

CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT

Act 169 of 1975

AN ACT to regulate charitable organizations, professional fund raisers and other persons soliciting or collecting contributions on behalf of charitable organizations, and certain other persons involved in the solicitation of contributions to charitable organizations; to require certain charitable organizations and certain professional solicitors to register and disclose certain information before soliciting contributions; to require certain professional fund raisers to obtain a license and disclose certain information before soliciting contributions; to provide for reporting of financial and other information by those licensed or registered and those claiming exemption from licensing or registration; to prescribe standards of conduct and administration and prohibit certain actions in connection with charitable solicitations; to provide for powers and duties of the attorney general and county prosecuting attorneys; to preempt local regulation; to provide remedies and penalties for violations; and to repeal acts and parts of acts.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

The People of the State of Michigan enact:

400.271 Short title.

Sec. 1. This act shall be known and may be cited as the "charitable organizations and solicitations act".

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.272 Definitions.

Sec. 2. As used in this act:

(a) "Charitable organization" means a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization of persons that solicits or obtains contributions solicited from the public for charitable purposes. The term includes a chapter, branch, area office, or similar affiliate or person soliciting contributions within the state for a charitable organization that has its principal place of business outside the state. The term does not include any of the following:

(i) A duly constituted religious organization or a group affiliated with and forming an integral part of a religious organization if none of its net income inures to the direct benefit of any individual and if it has received a declaration of current tax exempt status from the United States if it is a religious organization or if its parent or principal organization has obtained tax exempt status if it is an affiliated group.

(ii) A candidate or a committee as those terms are defined in section 3 of the Michigan campaign finance act, 1976 PA 388, MCL 169.203.

(iii) A political party qualified to be on the general election ballot under section 560a of the Michigan election law, 1954 PA 116, MCL 168.560a.

(b) "Charitable sales promotion" means 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.

(c) "Clothing donation box" means a receptacle in which a person may place clothing or other items of personal property he or she intends to donate to a charitable organization and that has a capacity of at least 27 cubic feet.

(d) "Contribution" means a promise, grant, or payment of money or property of any kind or value, including a promise to pay, except 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 offices, and except money or property received from a governmental authority or foundation restricted as to use.

(e) "Person" means an individual, organization, group, association, partnership, corporation, limited liability company, trust, any other legal entity, or any combination of legal entities.

(f) "Professional fund raiser" means a person who 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 in exchange for compensation or other consideration; or who engages in the business of or holds himself or herself out as independently engaged in the business of soliciting contributions for those purposes. The term does not include a bona fide officer or employee of a charitable organization unless his or her salary or other compensation is computed on the basis of funds to be raised or actually raised. The term includes a person that is not a charitable organization and that owns or operates a clothing donation box if any of the following are met:

(i) The person represents or implies to any person that personal property placed in the clothing donation box or the proceeds of that property will be donated to 1 or more charitable organizations.

(ii) The person represents or implies to any person that he or she is using the clothing donation box to solicit contributions on behalf of 1 or more charitable organizations.

(iii) The clothing donation box or any sign near the clothing donation box is marked with the name, logo, trademark, or service mark of 1 or more charitable organizations or is otherwise marked in any manner that represents or implies that personal property placed in the donation box or the proceeds of that property will be donated to 1 or more charitable organizations.

(g) "Professional solicitor" means a person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes.

(h) "Prohibited transaction" is any dealing, activity, conduct, administration, or management of a charitable organization or by any of its officers, trustees, personnel, or related persons that may be prohibited as constituting activity contrary to proper administration of the charitable organization or conduct of a fund raising campaign or solicitation by a professional fund raiser, professional solicitor, or solicitor.

(i) "Soliciting material" means printed or similar material used to solicit money from the public, including, but not limited to, any labels, posters, television scripts, radio scripts, or recordings used for that purpose.

(j) "Solicitor" means a person who solicits on behalf of a charitable organization.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 2010, Act 196, Imd. Eff. Oct. 5, 2010;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.273 Charitable organization; registration; information to be included in registration statement; form; suspension of requirement to file registration statement; conditions.

Sec. 3. (1) Before a solicitation, unless the charitable organization is exempt from registration and reporting under section 13, a charitable organization that solicits or intends to solicit or receives or intends to receive contributions from persons by any means shall register with the attorney general as provided in this act.

(2) A charitable organization described in subsection (1) shall register under this act by submitting a registration statement in the form prescribed by the attorney general. To register, a charitable organization must include all of the following information about the charitable organization in the registration form:

(a) The name of the organization and any name it uses or intends to use to solicit contributions.

