

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1065

By: Paddack

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5
6 AS INTRODUCED

7 An Act relating to charitable organizations; amending
8 18 O.S. 2011, Section 552.14a, which relates to
9 violations of the Oklahoma Solicitation of Charitable
Contributions Act; including persons acting in
certain capacities; and providing an effective date.

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

12 SECTION 1. AMENDATORY 18 O.S. 2011, Section 552.14a, is
13 amended to read as follows:

14 Section 552.14a. A. Applicable to charitable organizations,
15 professional fundraisers ~~and~~, professional solicitors and persons
16 appearing to act in such capacities, the following shall constitute
17 violations of this act:

18 1. Knowingly making any false material statement or
19 representation on a registration application;

20 2. Using the name of a person when soliciting contributions or
21 in an advertisement, brochure, stationery or correspondence, without
22 the consent or approval of such person, other than an officer,
23 director or trustee of the charitable organization by or for which
24 contributions are solicited. This paragraph shall not apply to the

1 use of the name of a person that has contributed to or sponsored an
2 event or program of the charitable organization in a report,
3 brochure, program or listing of donors, contributors, sponsors, or
4 supporters issued or published by a charitable organization. This
5 paragraph shall not apply to the use of a public figure's name
6 and/or likeness truthfully and in good faith, so long as such use
7 does not imply a false endorsement;

8 3. Knowingly using, in connection with solicitation of
9 contributions for the purpose of deceiving the public, a name
10 similar to other charitable organizations, professional fundraiser,
11 professional solicitor or government agency or political
12 subdivision;

13 4. Failing to register as required pursuant to Sections 552.3,
14 552.7 or 552.9, as applicable, of ~~Title 18 of the Oklahoma Statutes~~
15 this title unless otherwise exempted by this act;

16 5. Employing in any solicitation or collection of contributions
17 for a charitable organization any device, scheme or artifice to
18 defraud or for obtaining money or property by means of any false
19 pretense, representation or promise; and

20 6. Failing or refusing to supply requested information as
21 required by Section 552.9 of ~~Title 18 of the Oklahoma Statutes~~ this
22 title.

23 B. The Attorney General or a district attorney may bring an
24 action:

1 1. To obtain a declaratory judgment that an act or practice
2 violates this act;

3 2. To enjoin, or to obtain a restraining order against a person
4 who has violated or is violating this act;

5 3. To recover actual damages, restitution, disgorgement and
6 penalties attributed to a violation of this act;

7 4. To recover reasonable expenses and investigation fees
8 attributable to a violation of this act;

9 5. To prosecute any civil or criminal actions as provided by
10 this act, as applicable; and

11 6. To revoke the registration of a charitable organization,
12 professional fundraiser, or professional solicitor for any violation
13 of this act.

14 C. In lieu of instigating or continuing an action or
15 proceeding, the Attorney General or a district attorney may accept a
16 consent judgment with respect to any act or practice declared to be
17 a violation of this act. Such a consent judgment shall provide for
18 the discontinuance by the person entering the same of any act or
19 practice declared to be a violation of this act, and it may include
20 a stipulation for the payment by such person of reasonable expenses,
21 attorney fees, investigation costs and penalties incurred by the
22 Attorney General or a district attorney. The consent judgment also
23 may include a stipulation for restitution to be made by such person
24 to contributors of money, property or other things received from

1 contributors in connection with a violation of this act and also may
2 include a stipulation for specific performance. Any consent
3 judgment entered into pursuant to this section shall not be deemed
4 to admit the violation, unless it does so by its terms. Before any
5 consent judgment entered into pursuant to this section shall be
6 effective, it must be approved by the district court and an entry
7 made in the manner required for making an entry of judgment. After
8 such approval is received, any breach of the conditions of such
9 consent judgment shall be treated as a violation of a court order,
10 and shall be subject to all the penalties provided by law therefor.

