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BILL ANALYSIS

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Senate Bill 1528 (Substitute S-1 as passed by the Senate)
Senate Bill 1577 (as passed by the Senate)
Sponsor: Senator Mark D. Jansen
Committee: Families and Human Services

Date Completed: 11-23-10

RATIONALE

The Charitable Organizations and Solicitations Act contains licensure and reporting requirements for charitable organizations, and requires the licensure of professional fund-raisers as well as the registration of professional solicitors. Most of the Act's provisions have not been significantly amended since the mid-1970s. These provisions include an exemption for a person who does not receive more than \$8,000 in contributions during a year, and a misdemeanor penalty for certain violations of the Act. It has been suggested that the Act should be revised in a number of ways. In particular, some people believe that charitable organizations should be required to register, rather than be licensed; that the \$8,000 ceiling for an exemption should be raised; and that violators should be subject to increased criminal penalties, including a felony penalty for certain violations.

CONTENT

Senate Bill 1528 (S-1) would amend the Charitable Organizations and Solicitations Act to do the following:

- **Require charitable organizations to register with (rather than be licensed by) the Attorney General.**
- **Allow a charitable organization to receive up to \$25,000 in a year without having to register.**
- **Prohibit a number of activities involving misrepresentations.**
- **Increase the misdemeanor fine for a violation of the Act, and make certain violations a felony.**

- **Provide for a civil fine 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 county prosecutors to prosecute people subject to the Act.**

Senate Bill 1577 would amend the sentencing guidelines in the Code of Criminal Procedure to include a violation of Section 23 of the Charitable Organizations and Solicitations Act (which prescribes criminal penalties) as a Class E felony against the public trust with a statutory maximum of five years. The bill is tie-barred to Senate Bill 1538.

Senate Bill 1538 (S-1) is described in detail below.

Registration

Currently, a charitable organization that is not exempt under the 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 by submitting a registration statement.

A registration statement would have to contain the same information that currently must be in a license application, plus the charitable organization's Internal Revenue

Service Form 990, 990-EZ, 990-PF, or other 990-series return for the preceding tax year.

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 ceiling to \$25,000 for registration and reporting.

The bill also provides that a person who was not a charitable organization, professional fund-raiser, or 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.

The Act requires the Attorney General to issue a license within 30 days if an application and supporting material conform to the Act's requirements. Under the bill, the Attorney General would have to register a charitable organization if its registration statement and supporting information met the Act's requirements, and the effective date of the registration would be the date the Attorney General received the registration statement.

Currently, a charitable organization's license expires one year after the date it is issued. Under the bill, a charitable organization's registration would expire one year and seven months after the end date of a financial statement provided under the Act.

Prohibited Conduct

The bill would prohibit a person subject to the Act, or an employee or agent of such a person, from doing any of 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 license, or any order issued under the Act.
- 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.

- Using a fictitious or false name, address, or telephone number in any solicitation.
- 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 or implying that a donor would receive special benefits or treatment or that failure to make a contribution would result in unfavorable treatment.
- Falsely representing or implying 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.
- Representing that funds solicited would be used for a particular charitable purpose if those funds were not used for that purpose.
- Soliciting contributions, conducting a sales promotion, or otherwise operating as a charitable organization, professional fund-raiser, or professional solicitor except in compliance with the Act.
- Aiding, abetting, or otherwise permitting a person to solicit contributions or conduct a sales promotion unless that person complied with the Act.
- Failing to file any information or reports required under the Act.
- Soliciting or receiving a contribution or conducting a charitable sales promotion for, or selling memberships in, a charitable organization subject to the Act if that organization were not registered.
- Violating the terms of an assurance of discontinuance or similar agreement accepted by the Attorney General and filed with the court.
- Wearing a law enforcement or public safety uniform or similar clothing when making a face-to-face solicitation or collection of contributions.

The bill also would prohibit a person subject to the Act, or the person's employee or agent, from making a misrepresentation to a

person that would lead him or her to believe any of the following:

- Another person on whose behalf a solicitation effort was conducted, was a charitable organization or the proceeds of a solicitation effort were for charitable purposes.
- Another person sponsored, endorsed, or approved a solicitation effort if that other person had not consented to the use of his or her name for that purpose.
- Registration or licensure under the Act constituted endorsement or approval by a department or agency of any state or the Federal government.
- A contribution was eligible for tax advantages.

In addition, the bill would prohibit a person subject to the Act, or the person's employee or agent, from submitting any of the following to the Attorney General: 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.

A person subject to the Act, or the person's employee or agent, also would be prohibited from failing to comply with a person's request to remove, or not to share, his or her personal 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.

A charitable organization also would be prohibited from failing to verify that all professional fund-raisers with which the organization had contracted for fund-raising services were currently licensed under the Act; or submitting financial statements or 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 professional fund-raiser also would be prohibited from failing to provide verification of current licensing status and inform any charitable organization with which it had

contracted of any change affecting its registration or bonding within 14 days of the change.