(b) The principal address of the organization and the address of each office in this state. If the organization does not maintain a principal office, the organization shall include the name and address of the person that has custody of its financial records in the registration statement.

(c) The names and addresses of the officers, directors, trustees, chief executive officer, and state agent of the organization.

(d) Where and when the organization was legally established, the form of its organization, and its tax exempt status.

(e) The purpose for which the organization is organized and the purposes for which contributions to be solicited will be used.

(f) The fiscal year of the organization.

(g) Whether the organization is or has ever been enjoined from soliciting contributions.

(h) All methods by which solicitations will be made.

(i) Copies of contracts between the organization and any professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. If a contract described in this subdivision is executed after filing of the registration statement, the organization shall file a copy of the contract with the attorney general within 10 days after the date of execution.

(j) If the charitable organization received contributions in its immediately preceding tax year, as reported on the charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return, in the amount of \$500,000.00 or more, financial statements prepared according to generally accepted accounting principles and audited by an independent certified public accountant. If the charitable organization received contributions in its immediately preceding tax year, as reported on the charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return, in the amount of \$250,000.00 or more, but less than \$500,000.00, the charitable organization shall include financial statements that are either reviewed or audited by an independent certified public accountant. The attorney general may waive this requirement 1 time for a charitable organization.

(k) The charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return for the preceding tax year.

(l) Any other information the attorney general requires by rule.

(3) Both of the following apply for purposes of subsection (2)(j):

(a) For registration statements submitted under this section on or after January 1, 2015 and before January 1, 2020, the dollar amounts of contributions in subsection (2)(j) at which reviewed financial statements and at which audited financial statements are required with the registration statement are increased by \$25,000.00. Those dollar amounts are increased by an additional \$25,000.00 for every subsequent 5-year period, beginning on January 1, 2020.

(b) "Contributions" means all contributions and support reported on a charitable organization's form 990, 990-EZ, 990-PF, or other 990-series return. The term includes special fund-raising event receipts, net of direct expenses, but does not include contributions or grants received from governmental agencies.

(4) The attorney general may suspend a charitable organization's obligation to provide any of the following with its registration statement submitted under subsection (2) for a reasonable, specifically designated time if the attorney general receives a written request to suspend that obligation and the attorney general determines, and notifies the charitable organization in writing, that the interest of the public will not be prejudiced by suspending that obligation:

(a) Financial statements under subsection (2)(j).

(b) A tax return under subsection (2)(k).

(c) Any other information the organization is obligated to provide pursuant to any rule promulgated under subsection (2)(l).

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2008, Act 424, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.274 Copies of contracts and soliciting materials.

Sec. 4. (1) True and correct copies of the contracts of professional fund raisers shall be kept on file in the offices of the charitable organization and the professional fund raiser during the term of employment and for 6 years subsequent to the date the solicitation of contributions provided for therein actually terminates.

(2) Copies of all soliciting materials shall be supplied upon request of the attorney general.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.275 Examination of registration statement; registration; exceptions; charge not required.

Sec. 5. (1) The attorney general shall examine the registration statement of a charitable organization that is submitted in proper form and is supported by material information required under this act. If the registration statement and supporting information conforms to the requirements of this act and any rules promulgated under this act, the attorney general shall register the charitable organization, unless the organization has materially misrepresented or omitted information required or the organization has acted or is acting in violation of this act or rules promulgated hereunder. If registered, the effective date of the registration is the date the registration statement was received by the attorney general.

(2) Registration of a charitable organization shall be without charge to the charitable organization or its agents and representatives if the purpose of registration is soliciting and receiving contributions and donations or selling memberships or otherwise raising money from the public for the specified charitable purpose.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.276 Notice of change in information; report.

Sec. 6. A charitable organization shall notify the attorney general within 30 days of any change in the information required to be furnished under section 3. A report shall be filed and signed by the president or other authorized officer and the chief fiscal officer of the organization.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.277 Expiration of registration; renewal of registration statement and supporting information.

Sec. 7. The registration of a charitable organization shall expire 1 year and 7 months after the end date of the financial statement provided under section 3(2). To renew a registration, a charitable organization shall file with the attorney general a renewal registration statement and supporting information on or before 30 days before the expiration date of the current registration.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.278 Documents; books and records; inspection.

