

Legislative Analysis



CLOTHING DONATION BOXES

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House Bill 5716 as enrolled
Public Act 195 of 2010
Sponsor: Rep. Goeff Hansen

House Bill 5717 as enrolled
Public Act 196 of 2010
Sponsor: Rep. Ed Clemente

House Committee: Commerce
Senate Committee: Commerce and Tourism

Complete to 10-22-10

A SUMMARY OF HOUSE BILLS 5716 & 5717 AS ENROLLED

The bills regulate the use of clothing donation boxes.

House Bill 5716 amended the Michigan Consumer Protection Act (MCL 445.903) to prohibit a person who engages in the conduct of trade or commerce and owns or operates a clothing donation box from doing the following:

- Marking the clothing donation box or any sign near the box in a manner that represents or implies that any personal property placed in the box, or the proceeds of that property, is donated to one or more charities, if that is not true.
- Displaying the name, logo, trademark, or service mark of a charitable organization on a clothing donation box or any nearby sign if that charity does not receive any of the property placed in the box or proceeds from that property.
- Failing to clearly and conspicuously disclose on the box or a nearby sign the name, address, and telephone number of each organization that receives property or proceeds; what percentage the organization receives; the name, address, and telephone number of anyone else receiving property or proceeds, and the percentage of property and proceeds that person receives. This would apply when charitable organizations receive some but not all of the property or proceeds from the donation box.

The term "clothing donation box" refers to a receptacle in which a person can place clothing or other items of personal property with the intention of donating the property to a charitable organization and that has a capacity of a least 27 cubic feet

The bill includes such conduct in the act's description of "unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce."

The Consumer Protection Act is enforced by the state Attorney General, local prosecutors, and, in some cases, private lawsuits. The Charitable Organizations and Solicitations Act is enforced by the state Attorney General.

House Bill 5717 amended the Charitable Organizations and Solicitations Act (MCL 400.272), which licenses and regulates certain charitable organizations, solicitors, and fund-raisers. It contains the same prohibitions as listed above for the use of clothing donation boxes. (However, the requirement that the *percentage* of property or proceeds a charitable organization or other person receives be noted on a donation box or nearby sign is omitted in House Bill 5717. The names and addresses are required.) These prohibitions do not apply to entities and individuals exempt from licensing and financial statement requirements under Section 13 of the act. (Exempt groups are described later.)

In addition, the bill requires a person that is not a charitable organization and that owns or operates a clothing donation box or that receives any of the property or proceeds from a donation box to maintain a current license under the act at any time the clothing donation box is accessible to the public.

The bill also amended the definition of the term "professional fund raiser" to include a person that is not a charitable organization when any of the following conditions are met:

- The person represents or implies that personal property placed in a clothing donation box or the proceeds of the property will be donated to one or more charitable organizations.
- The person represents or implies that he or she is using the clothing donation box to solicit contributions on behalf of one or more charitable organizations.
- The donation box or any nearby sign is marked with the name, logo, or service mark of one or more charitable organizations or is otherwise marked in a manner that represents or implies that personal property placed in the donation box or proceeds of that property will be donated to one or more charitable organizations.

Violations of this act are misdemeanors punishable by a fine of not more than \$500.00, or imprisonment for not more than six months, or both.

Exempt entities

Under Section 13 of the act, the licensing and financial statement requirements do not apply to any of the following:

- (a) A person who requests a contribution for the relief or benefit of an individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary after deducting reasonable expenses for costs of solicitation, if any, and if all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for their services.

(b) A person who does not intend to solicit and receive and does not actually receive contributions in excess of \$8,000 during any 12-month period if all of its fund-raising functions are carried on by persons who are unpaid for their services and if the organization makes available to its members and the public a financial statement of its activities for the most recent fiscal year. If the gross contributions received during any 12-month period exceed \$8,000, the person shall file an application for license with required supporting information as provided in section 3 within 30 days after the date it has received total contributions in excess of \$8,000.

(c) An organization that does not invite the general public to become a member of the organization and confines solicitation activities to solicitation drives solely among its members and the members' immediate families, if the drives are not held more frequently than quarterly. "Immediate family" means the grandparents, parents, spouse, brothers, sisters, children, and grandchildren.

(d) An educational institution certified by the State Board of Education.

(e) A veterans organization incorporated under federal law.

(f) An organization that receives funds from a charitable organization licensed under this act that does not solicit or intend to solicit or receive or intend to receive contributions from persons other than a charitable organization, if the organization makes available to its members and the public a financial statement of its activities for the most recent fiscal year.

(g) A licensed hospital, hospital based foundation, and hospital auxiliary that solicit funds solely for one or more licensed hospitals.

(h) A nonprofit service organization that is exempt from taxation under the federal Internal Revenue Code other than Section 501(c)(3), whose principal purpose is not charitable, but solicits from time to time funds for a charitable purpose by members of the organization who are not paid for the solicitation. The funds shall be wholly used for the charitable purposes for which they were solicited, and the organization shall file with the attorney general a federal form 990 or 990 AR.

(i) A nonprofit corporation whose stock is wholly owned by a religious or fraternal society that owns and operates facilities for the aged and chronically ill in which no part of the net income from the operation of the corporation inures to the benefit of a person other than the residents.

(j) Charitable organizations licensed by the Department of Human Services that serve children and families.

(k) A person registered under and complying with the requirements of the Public Safety Solicitation Act.

FISCAL IMPACT:

The bill does not appear to have a significant fiscal impact.

BACKGROUND INFORMATION:

These bills were aimed at addressing the problem of clothing donation bins operated by "for-profit thrift stores," where the donated goods are sold for a profit with only a small portion of the value of the donations going to charity.

According to testimony provided by the Goodwill Association of Michigan, "these remote donation bins are usually found in parking lots of existing businesses or empty lots. They are often built to look like legitimate charitable organizations such as Goodwill or Salvation Army. Not only are these boxes looked upon as convenient by the local residents, but they feel their donations are certainly going to be used for good within their communities." However, the Goodwill representative noted, "typically, charities receive a small annual flat fee for the use of their name, sometimes as low as 6% of what the actual donation is really worth!" The Goodwill representative described this as a deceptive practice and urged legislation that would provide donors with more information about who benefits from the donations.

According to testimony, the use of clothing donation bins by "for profit thrift stores" removes local donation from the local community and diverts revenue from the charitable organizations that use the donations to raise revenue in order to provide a host of services; in Goodwill's case, donations help to provide services to people with disabilities and other barriers to employment.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.