



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1115 (Substitute S-3 as passed by the Senate)

Sponsor: Senator Tom George

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 8-31-04

RATIONALE

Michigan's Charitable Organizations and Solicitations Act contains licensure and reporting requirements for all organizations and persons soliciting or collecting contributions for charitable purposes that collect more than \$8,000 in a year from fund-raising activities conducted by volunteers. The Act has not been significantly revised since 1975, and the \$8,000 threshold has not been increased to reflect the inflation that has occurred in the past 30 years. Some people believe that small charities might be burdened by complying with the Act, or might be violating the Act because they are not aware of its requirements. It also has been suggested that there is a need for greater enforcement of the Act.

CONTENT

The bill would amend the Charitable Organizations and Solicitations Act to do the following:

- **Require charitable organizations and professional fund-raisers to register with the Attorney General (rather than be licensed by the Attorney General), and provide for the registration of vendors.**
- **Establish registration fees and a late fee.**
- **Require a charitable organization or professional fund-raiser to include financial information and information about its directors, officers, and employees with its registration.**
- **Allow a charitable organization to receive up to \$25,000 (rather than \$8,000) in a fiscal year before it is**

subject to the registration and reporting requirements.

- **Exempt school booster groups and parent-teacher organizations and public schools, nonpublic schools, preschools, and institutions of higher education from the registration and reporting requirements.**
- **Create the "Charitable Organizations and Solicitations Fund" for the deposit of registration fees, fines, and penalties, and require the Attorney General to spend money in the Fund, upon appropriation, to administer and enforce the Act.**
- **Require a charitable organization to report on its previous fiscal year when renewing its registration, and require professional fund-raisers to file financial reports.**
- **Require registrants to retain records for at least three years.**
- **Prohibit a number of activities involving misrepresentations.**
- **Increase the maximum fine for a misdemeanor under the Act from \$500 to \$5,000, and make certain violations a felony punishable by imprisonment for up to five years and/or a maximum fine of \$20,000.**
- **Require a charitable organization, professional fund-raiser, or vendor to disclose certain information when requesting a contribution.**
- **Provide for a civil penalty of up to \$10,000 payable to the State for violations.**
- **Authorize the Attorney General to issue a cease and desist order and to accept an assurance of discontinuance.**

- **Allow a person injured by a violation to pursue a remedy under the Michigan Consumer Protection Act.**
- **Provide that an oral pledge or promise to make a contribution would be unenforceable if it resulted from a telephone or door-to-door solicitation.**
- **Provide that a person who solicited contributions, conducted a fund-raising event, or conducted a sales promotion or campaign for a charitable purpose would be subject to the Act.**
- **Require the Attorney General to report to the Legislature.**

Charitable Organizations

Definition. The bill would redefine "charitable organization" as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (IRC) or a person whose purpose, structure, or activities are described in that section. The term would not include the following:

- A Federal, State, or local unit of government, or a subdivision, agency, or instrumentality of Federal, State, or local government.
- A religious organization incorporated or established for religious purposes whether or not the organization is exempt under or described in Section 501 (c)(3) of the IRC.

The present definition refers to a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization that solicits or obtains contributions solicited from the public for charitable purposes. The definition excludes a tax-exempt religious organization if none of its net income inures to the direct benefit of any individual; a candidate or committee; and a political party qualified to be on the general election ballot.

The bill would define "charitable purpose" as a purpose described in Section 501(c)(3) of the IRC.

Registration. Currently, a charitable organization that is not exempt under the Charitable Organizations and Solicitations Act and that solicits or intends to solicit, or receives or intends to receive, contributions by any means, must apply to be licensed by

the Attorney General. The bill, instead, would require the charitable organization to register with the Attorney General. A charitable organization would have to have at least two directors, trustees, or members.