Sec. 8. Documents required to be filed with the attorney general shall be open to public inspection. Persons subject to this act shall maintain accurate and detailed books and records at the office of the resident agent or

the principal office which shall be open to inspection at all reasonable times by the attorney general or his authorized representative.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.279 Local, county, or area division supervised and controlled by superior or parent organization; registration; application statement; annual report.

Sec. 9. If a local, county, or area division of a charitable organization is directly supervised and controlled by a superior or parent organization, which is incorporated, qualified to do business or doing business within this state, the local, county, or area division is not required to register under section 3 if the superior or parent organization files an application statement on behalf of the local, county, or area division in addition to or as part of its application statement. When an application statement has been filed by a superior or parent organization, it shall file the annual report required under sections 14 and 16 on behalf of the local, county, or area division in such detail as required by the rules.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.280 Rules.

Sec. 10. The attorney general may promulgate rules necessary for the administration of this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. Emergency rules may not be promulgated pursuant to this act.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.281 Designation of resident agent; service of process.

Sec. 11. (1) The attorney general shall not accept a registration statement from a charitable organization located in another state or country unless it first designates a resident agent in this state for the acceptance of process issued by any court.

(2) A charitable organization, professional fund raiser, professional solicitor, or other person soliciting contributions in this state but not having an office in this state is subject to service of process as follows:

(a) By service on its registered agent in this state, or if there is no registered agent in this state, then on the person designated in the registration statement, license application, or registration application as having custody of its books and records within this state. If a person designated in a registration statement, license application, or registration application is served under this subdivision, a copy of the process shall be mailed to the charitable organization at its last known address.

(b) By service made as otherwise provided by law or court rules if any of the following apply:

(i) If the person has solicited contributions in this state, but in this state does not maintain an office, has a registered agent, and has a designated person that has custody of its books and records.

(ii) If a registered agent or person that has custody of the person's books and records in this state cannot be found, as shown by the return of the sheriff of the county in which the registered agent or person that has custody of books and records has been represented by the charitable organization as maintaining an office.

(3) Solicitation of a contribution in this state, by any means, is considered the agreement of the charitable organization, professional fund raiser, professional solicitor, or other person that any process against that person that is served in accordance with this section is of the same legal force and effect as if served personally.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.282 Repealed. 2010, Act 377, Eff. Mar. 1, 2011.

Compiler's note: The repealed section pertained to the authority of the attorney general to suspend the filing of reports as to charitable corporations, trusts, or organizations.

400.283 Exemptions from registration and reporting requirements.

Sec. 13. A charitable organization's registration and reporting requirements under this act do not apply to any of the following:

(a) A person that 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 that are unpaid, directly or indirectly, for their services.

(b) A charitable organization that does not intend to solicit and receive and does not actually receive contributions of more than \$25,000.00 during any 12-month period if all of its fund-raising functions are carried on by persons that are unpaid for their services and if the organization makes available to its members

and the public a financial statement of its activities for its most recent fiscal year. If the gross contributions received during any 12-month period exceed \$25,000.00, the person shall register under this act within 30 days after the date its total contributions in that fiscal year exceed \$25,000.00.

(c) A charitable 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, directors, trustees, or their immediate families. As used in this subdivision, "immediate family" means the grandparents, parents, spouse, brothers, sisters, children, and grandchildren of a member, director, or trustee.

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

(g) A licensed hospital, hospital-based foundation, or hospital auxiliary that solicits funds solely for 1 or more licensed hospitals.

(h) A nonprofit service organization that is exempt from taxation under a provision of the internal revenue code other than section 501(c)(3), 26 USC 501(c)(3), whose principal purpose is not charitable, but that solicits from time to time funds for a charitable purpose by members of the organization that are not paid for the solicitation. Funds solicited under this subdivision shall be wholly used for the charitable purposes for which they were solicited, and the organization must file with the attorney general a federal form 990 or 990-EZ.

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

(j) A charitable organization licensed by the department of human services that serves children and families.

(k) A person registered under and complying with the requirements of the public safety solicitation act, 1992 PA 298, MCL 14.301 to 14.327.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 1992, Act 299, Imd. Eff. Dec. 18, 1992;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.284 Repealed. 2010, Act 377, Eff. Mar. 30, 2011.

Compiler's note: The repealed section pertained to filing financial statements.

400.285 Repealed. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

Compiler's note: The repealed section required statement of basis for claiming continuing exemption.

400.286 Noncompliance; imposition of conditions.

Sec. 16. The attorney general may impose conditions on the registration of a charitable organization that fails to comply with this act or rules promulgated under this act.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.287 Professional fund raiser; application for license; bond; renewal of license; registration or reregistration of professional solicitor.

