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BILL



ANALYSIS

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Senate Bill 1115 (as introduced 3-18-04)

Sponsor: Senator Tom George

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 6-2-04

## **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.**
- **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 for gathering information and providing it to the public.**
- **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.**
- **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.**
- **Increase the maximum criminal fine for a violation from \$500 to \$5,000.**
- **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 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, a subdivision, agency, or instrumentality of Federal, State, or local government, or a religious organization incorporated or established for religious purposes.

- A candidate, candidate committee, or committee, as defined in the Michigan Campaign Finance Act.
- An authorized committee, political committee, or principal campaign committee, as defined in Federal law (2 USC 431).
- A political party as described in the Michigan Election Law.

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; or 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 Internal Revenue Code, or a benevolent, philanthropic, educational, scientific, public health, humane, religious, or other eleemosynary objective.

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 fundraiser, or was an agent or contractor for a professional fundraiser, 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 \$250,000 or more. If the reported contributions were \$100,000 or more but less than \$250,000, the organization would have to provide financial statements reviewed or audited by an independent CPA.

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 Exception. Currently, the Act's 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.

#### 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, religious organization, or any other person except a political party; or who engages in the business of or holds himself or herself out as independently engaged in the business of soliciting contributions for charitable purposes. A bona fide officer or employee of a charitable organization, or a person whose service to a charitable organization is limited to providing advice, research, or writing would not be a professional fund-raiser. (The present definition is generally the same but does not refer to a subcontractor, and excludes a bona fide officer or employee of a charitable organization unless his or her salary is computed on the basis of funds raised.)

#### 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.

Before conducting a charitable sales promotion or solicitation campaign, a vendor would have to register with the Attorney General and pay a \$50 fee. A vendor would have to include specific information with its registration, including a concise description of the principal methods by which it intended to conduct its charitable sales promotion or solicitation campaign in Michigan. A vendor would be prohibited from conducting a charitable sales promotion or solicitation campaign in which it used the name of a charitable organization that was not registered in this State.

A vendor would have to report to the Attorney General the total dollar sales of each charitable sales promotion or

solicitation campaign conducted in Michigan and the amount paid to each charitable organization. This information would have to be reported with the vendor's renewal registration or within 30 days after the conclusion of a promotion or campaign in this State if no further charitable sales promotion or solicitation campaign were intended.

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 of \$1 per day up to a maximum late fee of \$100, for failing to file a report as required, or failing 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.

#### 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.

As currently provided, information filed with the Attorney General would be a public record open to inspection. In addition, a file in the Attorney General's office regarding a closed enforcement action or a settlement in a civil case under the Act would be open to public inspection and copying. The bill would prohibit a provision or requirement of confidentiality or sealing of records as a condition of settlement of an enforcement or civil action.

(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.)

#### 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.
- Misrepresenting or misleading 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.
- 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 remove a person's name from any donor or mail list used by a charitable organization or professional fund-raiser for solicitation purposes if the person requested that his or her name be removed.

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.

#### 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 penalty, 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 or engage in other specified activities. The bill would increase the maximum fine to \$5,000.

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 may do.

#### 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 Attorney General could spend money from the Fund, upon appropriation, only for expenditures directly related to gathering and providing the public with information regarding people subject to the Act. This information would have to be disseminated under a plan developed under the bill.

#### 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" would mean the promise, grant, or payment of money or promise of any kind or value, including the promise to pay. 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.
- Distributing, circulating, mailing, posting, or publishing 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.

Legislative Analyst: Suzanne Lowe

**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 would be convicted of the misdemeanor offense. Public libraries would benefit from any additional penal fine revenue generated by the increased fine.

Fiscal Analyst: Bill Bowerman  
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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.