A registration would have to include generally the same information that is currently required on a license application, as well as the following:

- Whether the organization or any of its officers, directors, or principals presently was, or ever had been, enjoined, fined, convicted, or subject to any other sanction or penalty as a result of soliciting contributions in any state or country, or whether such proceedings were pending.
- Whether an officer, director, or employee of the organization owned a 10% or greater interest in a professional fund-raiser, or was an agent or contractor for a professional fund-raiser, while the fund-raiser was under contract with the organization to solicit funds.
- Financial information necessary for the Attorney General to prepare reports to the Legislature or the public, if the information were not included on the organization's Internal Revenue Service form (IRS form 990, 990-EZ, or 990-PF), or if the organization did not have to file an IRS form.

In addition, the charitable organization would have to provide with its registration a copy of its fully and properly completed IRS form for the previous year, including all schedules, attachments, and exhibits, except the schedule of contributors. An organization that did not file an IRS form would have to prepare a pro forma form for filing with the registration.

An organization also would have to file with its registration financial statements that had been audited by an independent certified public accountant if the amount of money the organization received during its fiscal year reported on its Federal tax return were \$500,000 or more. If the reported contributions were \$200,000 or more but less than \$500,000, the organization would have to provide financial statements reviewed or audited by an independent CPA.

Currently, the Attorney General may not accept license applications from a charitable

organization located in another state or country unless it has designated a resident agent in this State for the purpose of acceptance of process issued by any court. He bill would delete this provision.

Fee. Currently, there is no charge for a license issued under the Act. Under the bill, a charitable organization would have to pay the following registration fee with its registration or renewal, based on the amount of gross receipts from all sources in the fiscal year reported:

- \$20 if gross receipts were at least \$25,000 but under \$100,000.
- \$50 if gross receipts were at least \$100,000 but under \$500,000.
- \$100 if gross receipts were at least \$500,000 but under \$1 million.
- \$200 if gross receipts were \$1 million or more.

If gross receipts were under \$25,000, there would be no fee.

If an organization were the parent charitable organization of one or more subsidiaries that did not meet the combined registration requirements under the Act, the parent organization could pay a single registration fee of \$300 for itself and all of its subsidiaries.

Reporting & Renewal. A registered charitable organization would have to report on its previous fiscal year and renew its registration within six months after the close of its fiscal year. The organization's registration would expire if its renewal registration and report were not received within 18 months after the end of the fiscal year reported on the organization's most recently filed registration form, unless the Attorney General extended the registration. The Attorney General would have to extend an organization's time for filing the report or registration if the organization received an extension of time to file its IRS form.

Registration Exceptions. Currently, the Act's licensure and reporting requirements do not apply to a person who does not intend to solicit and receive and does not actually receive contributions over \$8,000 during any 12-month period if all of its fund-raising activities are carried on by people who are unpaid for their services. The bill would

raise the threshold to \$25,000 for registration and reporting.

The Act also exempts an educational institution certified by the State Board of Education. The bill, instead, would exempt a public school, nonpublic school, preschool, or institution of higher education formed under the laws of this State. The bill also would exempt a booster group or a parent-teacher organization that is recognized by the public school, nonpublic school, or school district that it is organized to support.

Professional Fund-Raisers

The Act prohibits a person from acting as a professional fund-raiser for a charitable organization or charitable purpose before applying for a license with the Attorney General or after the expiration or cancellation of a license. An applicant must file a \$10,000 bond.

The bill, instead, would prohibit a person from soliciting or receiving donations for a charitable purpose or on behalf of a charitable organization or religious organization, before registering with the Attorney General, or after the expiration, suspension, revocation, or denial of a registration. The person would have to pay a \$200 fee. A professional fund-raiser that received, had custody of, or had access to funds solicited in Michigan for a charitable organization would have to include a \$25,000 bond with a registration; or the Attorney General could accept an irrevocable letter of credit in lieu of a bond.

