

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2363

By: Burns

COMMITTEE SUBSTITUTE

An Act relating to charitable organizations; creating disclosure requirements for solicitation materials; amending 18 O.S. 2011, Section 552.3, as amended by Section 1, Chapter 4, O.S.L. 2013 (18 O.S. Supp. 2020, Section 552.3), which relates to registration; modifying required information; amending 18 O.S. 2011, Section 552.14a, which relates to violations of the Oklahoma Solicitation of Charitable Contributions Act; adding certain violation; updating references; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 552.23 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Every charitable organization and professional fundraiser that is required to be registered with the Office of the Secretary of State pursuant to Sections 552.3 and 552.7 of Title 18 of the Oklahoma Statutes shall disclose all of the following information at the time of solicitation:

1 1. The legal name of the charitable organization, any trade
2 names that the charitable organization uses, any other name the
3 organization may be identified or known as, and any distinctive
4 names the organization uses for purposes of solicitation of
5 contributions, as the name(s) appears on file with the Office of the
6 Secretary of State, on whose behalf the solicitation is being made;

7 2. Upon request, the program(s) the funds solicited will be
8 used to support;

9 3. Upon request, the approximate percentage of contributions
10 solicited in a fiscal year to remain in Oklahoma; and

11 4. Upon request, the process to obtain for free a copy of the
12 charitable organization's registration and financial information
13 from the Office of the Secretary of State.

14 B. In addition to the information required by subsection A of
15 this section, every written or printed solicitation shall
16 prominently state the following disclosure statement verbatim:

17 "A copy of [insert name of the charitable organization as it
18 appears on file with the Office of the Secretary of State's]
19 registration with the State of Oklahoma and financial information
20 are available for free from the Oklahoma Office of the Secretary of
21 State. Registration is not an endorsement by the State."

22 The disclosure statement shall be prominently displayed by use
23 of one or more of the following: underlining, a border, or bold
24 type. Where the solicitation consists of more than one piece, the

1 disclosure statement shall be displayed on a prominent part of the
2 solicitation materials. If the solicitation occurs on a website,
3 the disclosure statement must be prominently displayed on any
4 webpage that identifies a mailing address where contributions are to
5 be sent, identifies a telephone number to call to process
6 contributions, or provides for online processing of contributions.

7 SECTION 2. AMENDATORY 18 O.S. 2011, Section 552.3, as
8 amended by Section 1, Chapter 4, O.S.L. 2013 (18 O.S. Supp. 2020,
9 Section 552.3), is amended to read as follows:

10 Section 552.3 A. No charitable organization that is either
11 located within this state or that is soliciting contributions from
12 any person in this state, except those specifically exempt under
13 Section 552.4 of this title, shall solicit contributions until the
14 charitable organization shall have registered with the Office of the
15 Secretary of State and filed information, as required by the
16 Oklahoma Solicitation of Charitable Contributions Act, on forms
17 approved by that office. At the time of registration, each
18 charitable organization, except as otherwise provided in this
19 section, shall pay a fee of Sixty-five Dollars (\$65.00). The first
20 Fifteen Dollars (\$15.00) of the fee shall be deposited to the credit
21 of the General Revenue Fund of the State Treasury. Thirty-four
22 Dollars (\$34.00) of the fee shall be deposited to the credit of the
23 Attorney General Charitable Solicitations Enforcement Revolving Fund
24 and the remaining Sixteen Dollars (\$16.00) shall be deposited to the

1 credit of the Secretary of State Charitable Solicitations Revolving
2 Fund. Provided, a charitable organization whose contributions
3 during the previous registration period did not exceed Ten Thousand
4 Dollars (\$10,000.00) or if this is the charitable organization's
5 first registration period and the anticipated contributions for the
6 current registration period are not expected to exceed Ten Thousand
7 Dollars (\$10,000.00), shall pay a fee of Fifteen Dollars (\$15.00) of
8 which Ten Dollars (\$10.00) shall be deposited to the credit of the
9 Attorney General Charitable Solicitations Enforcement Revolving Fund
10 and the remaining Five Dollars (\$5.00) shall be deposited to the
11 credit of the Secretary of State Charitable Solicitations Revolving
12 Fund. Each charitable organization that is required to register
13 under this act shall register annually with the Secretary of State
14 by the date that the charitable organization files its Form 990 or
15 by the date, plus extensions, that it is required to file its Form
16 990, whichever occurs first. Registration shall not be deemed to
17 constitute an endorsement by the state or by the Secretary of State
18 of any charitable organization or the proposed uses of the funds
19 solicited. The information so filed shall be available to the
20 general public. The charitable organization shall provide the
21 following information on the required forms:

