional
15 solicitor, if the solicitor is a business entity and made in
16 accordance with section 552.3a of this title. The statement shall
17 be accompanied by a fee of Three Hundred Dollars (\$300.00), plus the
18 costs of a background investigation to the Office of the Secretary
19 of State as provided for in subsection E of this section. The funds
20 shall be deposited in the Revolving Fund for the Office of the
21 Secretary of State. If a professional solicitor is a corporation or
22 partnership, a single fee shall cover all its partners, members,
23 employees, directors, agents, or officers. Registration shall be
24 for a period of one (1) year from the date of ~~filing~~ approval by the

1 Secretary of State, and may be renewed annually upon the filing of a
2 renewal application accompanied by a payment of the fee prescribed
3 herein.

4 B. At the time of filing the registration statement, a
5 professional solicitor shall file with and have approved by the
6 Secretary of State a full cash or surety bond in the amount of
7 Twenty-Five Thousand Dollars (\$25,000.00). The bond shall be in
8 favor of the Secretary of State and shall be held for any person
9 having prevailed in a cause of action against the solicitor for
10 liabilities resulting from the solicitor's violation of the Oklahoma
11 Solicitation of Charitable Contributions Act or any rule promulgated
12 by the Secretary of State necessary to implement the provisions of
13 this act. The bond shall be in a form prescribed by the Secretary
14 of State. If a surety bond is issued, it shall be issued by an
15 insurer authorized to transact surety insurance in this state. The
16 Secretary of State may require that any cash offered as security for
17 a full cash bond be held in escrow by a financial institution
18 located in the state, subject to an escrow agreement approved by the
19 Secretary of State.

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

22 1. The name, address, and telephone number of the professional
23 solicitor and the agent authorized to accept service of process in
24 this state;

1 2. The names in which the professional solicitor is doing
2 business in Oklahoma and any names used in the past;

3 3. The names and addresses of any charity sharing in the
4 charitable contributions received in this state and the full legal
5 name and street address of the professional fund-raiser who the
6 professional solicitor is providing services for;

7 4. A copy of any articles of incorporation and by-laws of the
8 solicitor, if applicable, and any tax-exempt status letter from the
9 Internal Revenue Service;

10 5. The names, addresses, and occupations of persons employed by
11 or who have contracted with the professional solicitor and a
12 statement of whether those persons have been convicted of a felony
13 or a misdemeanor involving moral turpitude or arising from their
14 conduct as solicitors for a charitable organization or purpose;

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

1 7. A statement of whether the professional solicitor has ever
2 been enjoined by any court or otherwise prohibited from soliciting
3 contributions in any jurisdiction;

4 8. A statement indicating the method by which the solicitation
5 is made, a description of the promotional plan together with copies
6 of all advertisements, the location of all telephones being used,
7 and the time period during and the areas in which the solicitations
8 are made; and

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

12 D. The professional solicitor shall report in writing to the
13 Secretary of State any material change in the registration statement
14 occurring after filing. The report shall be filed within seven (7)
15 calendar days after the change occurs and shall be accompanied by a
16 filing fee of Twenty-five Dollars (\$25.00) which shall be deposited
17 in the Revolving Fund for the Office of the Secretary of State.

18 E. No person shall act as a professional solicitor if he or
19 she, his or her officers, directors, or any person with a
20 controlling interest in the business, or any person the professional
21 solicitor employs or procures to solicit for compensation has been
22 convicted by a court of any state or the United States of a felony
23 or a misdemeanor involving moral turpitude or arising from his or
24 her conduct as a solicitor for a charitable organization. A

1 background check on each person set out in this subsection shall be
2 performed by the Office of the Secretary of State. The actual cost
3 of the investigation shall be added to the registration fee.

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

7 1. The name of the professional solicitor set out in the
8 registration statement filed with the Secretary of State and the
9 fact that he or she is being paid for his or her services;

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

13 3. The percentage of the contributions solicited that the
14 professional solicitor is to receive if requested by the person
15 being solicited.

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

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