Sec. 17. (1) A person shall not act as a professional fund raiser for a charitable organization or charitable purpose before he has filed an application for a license with the attorney general or after the expiration or cancellation of a license or renewal thereof. Applications for license shall be in writing, under oath, in the form prescribed by the attorney general. The applicant when making application, shall file with and have approved by the attorney general a bond in which the applicant shall be the principal obligor, in the sum of \$10,000.00. The bond shall run to the people of the state and to any person including charitable organizations who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of the solicitation. The aggregate limit of liability of the surety to the state and to all the persons shall not exceed the sum of the bond. Application for renewal of licenses when effected shall be for a period of 1 year, or a part thereof, expiring on June 30, and may be renewed for additional 1-year periods upon written application, under oath, in the form prescribed by the attorney general and the filing of the bond.

(2) A person shall not act as a professional solicitor in the employ of a professional fund raiser required to be licensed before he has registered with the attorney general or after the expiration or cancellation of

registration. Application for registration or reregistration shall be in writing, under oath, in the form prescribed by the attorney general. Registration or reregistration when effected shall be for a period of 1 year, or a part thereof, expiring on June 30, and may be renewed upon written application, under oath, in the form prescribed by the attorney general for additional 1-year periods.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.287a Suspension of license of professional fund raiser or registration of charitable organization or professional solicitor; imposition of conditions.

Sec. 17a. (1) After notice and an opportunity to be heard, the attorney general may suspend or revoke the license of a professional fund raiser or the registration of a charitable organization or professional solicitor that has violated or is violating this act or rules promulgated under this act.

(2) The attorney general may suspend the license of a professional fund raiser or the registration of a charitable organization or professional solicitor, on an emergency basis without a hearing, if the attorney general issues a notice of emergency suspension containing both of the following:

(a) A description of the conduct in violation of this act or a rule promulgated under this act that constitutes the emergency.

(b) A statement that the professional fund raiser, charitable organization, or professional solicitor has an opportunity for a hearing at a designated time, date, and place, within 48 hours after the notice of emergency suspension is issued, or at a later time agreed to in writing by the attorney general and the professional fund raiser, charitable organization, or professional solicitor, on whether the license or registration should be permanently suspended or revoked. At a hearing held under this subdivision, the professional fund raiser, charitable organization, or professional solicitor shall have a reasonable opportunity to show its compliance with this act or the rules promulgated under this act and has the burden of proof of establishing that compliance.

(3) In addition to his or her authority to suspend or revoke a license or registration under this section, the attorney general may impose conditions on the license of a professional fund raiser or the registration of a charitable organization or professional solicitor that fails to comply with this act or rules promulgated under this act.

History: Add. 2010, Act 377, Eff. Mar. 30, 2011.

400.288 Prohibited conduct; publishing names of contributors; identification.

Sec. 18. (1) A person subject to this act, or an employee or agent of a person subject to this act, shall not do any of the following:

(a) Engage in a method, act, or practice in violation of this act or a rule promulgated under this act; any restriction, condition, or limitation placed on a registration or license; or any order issued under this act.

(b) Represent or imply 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.

(c) Represent or imply that a contribution is 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 written authorization from that charitable organization.

(d) Use a name, symbol, or statement so closely related or similar to a name, symbol, or statement used by another charitable organization or governmental agency that use of that name, symbol, or statement would tend to confuse or mislead a solicited person.

(e) Use a fictitious or false name, address, or telephone number in any solicitation.

(f) Make a misrepresentation to a person by any manner that would lead that person to believe that another person, on whose behalf a solicitation effort is conducted, is a charitable organization or that all or any part of the proceeds of a solicitation effort are for charitable purposes.

(g) Make a misrepresentation to a person by any manner that would lead that person to believe that another person sponsors, endorses, or approves a solicitation effort if that other person has not given written consent to the use of his or her name for that purpose.

(h) Make a misrepresentation to a person by any manner that would lead that person to believe that registration or licensure under this act constitutes endorsement or approval by a department or agency of any state or the federal government.

(i) Represent or imply 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 of a contribution the charitable organization will actually receive.

(j) Divert or misdirect contributions to a purpose or organization other than that for which the funds were

contributed or solicited.

(k) Falsely represent or imply that a donor will receive special benefits or treatment or that failure to make a contribution will result in unfavorable treatment.

(l) Make a misrepresentation to a person by any manner that would lead that person to believe that a contribution is eligible for tax advantages unless that contribution qualifies for those tax advantages and all disclosures required by law are made.