22 1. The legal name of the charitable organization, any trade
23 names that the charitable organization uses, any other name the
24 organization may be identified or known as, and any distinctive

1 names the organization uses for purposes of solicitation of
2 contributions;

3 2. The mailing address of the charitable organization which can
4 be a P.O. box address;

5 3. The name and mailing address of:

6 a. each officer, director, trustee, and/or equivalent, and

7 b. each salaried executive employee of the charitable
8 organization;

9 4. The name and mailing address of:

10 a. each professional fundraiser or professional solicitor
11 that will have custody of the contributions, and

12 b. each person associated with a professional fundraiser,
13 professional solicitor or charitable organization that
14 is directly responsible for the payment and
15 distribution of funds collected;

16 5. The name and mailing address of each professional
17 fundraising counsel utilized by the charitable organization;

18 6. For charitable organizations that register for the first
19 time, a statement of whether or not the charitable organization
20 believes contributions for the first year of registration will
21 exceed Ten Thousand Dollars (\$10,000.00);

22 7. The purposes for which the contributions solicited are to be
23 used;

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1 8. The approximate percentage of contributions solicited in a
2 fiscal year to remain in Oklahoma;

3 9. For the initial registration of a newly formed charitable
4 organization, a copy of a letter from the Internal Revenue Service,
5 or other evidence, showing that such organization is exempt from
6 federal income taxation; or, for a charitable organization that has
7 not applied for federal income tax exemption with the Internal
8 Revenue Service or is not required to apply for federal income tax
9 exemption, evidence showing that said charitable organization is
10 organized in any state or jurisdiction as a not-for-profit entity;

11 ~~9.~~ 10. An identification of the period of time or periods
12 during which solicitations are to be conducted, which may be
13 specific periods, estimated or projected time frames, or continuous,
14 and which may involve different periods for different types of
15 solicitations by the same charitable organization;

16 ~~10.~~ 11. An identification of the specific method or methods of
17 solicitation utilized by the charitable organization and its agents;

18 ~~11.~~ 12. Whether the solicitation is to be conducted by the
19 following for or on behalf of the charitable organization:
20 professional fundraisers, employees or volunteers of the charitable
21 organization, and/or others; and

22 ~~12.~~ 13. If the solicitation is to be conducted in whole or in
23 part by professional fundraisers, the names and addresses of each
24 professional fundraiser involved in the solicitation; the basis of

1 payment or other consideration payable to each professional
2 fundraiser and the nature of the arrangements between the charitable
3 organization and each professional fundraiser, the specific amount,
4 formula or percentage of compensation, or property of any kind or
5 value to be paid or provided to each professional fundraiser; and if
6 payment is based on a percentage, the amount of compensation as a
7 percentage of the total contributions received, and the net amount
8 of the total contributions received (total contributions received,
9 less expenses of solicitation other than amounts payable to any
10 professional fundraiser).

11 B. In addition to the required information in subsection A of
12 this section, every charitable organization subject to the
13 provisions of the Oklahoma Solicitation of Charitable Contributions
14 Act that has solicited contributions during the previous fiscal year
15 shall provide the following information:

16 1. The gross amount of the contributions, gifts, grants and
17 other similar amounts received by the charitable organization;

18 2. The total Program Service Expenses of the charitable
19 organization;

20 3. The total Management and General Expenses of the charitable
21 organization;

22 4. The total Fundraising Expenses of the charitable
23 organization; ~~and~~

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1 5. The actual percentage of contributions solicited that
2 remained in Oklahoma;

3 6. The actual percentage of funds raised spent on a commission
4 or fee to a professional fundraiser; and

5 7. The aggregate amount paid, or payable, to professional
6 fundraisers and professional fundraising counsel.