A registration form would have to include specified information, including where and when the professional fund-raiser was legally established and the form of its organization. The registration form would have to include the name and address of all officers and directors if the organization were incorporated, or the name and address of the owner, all members and managers, or all partners, if it were a sole proprietorship, limited liability company, or partnership.

The registration form also would have to include the following:

- The name, address, and telephone number of anyone with direct responsibility for solicitation activity in this State.

- Whether the professional fund-raiser or any of its officers, directors, or principals was currently, or ever had been, enjoined, fined, convicted, or subject to any other sanction or penalty as a result of soliciting contributions in any state or country.
- A concise description of the principal methods by which the professional fund-raiser was or would be soliciting contributions.
- The name, address, and telephone number of any charitable organization for which the fund-raiser had agreed to solicit funds or provide services as a professional fund-raiser on any campaign in this State.
- A copy of any agreement between the professional fund-raiser and a charitable organization, and any subcontract between the professional fund-raiser and a person who would act as a fund-raiser on behalf of a charitable organization, religious organization, or any other person soliciting for a charitable purpose.
- Whether an officer, director, or employee of a charitable organization owned a 10% or greater interest in the professional fund-raiser, or was an agent or contractor for the fund-raiser, while the professional fund-raiser was under contract with that charitable organization to solicit funds, and whether that information had been fully disclosed to the organization's board of directors or other governing body.

Within 90 days after a solicitation campaign was completed, or on the anniversary of the beginning of a campaign that lasted more than one year, a professional fund-raiser that solicited contributions in Michigan on behalf of a charitable organization would have to file with the Attorney General a financial report for the campaign, including gross revenue and an itemization of all expenses incurred on the organization's behalf.

The bill would define "professional fund-raiser" as a person, including a subcontractor, who for compensation or other consideration conducts, manages, or carries on a drive or campaign to solicit contributions for or on behalf of a charitable organization or religious organization; a person who engages in the business of or holds himself or herself out as independently engaged in the business of soliciting

contributions for charitable purposes; or a bona fide officer or employee of a charitable organization if his or her salary or other compensation is based or computed on the amount of money he or she raises or is expected to raise.

A person would not be a professional fundraiser if his or her service to a charitable or religious organization were limited to providing training, advice, research, preparation of grant or contract applications, or design, writing, or production of solicitation materials if all of the following were met:

- All materials were subject to review and acceptance or rejection by the charitable or religious organization.
- All grants were submitted to the grantor by the charitable or religious organization.
- The person did not directly solicit any donors.
- The person's compensation was not directly or indirectly based or computed on the amount of money the person raised or was expected to raise.

"Professional fund raiser" is presently defined in the Act as a person who for compensation or other consideration plans, conducts, manages, or carries on a drive or campaign of soliciting contributions for or on behalf of a charitable organization, religious organization, or any other person; or who engages in the business of or holds himself out as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization is not a professional fund raiser unless his or her salary or other compensation is computed on the basis of funds to be raised or actually raised.

Registration Effectiveness; Suspension

Currently, the Attorney General must issue a license to a charitable organization within 30 days if its application and supporting material conform to the requirements of the Act and rules, unless the organization has materially misrepresented or omitted required information, or is violating or has violated the Act or rules. Under the bill, a charitable organization's or professional fund-raiser's registration would be effective immediately when the Attorney General

received the registration, information, and fees required under the Act, unless the organization or fund-raiser had made a misrepresentation or omitted required information, or was violating or had violated the Act or rules, or an officer, director, or principal of the fund-raiser was or had been enjoined, fined, convicted, or otherwise sanctioned or penalized for soliciting contributions. The Attorney General would have to notify the charitable organization or professional fund-raiser of any omissions or deficiencies in its registration or renewal within 30 days after receipt.

The Act authorizes the Attorney General to suspend or revoke a license after notice and an opportunity for a hearing, and provides for license suspensions on an emergency basis. If an emergency suspension is issued, the Attorney General is required to hold a hearing on it within 48 hours to determine if the license should be revoked. Under the bill, the Attorney General could suspend or rescind a registration, and the hearing after an emergency suspension would be on whether the suspension should continue.

