



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 Bills 1528 and 1577 (as enacted)
Sponsor: Senator Mark D. Jansen
Senate Committee: Families and Human Services
House Committee: New Economy and Quality of Life

PUBLIC ACTS 377 & 378 of 2010

Date Completed: 1-26-11

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 been in place 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 was 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 needed to be raised; and that violators should be subject to increased criminal penalties, including a felony penalty for certain violations.

- **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 amends 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 was tie-barred to Senate Bill 1538.

Both bills will take effect on March 30, 2011.

Senate Bill 1538 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, requires the charitable organization, before a solicitation,

CONTENT

Senate Bill 1528 amends 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.**

to register with the Attorney General by submitting a registration statement.

A registration statement must 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 information currently required includes audited financial statements if the charitable organization received \$500,000 or more in the preceding year, or reviewed or audited financial statements if it received at least \$250,000 but less than \$500,000 in the preceding year.)

The bill allows the Attorney General to suspend a charitable organization's obligation to provide any of the following with its registration statement for a reasonable, specifically designated time if the Attorney General receives a request to suspend that obligation and he or she determines, and notifies the charitable organization in writing, that the public interest will not be prejudiced by suspending that obligation:

- Financial statements.
- A tax return.
- Any other information the organization is obligated to provide under a rule promulgated by the Attorney General.

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 must register a charitable organization if its registration statement and supporting information meet the Act's requirements, and the effective date of the registration will 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 will expire one year and seven months after the end date of a financial statement provided under the Act.

Registration Exemptions

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 raises the ceiling to \$25,000 for an exemption from the registration and reporting requirements.

The bill provides that a person who is not a charitable organization, professional fundraiser, or volunteer supervised by a charitable organization, but who solicits contributions, conducts a fund-raising event, or conducts a charitable sales promotion for a charitable purpose is subject to the Act but does not have to register or file reports.

(The bill defines "charitable sales promotion" as any advertising or sales activities that include a statement or representation that the purchase or use of the goods or services offered for sale will benefit, in whole or in part, a charitable organization or charitable purpose.)

Prohibited Conduct

The bill prohibits 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 has a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person does 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 will receive for a charitable program after solicitation costs are paid, is greater than the amount or percentage that the organization actually will receive.
- Diverting or misdirecting contributions.
- Falsely representing or implying that a donor will receive special benefits or treatment or that failure to make a contribution will result in unfavorable treatment.

- Falsely representing or implying that a person being solicited or a family member or associate of the person has 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 will be used for a particular charitable purpose if those funds are not used for that purpose.
- Soliciting contributions, conducting a charitable 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 charitable sales promotion unless that person complies 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 is 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 prohibits a person subject to the Act, or the person's employee or agent, from making a misrepresentation to a person that will lead him or her to believe any of the following:

- Another person on whose behalf a solicitation effort is conducted, is a charitable organization or the proceeds of a solicitation effort are for charitable purposes.
- Another person sponsors, endorses, or approves a solicitation effort if that other person has not consented to the use of his or her name for that purpose.
- Registration or licensure under the Act constitutes endorsement or approval by a department or agency of any state or the Federal government.

- A contribution is eligible for tax advantages.

In addition, the bill prohibits a person subject to the Act, or the person's employee or agent, from submitting either of the following to the Attorney General: a document or statement that purports to be signed, certified, attested to, approved by, or endorsed by a person if that signature, certification, attestation, approval, or endorsement is not genuine or was 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 is 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.

The bill also prohibits a charitable organization from failing to verify that all professional fund-raisers with which the organization has contracted for fund-raising services are currently licensed under the Act; or submitting a financial statement or any other financial report required under the Act, that contains any misrepresentation with respect to the organization's activities, operations, or use of charitable assets.

A professional fund-raiser also is prohibited from failing to provide verification of current licensing status and inform any charitable organization with which it has 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 applies to any person subject to the Act.

Injunctive Action & Civil Penalties

The Act authorizes the Attorney General to bring an action to enjoin an act or practice prohibited by the Act. Under the bill, after

finding that a person has engaged in or is engaging in a prohibited act or practice, the court may 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 may award to the State a civil fine of up to \$10,000 for each violation of the Act. A court may enter an injunction without a finding of irreparable harm.