The Act prohibits a charitable organization or professional fund-raiser from using a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that it would tend to confuse or mislead the public. Under the bill, that prohibition would apply to any person subject to the Act.

Injunctive Action & Civil Penalties

As currently provided, the Attorney General could bring an action to enjoin an act or practice prohibited under the Act. After finding that a person had engaged in or was engaging in a prohibited act or practice, the court could enter any appropriate 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 civil fine of up to \$10,000 for each violation of the Act. A court could enter an injunction without a finding of irreparable harm.

In addition to any other remedy, a person who violated an injunction or other order entered under these provisions would have to pay to the State a civil fine of up to \$10,000 for each violation. The fine 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 that violated 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.

Criminal Penalties

Currently, it is a misdemeanor punishable by a maximum fine of \$500, imprisonment for up to six months, or both, to violate the Act; solicit and receive public donations or sell memberships in the State for any organization, institution, or association subject to the Act and not licensed under it; or solicit funds under a license and then 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.
- Knowingly misrepresent that a donor would receive special benefits or treatment or that failure to make a contribution would result in unfavorable treatment.
- 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 fail to file any materials, information, or report required under the Act.

If a person engaged in any of the activities listed above, except failing to file, 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, as a result, wrongfully obtained more than

\$1,000 and less than \$5,000 in the aggregate:

- 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 was 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 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 or professional fund-raiser unless the information required under the Act was filed with the Attorney General.
- 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 the person knew was not registered.
- 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.

If a person engaged in those practices and, as a result, wrongfully obtained more than \$5,000 in the aggregate, 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:

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

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 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 prosecute a person subject to the Act in the same manner as the Attorney General may do so. A county prosecutor would have to notify the Attorney General when he or she began a prosecution and give the Attorney General a copy of the final judgment.

Repealed Sections

The bill would repeal Sections 12 and 14 of the Act. Section 14 requires a charitable organization to file a financial statement with its application for a license or renewal. Section 12 allows the Attorney General to suspend that requirement for a particular charitable organization or other entity, if doing so will not harm the public interest.

MCL 400.272 et al. (S.B. 1528)
777.14a (S.B. 1577)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Senate Bill 1538 (S-1) would update Michigan law and streamline the regulation of charitable organizations. Requiring registration instead of licensure would save

the resources of both the Attorney General's office and the charities, and raising the ceiling for an exemption to \$25,000 would prevent unnecessary regulation. The current cap of \$8,000 has been in place since 1976 and obviously does not reflect the inflation that has occurred in the last 35 years. Many small charities might be burdened by complying with the Act, or might unwittingly be violating it because they are not aware of the requirements. The bill also would provide clarity by specifying that a charitable organization's registration would be effective when the Attorney General received its registration statement. Currently, there is a 30-day window between the time a license application is submitted and the deadline for the Attorney General to issue a license, and it is not clear whether an organization is authorized to solicit during that period.

In addition, the bill would significantly expand the conduct that amounts to a violation of the Act, and would establish meaningful penalties. The current misdemeanor penalty has been unchanged since 1976. It now amounts to little more than a slap on the wrist for violators, and the \$500 maximum fine is merely a cost of doing business. Increasing the misdemeanor fine to \$5,000 and adding a felony penalty would put teeth into the law, providing an appropriate punishment for offenders. Also, by deterring potential misconduct, the increased penalties would help protect consumers from unscrupulous operators.

In a time of scarce resources and high needs, charitable organizations are a vital part of the Michigan economy. This legislation would enhance the credibility of legitimate organizations and bolster one of their most valuable assets: the public trust. Increased public confidence can lead to increased contributions, which in turn enables the charities to help vulnerable individuals and worthy causes when government assistance is not available.

Opposing Argument

Senate Bill 1538 (S-1) would undermine consumer protection by allowing organizations to raise up to \$25,000 without being registered, effectively operating without oversight by the Attorney General. Recently, the Attorney General's office calculated that 1,966 charitable

organizations that are currently licensed would not have to be registered under the bill. That number represents 31% of all regulated entities.

In addition, the bill includes no fee structure to offset the costs of regulatory functions. There currently is no fee associated with licensure and there would be no fee associated with registration. The Attorney General's funding is depleted, which weakens the office's ability to protect the public.

Although reducing the number of regulated entities would require fewer resources, other changes in the bill would increase costs. Any potential savings would not justify the loss of public protection.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1528 (S-1)

There should be no significant additional costs to the Office of Attorney General (OAG) as a result of the proposed legislation. There could be minimal additional costs associated with the rules that the OAG would have to promulgate as a result of this proposal; however, the current OAG funding levels should be able to absorb these costs.

There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Any additional penal fine revenue collected would benefit public libraries.

Senate Bill 1577

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. An offender convicted of a Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38

months, with a statutory maximum of five years. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Joe Carrasco
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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.