Under the bill, the Administrative Procedures Act would apply to a notice given or a hearing held under these provisions. The charitable organization or professional fund-raiser would have to have a reasonable opportunity at the hearing to rebut the Attorney General's allegations and to produce evidence to show compliance with the Charitable Organizations and Solicitations Act or rules promulgated under it. At a hearing on an emergency suspension, the Attorney General would have the burden of proof in establishing noncompliance with the Act or a rule and that the public health, safety, or welfare required the emergency suspension.

Vendors

The bill would define "vendor" as a person other than a charitable organization who conducts charitable sales promotions or solicitation campaigns through vending machines, honor boxes, novelty machines, or similar devices, who represents that it benefits a charitable organization or a charitable purpose through a portion of the proceeds, a fixed dollar amount, or any other manner.

A vendor would not be allowed to conduct a charitable sales promotion or solicitation campaign in which it used the name of a charitable organization that was not registered in the State.

A vendor would be required to display prominently the following information on each vending machine, honor box, novelty machine, or similar device through which the vendor conducted a charitable sales promotion or solicitation campaign:

- The name of the vendor and the fact that the vendor owned the machine, box, or device.
- The percentage of sales, if any, that a charitable organization would receive.
- The amount that a charitable organization would receive regardless of sales, if any.

Late Fee

A person required to register under the Act would be subject to a late fee if any of the following occurred:

- A charitable organization failed to file a report on or before the date its registration expired, unless an extension had been granted.
- A professional fund-raiser failed to file a report within 90 days after a solicitation campaign was completed, or on the anniversary of the commencement of a solicitation campaign lasting more than one year.
- A charitable organization or professional fund-raiser failed to cure a defect in its registration or annual report within 30 days after notice by the Attorney General that a correction or additional information was required.

If a charitable organization or professional fund-raiser were subject to a late fee and the failure to file or cure continued for more than seven days, the charitable organization would have to pay a late fee to the Attorney General in the amount of \$1 per day for each day the failure continued beyond seven days, or an amount equal to 20% of its registration fee, whichever was greater. The attorney general could waive the late fee if it were the first one charged to a charitable organization or professional fund-raiser.

Disclosure

Before making an oral request for a contribution and at the same time as a written request, the charitable organization, professional fund-raiser, or vendor soliciting the contribution would have to disclose the name and location by city and state of each charitable organization on whose behalf the solicitation was made. If a solicitation were made by direct personal contact, the information also would have to be disclosed prominently on any written material shown to the person solicited. If a solicitation were made by radio, television, telephone, or any other means not involving personal contact, the information would have to be disclosed prominently in the solicitation.

The information also would have to be disclosed prominently on any invoices, bills, fulfillment requests, letters, pamphlets, or brochures used to obtain payment of a pledge or promise to make a contribution.

In addition, a professional fund-raiser that orally solicited contributions would have to disclose its name as filed with the Attorney General and a statement that the solicitation was being conducted by a professional fund-raiser.

Record-Keeping

The bill would require a charitable organization, professional fund-raiser, or vendor to maintain, for at least three years, accurate and detailed records to provide the information required under the Act. All records would be open to the Attorney General at all reasonable times.

A charitable organization or person, including a vendor, commercial coventurer, or professional fund-raiser, that solicited contributions, raised funds, or conducted sales promotions for a charitable purpose, would have to maintain the original records or true copies of the records pertaining to all money or other property collected from Michigan residents and pertaining to the disbursement of that money or property. The records would have to be preserved for at least three years.

(A commercial coventurer would be a person who conducts charitable sales promotions. A person who enters into a licensing arrangement in which a charitable

organization allows the person to use its name for a fee would be a commercial coventurer.)