7 C. Any registration form required to be filed under this
8 section shall be executed by signature, without more, of the person
9 or persons signing the form, in which case the signature or
10 signatures shall constitute the affirmation of the signatory, under
11 penalty of perjury, that the signature is that person's act and deed
12 or the act and deed of the organization, and that the facts stated
13 therein are true.

14 D. If a charitable organization that is registered with the
15 Secretary of State to solicit contributions in this state changes
16 its name or the mailing address of its principal office, or plans to
17 engage in the solicitation of contributions using a name that is not
18 listed on its registration form, then it shall, prior to soliciting
19 any funds in this state using any such name, file with the Secretary
20 of State a statement executed by an authorized officer of the
21 organization setting forth any new name and mailing address along
22 with a fee of Twenty-five Dollars (\$25.00). Such fee shall be
23 deposited to the credit of the General Revenue Fund of the State
24 Treasury.

1 E. 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 fundraisers 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 3. AMENDATORY 18 O.S. 2011, Section 552.14a, is
8 amended to read as follows:

9 Section 552.14a A. Applicable to charitable organizations,
10 professional fundraisers and professional solicitors, the following
11 shall constitute violations of this act:

12 1. Knowingly making any false material statement or
13 representation on a registration application;

14 2. Using the name of a person when soliciting contributions or
15 in an advertisement, brochure, stationery or correspondence, without
16 the consent or approval in writing of such person, other than an
17 officer, director or trustee of the charitable organization by or
18 for which contributions are solicited. This paragraph shall not
19 apply to the use of the name of a person that has contributed to or
20 sponsored an event or program of the charitable organization in a
21 report, brochure, program or listing of donors, contributors,
22 sponsors, or supporters issued or published by a charitable
23 organization. This paragraph shall not apply to the use of a public
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1 figure's name and/or likeness truthfully and in good faith, so long
2 as such use does not imply a false endorsement;

3 3. Knowingly using, in connection with solicitation of
4 contributions for the purpose of deceiving the public, a name
5 similar to other charitable organizations, professional fundraiser,
6 professional solicitor or government agency or political
7 subdivision;

8 4. Failing to register as required pursuant to ~~Sections~~ Section
9 552.3, 552.7 or 552.9, as applicable, of ~~Title 18 of the Oklahoma~~
10 ~~Statutes~~ this title unless otherwise exempted by this act;

11 5. Employing in any solicitation or collection of contributions
12 for a charitable organization any device, scheme or artifice to
13 defraud or for obtaining money or property by means of any false
14 pretense, representation or promise; ~~and~~

15 6. Failing or refusing to supply requested information as
16 required by Section 552.9 of ~~Title 18 of the Oklahoma Statutes~~ this
17 title; and

18 7. Failing or refusing to supply information as required by
19 Section 1 of this act.

20 B. The Attorney General or a district attorney may bring an
21 action:

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

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

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

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

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

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

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

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

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

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

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

16 3. Enjoin any person from engaging in solicitation of
17 charitable contributions in this state;

18 4. Revoke the registration of a charitable organization,
19 professional fundraiser or professional solicitor;

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

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

7 F. When the Attorney General or a district attorney has reason
8 to believe that a person has engaged in, is engaging in or is about
9 to engage in any practice declared to be in violation of this act
10 and he or she believes it to be in the public interest that an
11 investigation should be made to ascertain whether a person has in
12 fact engaged in, is engaging in or is about to engage in any such
13 practice, he or she may execute in writing and cause to be served
14 upon any such person who is believed to have information,
15 documentary material or physical evidence relevant to the alleged
16 violation an investigative demand requiring such person to furnish,
17 under oath or otherwise, a report in writing setting forth the
18 nonprivileged relevant facts and circumstances of which the person
19 has knowledge, or to appear and testify, or to produce relevant
20 nonprivileged documentary material or physical evidence for
21 examination at such reasonable time and place as may be stated in
22 the investigative demand, concerning the solicitation of charitable
23 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
11 or 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 4. This act shall become effective November 1, 2021.
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