(m) Falsely represent or imply that a person being solicited, or a family member or associate of a person being solicited, has previously made or agreed to make a contribution.

(n) 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.

(o) Represent that funds solicited will be used for a particular charitable purpose if those funds are not used for the represented purpose.

(p) Solicit contributions, conduct a charitable sales promotion, or otherwise operate in this state as a charitable organization, professional fund raiser, or professional solicitor, except in compliance with this act.

(q) Aid, abet, or otherwise permit a person to solicit contributions or conduct a charitable sales promotion in this state unless the person soliciting contributions or conducting the charitable sales promotion complies with this act.

(r) Fail to file any information or reports required under this act.

(s) Fail to comply with a person's request to remove, or not to share, the person's personal information, including, but not limited to, the person's name, address, telephone number, or financial account information, from any list utilized 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.

(t) Solicit or receive a contribution or conduct a charitable sales promotion for, or sell memberships in, a charitable organization subject to this act if that charitable organization is not registered under this act.

(u) Submit any of the following to the attorney general:

(i) 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.

(ii) A document containing any materially false statement.

(v) Violate the terms of an assurance of discontinuance or similar agreement accepted by the attorney general and filed with the court under this act.

(w) For a charitable organization, fail to verify that all professional fund raisers with which the organization has contracted for fund-raising services are currently licensed under this act.

(x) For a professional fund raiser, fail to provide verification of current licensing status and inform any charitable organization with which it has contracted for fund-raising services of any changes affecting its licensing or bonding, in writing, within 14 days of the change.

(y) For a charitable organization, submit financial statements, including IRS form 990, 990-EZ, 990-PF, or other 990-series internal revenue service return, or any other financial report required under this act, that contain any misrepresentation with respect to the organization's activities, operations, or use of charitable assets.

(z) Wear a law enforcement or public safety uniform or clothing similar to a law enforcement or public safety uniform when making a face-to-face solicitation or collection of contributions.

(2) This section does not prevent the publication of names of contributors without their written consent in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(3) A charitable organization, whether or not exempt from this act, shall supply to each solicitor and each solicitor shall have in his or her immediate possession identification that sets forth the name of the solicitor and the name of the charitable organization on whose behalf the solicitation is conducted.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.289 Owning or operating clothing donation box; requirements; exemption.

Sec. 19. (1) Subject to subsection (2), a person that owns or operates a clothing donation box or that receives any of the personal property placed in a clothing donation box or proceeds of that personal property shall not do any of the following:

(a) Fail or neglect to maintain a current license under this act at any time the clothing donation box is accessible to the public.

(b) Mark the clothing donation box or any sign near the clothing donation box in any manner that

represents or implies that personal property placed in the clothing donation box, or the proceeds of that personal property, is donated to 1 or more charitable organizations if it is not.

(c) Display the name, logo, trademark, or service mark of a charitable organization on a clothing donation box or on any sign near the clothing donation box if that charitable organization does not receive any of the personal property placed in the clothing donation box or any of the proceeds of that personal property.

(d) If charitable organizations receive some but not all of the personal property placed in the clothing donation box or the proceeds of that personal property, fail or neglect to clearly and conspicuously disclose on the donation box or on a sign at the donation box the name, address, and telephone number of each charitable organization that receives any of that property or those proceeds and the name, address, and telephone number of any other person that receives any of that property or those proceeds.

(2) Subsection (1) does not apply to any person that is exempt from the licensing and financial statement requirements of this act under section 13.

History: Add. 2010, Act 196, Imd. Eff. Oct. 5, 2010.

Compiler's note: Former MCL 400.289, which pertained to provisions to licensure or registration, was repealed by Act 368 of 1976, Imd. Eff. Dec. 23, 1976.

400.290 Grounds for injunction, court order, or judgment; additional remedies; actions by attorney general; assurance of discontinuance.

Sec. 20. (1) In addition to any other action authorized by law, the attorney general may bring an action to enjoin an act or practice prohibited under this act. After finding that a person has engaged in or is engaging in a prohibited act or practice, a court may enter any appropriate order or judgment, including, but not limited to, an injunction, an order of restitution, or an award of reasonable attorney fees and costs. A court may award to this state a civil fine of not more than \$10,000.00 for each violation of this act against a person that is subject to this act; against an officer, director, shareholder, or controlling member of a person subject to this act; against any other person that directly engaged in, authorized, or was otherwise legally responsible for the prohibited act or practice; or against any combination of those persons. A court may order an injunction under this subsection if it finds that a violation of this act has occurred, or finds that an injunction would promote the public interest, without a finding of irreparable harm.