Currently, information filed with the Attorney General is a public record open to inspection. The bill provides, instead, that a registration, annual report, or other information required to be provided to or filed with the Attorney General under the Act would be a public record subject to the Freedom of Information Act. A schedule of contributors or other list of donors to a charitable organization provided to or filed with the Attorney General, however, would be exempt from disclosure.

In addition, a file in the Attorney General's office regarding a closed enforcement action or a settlement in a civil case under the Charitable Organizations and Solicitations Act would be open to public inspection and copying. The bill would prohibit a requirement of confidentiality or sealing of records as a condition of settlement of an enforcement or civil action under the Act unless it was limited to protecting information about a donor or other private individual that was exempt from disclosure under the Freedom of Information Act.

Prohibited Conduct

The bill would prohibit a charitable organization, professional fund-raiser, commercial coventurer, vendor, or person who solicited funds, or an employee or agent of such an entity or person, from engaging in certain activities. These include the following:

- Engaging in a method, act, or practice in violation of the Act or a rule promulgated under it, any restriction, condition, or limitation placed on a registration, or a final order or cease and desist order.
- Representing or implying that a person soliciting contributions or other funds for a charitable organization had a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person did not have.
- Representing or implying that a contribution was for or on behalf of a charitable organization, or using an emblem, device, or printed material belonging to or associated with a

- charitable organization, without first obtaining its written authorization.
- Making a misrepresentation to a person in any manner that would lead him or her to believe that a person on whose behalf a solicitation effort was conducted was a charitable organization or that the proceeds of a solicitation effort were for charitable purposes.
- Representing or implying that the amount or percentage of a contribution that a charitable organization would receive for a charitable program after solicitation costs were paid, was greater than the amount or percentage that the organization actually would receive.
- Diverting or misdirecting contributions.
- Falsely representing that a donor would receive special benefits or treatment or that failure to make a contribution would result in unfavorable treatment.
- Falsely representing that a person being solicited or a family member or associate of the person had previously made or agreed to make a contribution.
- Employing any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.
- Soliciting contributions, conducting a sales promotion, or otherwise operating as a charitable organization, professional fund-raiser, or vendor unless the information required under the Act was filed with the Attorney General.
- Failing to file the information and reports required under the Act or failing to provide requested information to the Attorney General in a timely manner.
- Failing to comply with a person's request to remove, or not to share, the person's personal information, including his or her name, address, telephone number, or financial account information, from any list used by a charitable organization or professional fund-raiser for solicitation purposes; or selling, leasing, licensing, sharing, or otherwise allowing any third-party access to any of the person's personal information, except as specifically required by law or court order.
- Soliciting or receiving a contribution or conducting a charitable sales promotion for, or selling memberships in this State in, a charitable organization subject to the Act if that organization were not registered under the Act.

- Submitting any of the following to the Attorney General in the course of registration: a document or statement that purported to be signed, certified, attested to, approved by, or endorsed by a person if that signature, certification, attestation, approval or endorsement were not genuine or were not given by that person; or a document containing any materially false statement.
- Violating the terms of an assurance of discontinuance or similar agreement accepted by the Attorney General and filed with the court under the Act.
- For a charitable organization, failing to verify that all professional fund-raisers with which the organization had contracted for fund-raising services were currently registered under the Act.
- For a professional fund-raiser, failing to provide verification of current registration status and inform any charitable organization with which it had contracted for fund-raising services, of any changes affecting its registration or bonding, in writing, within 14 days of the change.
- Submitting financial statements, including IRS form 990 and any other financial report required under the Act, that contained any misrepresentation with respect to the organization's activities, operations, or use of charitable assets.

A person who violated this provision would be subject to one or more of the following penalties:

- Placement of a restriction or condition on the person's registration.
- Denial, suspension, or revocation of a registration.
- A civil fine of up to \$10,000 to be paid to the Attorney General.
- A requirement to take some type of affirmative action, including the payment of restitution.