11 D. In any action brought by the Attorney General or a district
12 attorney, the court may:

13 1. Make such orders or judgments as may be necessary to prevent
14 the use or employment by a person of any practice declared to be a
15 violation of this act;

16 2. Make such orders or judgments as may be necessary to
17 compensate any person for damages sustained;

18 3. Enjoin any person from engaging in solicitation of
19 charitable contributions in this state;

20 4. Revoke the registration of a charitable organization,
21 professional fundraiser or professional solicitor;

22 5. Enter any order that is appropriate in a criminal
23 prosecution of crimes identified in this act or any other state law;
24 and

1 6. Grant other appropriate relief.

2 E. When an action is filed under this act by the Attorney
3 General or a district attorney, no action seeking an injunction or
4 declaratory judgment shall be filed in any other district in this
5 state based upon the same transaction or occurrence, series of
6 transactions or occurrences, or allegations that form the basis of
7 the first action filed.

8 F. When the Attorney General or a district attorney has reason
9 to believe that a person has engaged in, is engaging in or is about
10 to engage in any practice declared to be in violation of this act
11 and he or she believes it to be in the public interest that an
12 investigation should be made to ascertain whether a person has in
13 fact engaged in, is engaging in or is about to engage in any such
14 practice, he or she may execute in writing and cause to be served
15 upon any such person who is believed to have information,
16 documentary material or physical evidence relevant to the alleged
17 violation an investigative demand requiring such person to furnish,
18 under oath or otherwise, a report in writing setting forth the
19 nonprivileged relevant facts and circumstances of which the person
20 has knowledge, or to appear and testify, or to produce relevant
21 nonprivileged documentary material or physical evidence for
22 examination at such reasonable time and place as may be stated in
23 the investigative demand, concerning the solicitation of charitable
24 contributions.

1 G. To accomplish the objectives and to carry out the duties
2 prescribed by this act, the Attorney General or district attorney,
3 in addition to other powers conferred on him or her by this act or
4 the laws of this state, may issue subpoenas or other process to any
5 person and conduct hearings in aid of any investigation or inquiry,
6 administer oaths and take sworn statements under penalty of perjury,
7 and serve and execute in any county, search warrants; provided, that
8 none of the powers conferred by this act shall be used for the
9 purpose of compelling any natural person to furnish testimony or
10 evidence that might tend to incriminate him or her or subject him or
11 her to a penalty; and provided further, that information obtained
12 pursuant to the powers conferred by this act shall not be made
13 public or disclosed by the Attorney General, district attorney or
14 their employees unless otherwise provided under this act.

15 H. In addition to any other penalties provided under this act,
16 a charitable organization, professional fundraiser, or professional
17 solicitor that is found to be in violation of the Oklahoma
18 Solicitation of Charitable Contributions Act in a civil action or
19 who willfully violates the terms of any injunction or court order
20 issued pursuant to the Oklahoma Solicitation of Charitable
21 Contributions Act shall pay a civil penalty of not more than Ten
22 Thousand Dollars (\$10,000.00) per violation, taking into account the
23 nature and severity of the violation and the benefit provided to the
24 public by the violator, along with the need for protecting

1 contributors and donors. For the purposes of this section, the
2 district court issuing an injunction shall retain jurisdiction, and
3 in such cases, the Attorney General, acting in the name of the
4 state, or a district attorney may petition for recovery of civil
5 penalties.

6 I. In administering and pursuing actions under this act, the
7 Attorney General and a district attorney are authorized to sue for
8 and collect reasonable expenses, attorney fees, and investigation
9 fees as determined by the court. Civil penalties or contempt
10 penalties sued for and recovered by the Attorney General or a
11 district attorney shall be used for the furtherance of their duties
12 and activities under this act.

13 J. In addition to other penalties imposed by this act, any
14 person convicted in a criminal proceeding of committing an act
15 prohibited in paragraph 1, 3 or 5 of subsection A of this section,
16 shall be guilty of a felony and upon conviction thereof shall be
17 subject to a fine not to exceed Ten Thousand Dollars (\$10,000.00) or
18 imprisonment in the custody of the Department of Corrections for not
19 more than five (5) years, or by both such fine and imprisonment.

20 SECTION 2. This act shall become effective November 1, 2016.

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