In addition to any other remedy, the bill requires a person who violates an injunction or other order entered under these provisions to pay to the State a civil fine of up to \$10,000 for each violation. The fine may be recovered in a civil action brought by the Attorney General.

In addition to any other action authorized by law, the bill authorizes the Attorney General to issue a cease and desist order, issue a notice of intended action, or take other action in the public interest. The Attorney General may accept an assurance of discontinuance of any method, act, or practice that violates the Act from any person alleged to be engaged in that activity. An assurance of discontinuance may 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 may 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, makes 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 is conducted is a charitable organization or that the proceeds of a solicitation effort are for charitable purposes.
- Knowingly divert or misdirect contributions to a purpose or organization other than that for which the funds were contributed or solicited.
- Knowingly misrepresent that funds solicited or contributed will be used for a specific charitable purpose.
- Knowingly misrepresent that a donor will receive special benefits or treatment or that failure to make a contribution will 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 engages in any of the activities listed above, except failing to file, and the amount of money fraudulently collected or wrongfully diverted exceeds \$1,000 in the aggregate, the offense will be a felony punishable by imprisonment for up to five years and/or a maximum fine of \$20,000.

The misdemeanor penalty of up to \$5,000 and/or six months will apply to a person who does any of the following and, as a result, wrongfully obtains more than \$1,000 and less than \$5,000 in the aggregate:

- Knowingly misrepresents that a person soliciting contributions or other funds for a charitable organization has a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person does not have.
- Knowingly uses 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 is confusing or misleading.
- Knowingly uses a bogus, fictitious, or nonexistent organization, address, or telephone number in any solicitation.
- Knowingly misrepresents or misleads any person in any manner to believe that a

person or governmental agency sponsors, endorses, or approves a solicitation effort if that person or agency has not given written consent to the use of the person's or agency's name for that purpose.

- Knowingly misrepresents that the amount or percentage of a contribution that a charitable organization will receive for a charitable program after costs of solicitation are paid is greater than the amount or percentage the organization actually will receive.
- Knowingly solicits contributions, conducts a charitable sales promotion, or otherwise operates in the State as a charitable organization or professional fund-raiser unless the information required under the Act is filed with the Attorney General.
- Knowingly solicits or receives a contribution, conducts a charitable sales promotion, or sells memberships in the State for or on behalf of any charitable organization subject to the Act that is not registered.
- Aids, abets, or otherwise permits a person to solicit contributions or conduct a charitable sales promotion in the State unless that person has complied with the requirements of the Act.

If a person engages in those practices and, as a result, wrongfully obtains more than \$5,000 in the aggregate, he or she will 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 will apply to a person who knowingly submits 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. is not genuine or has not been given.
- Any document containing any materially false statement.

A person will 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.

The bill authorizes the Attorney General, in addition to pursuing a criminal action, to

bring a civil action for damages or equitable relief to enforce the Act.

The bill also allows 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 must notify the Attorney General when he or she begins a prosecution and give the Attorney General a copy of the final judgment.

Repealed Sections

The bill repeals 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 updates Michigan law and streamlines the regulation of charitable organizations. Requiring registration instead of licensure will save the resources of both the Attorney General's office and the charities, and raising the ceiling for an exemption to \$25,000 will prevent unnecessary regulation. The \$8,000 cap 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 provides clarity by specifying that a charitable organization's registration will 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 significantly expands the conduct that amounts to a violation of the Act, and establishes 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 will put teeth into the law, providing an appropriate punishment for offenders. Also, by deterring potential misconduct, the increased penalties will 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 will 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 will 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 will 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 will 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 will require fewer resources, other changes in the bill will increase costs. Any potential savings will not justify the loss of public protection.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

There are no data to indicate how many offenders will be convicted of the new offenses. An offender convicted of a Class E offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months, with a statutory maximum of five years. Local governments will incur the costs of incarceration in local facilities, which vary by county. The State will 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 will benefit public libraries.

Fiscal Analyst: Joe Carrasco
Matthew Grabowski

A0910\1528ea

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.