Before suspending or revoking a registration, the Attorney General would have to give the person an opportunity for a hearing in accordance with the Administrative Procedures Act.

Under the bill, "misrepresentation" would include an affirmative misrepresentation; a false statement; or an omission of or failure to disclose a material fact that was not obvious to the person to whom a statement or representation was made, if the omission

or failure to disclose tended to mislead that person.

Injunctive Action & Penalties

As currently provided, the Attorney General could bring an action to enjoin an act or practice prohibited under the Act. Under the bill, after finding that a person had engaged in or was engaging in a prohibited act or practice, the court could enter any necessary order or judgment, including an injunction, an order of restitution, or an award of reasonable attorney fees and costs. A court also could award to the State a maximum civil penalty of \$10,000 for each violation of the Act. A court would not have to find irreparable harm to enter an injunction, but would need to find only a violation of the Act or that an injunction would promote the public interest.

A charitable organization, fund-raiser, or any other person who violated an injunction or other order issued under these provisions, in addition to any other remedy, would have to pay to the State a civil penalty of up to \$10,000 for each violation. The penalty could be recovered in a civil action brought by the Attorney General.

In addition to any other action authorized by law, the Attorney General could issue a cease and desist order, issue a notice of intended action, or take other action in the public interest. The Attorney General could accept an assurance of discontinuance of any method, act, or practice in violation of the Act from any person alleged to be engaged in that activity. An assurance of discontinuance could include a stipulation for the voluntary payment of the costs of investigation, for an amount to be held in escrow pending the outcome of an action or as restitution to an aggrieved person, or for the voluntary payment to another person if in the public interest. At any time, the Attorney General could reopen an action resolved by an assurance of discontinuance for enforcement by a court or for further proceedings in the public interest.

Currently, it is a misdemeanor punishable by a maximum fine of \$500 and/or imprisonment for up to six months, to violate the Act; solicit and receive public donations or sell memberships in the State for and on behalf of any organization, institution, or association subject to the Act

and not licensed under it; or solicit funds under a license and thereafter divert them to purposes other than those for which they were contributed. The bill instead, would make it a misdemeanor, punishable by a maximum fine of \$5,000 and/or up to six months imprisonment for each violation, to do any of the following:

- Knowingly misrepresent or mislead any person in any manner to believe that a person on whose behalf a solicitation effort was conducted was a charitable organization or that the proceeds of a solicitation effort were for charitable purposes.
- Knowingly divert or misdirect contributions to a purpose or organization other than for which the funds were contributed or solicited.
- Knowingly misrepresent that funds solicited or contributed would be used for a specific charitable purpose.
- Employ any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.
- Knowingly misrepresent that a donor would receive special benefits or treatment or that failure to make a contribution would result in unfavorable treatment.
- Knowingly fail to file any information or report required under the Act.

If a person engaged in one of the first four activities listed above, and the amount of money fraudulently collected or wrongfully diverted exceeded \$1,000 in the aggregate, the offense would be a felony punishable by imprisonment for up to five years and/or a maximum fine of \$20,000.

The misdemeanor penalty would apply to a person who did any of the following and wrongfully obtained more than \$1,000 and less than \$5,000 in the aggregate as the result:

- Knowingly misrepresented that a person soliciting contributions or other funds for a charitable organization had a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person did not have.
- Knowingly used a name, symbol, or statement so closely related or similar to

one used by another charitable organization or governmental agency that use of that name, symbol or statement would be confusing or misleading.

- Knowingly used a bogus, fictitious, or nonexistent organization, address, or telephone number in any solicitation.
- Knowingly misrepresented or misled any person in any manner to believe that a person on whose behalf a solicitation effort was conducted was a charitable organization or that the proceeds of a solicitation effort were for charitable purposes if that were untrue.
- Knowingly misrepresented or misled any person in any manner to believe that a person or governmental agency sponsored, endorsed, or approved a solicitation effort if that person or agency had not given written consent to the use of the person's or agency's name for that purpose.
- Knowingly misrepresented that the amount or percentage of a contribution that a charitable organization would receive for a charitable program after costs of solicitation were paid was greater than the amount or percentage the organization would actually receive.
- Knowingly solicited contributions, conducted a sales promotion, or otherwise operated in the State as a charitable organization, professional fund-raiser, or vendor unless the information required under the Act was filed with the Attorney General.
- Aided, abetted, or otherwise permitted a person to solicit contributions or conduct a sales promotion in the State unless that person had complied with the requirements of the Act.
- Knowingly solicited or received a contribution, conducted a charitable sales promotion, or sold memberships in the State for or on behalf of any charitable organization subject to the Act that was not registered under it.

If the person engaging in the above-listed practices wrongfully obtained more than \$5,000, he or she would be guilty of a felony punishable by imprisonment for up to five years or a maximum fine of \$20,000, or both, for each violation. That penalty also would apply to a person who knowingly submitted either of the following in materials or statements required under the Act or requested by the Attorney General in the course of registration:

- Any document or statement purporting to have been signed, certified, attested to, approved by, or endorsed by a person when that signature, certification, etc. was not genuine or had not been given.
- Any document containing any materially false statement.

For purposes of the criminal penalties, a person would be presumed to have committed a violation knowingly if the Attorney General provided written notice identifying alleged violations to the person before the acts or omissions listed above occurred. In addition to pursuing a criminal action, the Attorney General could bring a civil action for damages or equitable relief to enforce the Act.

The bill would allow the prosecuting attorney for a county to investigate and prosecute a person subject to the Act in the same manner as the Attorney General.

Fund

The Charitable Organizations and Solicitations Fund would be created in the State Treasury. The State Treasurer could receive money or other assets for deposit into the Fund from registration fees, late registration fees, fines and penalties, and any other source. Money in the Fund at the close of the fiscal year would remain in the Fund.

The Department of the Attorney General could spend money from the Fund, upon appropriation, only to directly administer and enforce the Act.

Unregistered Person

A person who was not a charitable organization, professional fund-raiser, or vendor, or a volunteer supervised by a charitable organization, but who solicited contributions, conducted a fund-raising event, or conducted a sales promotion or campaign for a charitable purpose, would be subject to the Act but would not have to register or file reports.

Report to the Legislature

The bill would require the Attorney General to prepare a report and deliver it to the Senate and the House of Representatives.

The report would have to describe in detail a plan to educate the public regarding charitable organizations and professional fund-raisers operating in or soliciting contributions in this State. It also would have to include a description of the information the Attorney General intended to disseminate to the public, as well as a plan to disseminate the information free of charge.

The Attorney General would have to present the report to the Legislature within one year after the bill's effective date. He or she would have to disseminate the information included in the report within one year after presenting the report.

Other Definitions

The bill would define "charitable sales promotion" as an advertising or sales campaign representing that proceeds from the sale or use of the goods or services offered will benefit, in whole or in part, a charitable organization or charitable purpose, or that the seller or vendor will make a payment to a charitable organization or for a charitable purpose.

As currently defined, "contribution" means the promise, grant, or payment of money or promise of any kind or value, including the promise to pay. The bill would retain this part of the definition. Presently, the term excludes payments by members of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold office, and excludes money received from a governmental authority or foundation restricted as to use. The bill would delete that language. Under the bill, "contribution" would include that portion of membership fees, dues, or assessments that exceed the monetary value of membership benefits available to a dues payer whether or not the benefits are used, and membership fees, dues, or assessments that are paid primarily to support the charitable organization's activities and not to obtain benefits of more than nominal monetary value. The term would not include the following:

- A grant or contract from any governmental agency or a restricted grant from a foundation.
- Any portion of membership dues, fees, or assessments paid to a labor organization or bargaining representative.

"Solicit" and "solicitation" would mean a direct or indirect request for a contribution based on the representation that it will or may be used for a charitable purpose or to benefit a charitable organization, whether or not the person making the solicitation receives a contribution. The term would include any of the following methods of securing contributions:

- An oral or written request.
- The distribution, circulation, mailing, posting, or publication of a handbill, written advertisement, or other publication that directly or by implication seeks to obtain a contribution.
- An announcement to the news media, or by radio, television, telephone, telegraph, facsimile, electronic mail, or any other commercial device, or on the internet, concerning an appeal or campaign for a charitable organization or purpose.
- The sale or attempted sale of, or offer to sell an advertisement, advertising space, a book, a coupon, a magazine, a membership, merchandise, a subscription, a ticket, or other item in connection with a request for a charitable organization or purpose.
- A receptacle for contributions, such as honor boxes, vending machines, wishing wells, or contribution boxes, where a charitable purpose is used, referred to, or implied as an inducement to make a contribution or purchase.

The term also would include 1) receiving contributions solicited from the public by a person other than the charitable organization and transferred to that organization; and 2) receiving an allocation from a community chest, united fund, or similar organization or from a combined solicitation by two or more charitable organizations.

MCL 400.272 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate)

Supporting Argument

The bill would provide clarity for nonprofit organizations and small charities that regularly engage in small-scale fund-raisers. These groups may be confused as to whether they are currently required to seek a license from the Attorney General. Many small charities evidently are unaware of the registration requirement, and with the \$8,000 threshold, there is substantial likelihood that some are violating the Act without knowing it. Raising the threshold for registration and reporting to \$25,000 would exempt many small charities, which could find the registration fee unaffordable and the reporting burdensome. The proposed Charitable Organizations and Solicitations Fund would help the Attorney General administer and enforce the Act, and the increased penalties would deter unscrupulous organizations and fund-raisers from operating in Michigan. Putting more teeth into the Act would enhance the credibility of legitimate organizations as well as benefit consumers, who want some assurance that their contributions are going to genuine charities.

Response: There is some concern that the proposed registration fees would not be enough to support the Attorney General's activities. According to testimony on behalf of the Attorney General's office, fewer than nine full-time people in that office work in its charitable trust division. Ohio, on the other hand, employs 40 people in its charitable trust division.

Opposing Argument

The Act requires a charitable organization to notify the Attorney General within 30 days of any change in the information that must be furnished on its license application. Failure to give this notification is a violation of the Act. Under the bill, a charitable organization (or a professional fund-raiser or vendor) would have to give the Attorney General notice of a change in any of the information required to be furnished under the Act. The current requirement already is impractical for charitable organizations. Many small adjustments to an organization's makeup, such as membership on its board of directors, may not need to be reported more often than annually. The bill should limit the notification requirement to changes

that would affect an organization's eligibility for registration.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

Currently, State General Fund money is appropriated for the Department of Attorney General staff (8.5 FTE positions/\$600,000 GF/GP) that provides legal services related to the Charitable Organizations and Solicitations Act. Approximately 2,900 charities are licensed to solicit donations. The Department states that the bill would have an impact on its workload and require additional staff. However, the Department did not provide specifics on the number of additional staff who would be required or the amount of estimated revenue that would be generated from fees.

There are no data to indicate how many offenders are convicted of the misdemeanor offense. The bill could increase local corrections costs by allowing an offender to be charged with separate offenses for each violation. Public libraries would benefit from any additional penal fine revenue generated by the increased fine.

There also are no data to indicate how many offenders would be convicted of the proposed felony. Local units would incur the costs of incarceration in a local facility, which vary by counts. The State would incur the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any additional penal fine revenue raised by the new fine.

Fiscal Analyst: Bill Bowerman
Bethany Wicksall

A0304/S1115A

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.