(2) In addition to any other remedy, a person that violates an injunction or other order entered under subsection (1) shall pay to this state a civil fine of not more than \$10,000.00 for each violation, which may be recovered in a civil action brought by the attorney general.

(3) The attorney general may exercise the authority granted in this section against a charitable organization or person that operates under the guise or pretense of being a charitable organization or other person that is exempt from this act and is not in fact a charitable organization or person entitled to that exemption.

(4) In addition to any other action authorized by law, the attorney general may 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 this act from any person alleged to be engaged in or to have been engaged in that method, act, or practice. 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. An assurance of discontinuance shall be in writing and shall be filed with the circuit court for Ingham county. An action resolved by an assurance of discontinuance may be reopened by the attorney general at any time for enforcement by a court or for further proceedings in the public interest. Evidence of a violation of an assurance of discontinuance is prima facie evidence of a violation of this act in any subsequent proceeding brought by the attorney general.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.291 Investigation; order of appearance or production; service; contempt; oath or affirmation.

Sec. 21. (1) The attorney general may investigate a complaint from any person in whatever manner the attorney general considers appropriate and may investigate on his or her own initiative any person that is subject to this act. The attorney general may require a person or an officer, member, employee, or agent of a person to appear at a time and place specified by the attorney general to give information under oath and to produce books, memoranda, papers, records, documents, or other relevant evidence in the possession of the person ordered to appear.

(2) When requiring the attendance of a person or the production of documents under subsection (1), the attorney general shall issue an order setting forth the time when and the place where attendance or production is required and shall serve the order upon the person in the manner provided for service of process in civil

cases at least 5 days before the date fixed for attendance or production. The order shall have the same force and effect as a subpoena and, upon application of the attorney general, the order may be enforced by a court having jurisdiction over the person or the circuit court for the county of Ingham or for the county where the person receiving the order resides or is found, in the same manner as though the notice were a subpoena. If a person fails or refuses to obey the order issued by the attorney general, the court may issue an order requiring the person to appear before the court, to produce documentary evidence, or to give testimony concerning the matter in question. Failure to obey the order of the court is punishable by that court as contempt. The investigation may be conducted by an assistant attorney general or other person designated by the attorney general. The attorney general or other designated person may administer the necessary oath or affirmation to witnesses.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.292 Powers and duties of attorney general not restricted.

Sec. 22. This act shall not be construed to limit or restrict the exercise of powers or the performance of the duties of the attorney general which he otherwise is authorized to exercise or perform under any other provisions of law.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.293 Conduct constituting misdemeanor; penalty; presumption; civil action; prosecution.

Sec. 23. (1) A person that does any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$5,000.00, or both, for each violation:

(a) Knowingly misrepresents or misleads 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.

(b) Knowingly diverts or misdirects contributions to a purpose or organization other than for which the funds were contributed or solicited.

(c) Knowingly misrepresents that funds solicited or contributed will be used for a specific charitable purpose.

(d) Knowingly misrepresents that a donor will receive special benefits or treatment or that failure to make a contribution will result in unfavorable treatment.

(e) Employs 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.

(f) Knowingly fails to file any materials, information, or report required under this act.

(g) Engages in any of the following practices and wrongfully obtains more than \$1,000.00 and less than \$5,000.00, in the aggregate, as a result of the practice or practices:

(i) 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.

(ii) Knowingly uses a name, symbol, or statement so closely related or similar to a name, symbol, or statement used by another charitable organization or governmental agency that use of that name, symbol, or statement is confusing or misleading.

(iii) Knowingly uses a bogus, fictitious, or nonexistent organization, address, or telephone number in any solicitation.

(iv) 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.

(v) 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 of the contribution the charitable organization will actually receive.

(vi) Knowingly solicits contributions, conducts a charitable sales promotion, or otherwise operates in this state as a charitable organization or professional fund raiser unless the information required under this act is filed with the attorney general as required under this act.

(vii) Aids, abets, or otherwise permits a person to solicit contributions or conduct a charitable sales promotion in this state unless the person soliciting contributions or conducting the charitable sales promotion has complied with the requirements of this act.

(viii) Knowingly solicits or receives a contribution, conducts a charitable sales promotion, or sells memberships in this state for or on behalf of any charitable organization subject to the provisions of this act that is not registered under this act.

(2) A person that does any of the following is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$20,000.00, or both, for each violation:

(a) Engages in any practice or practices described in subsection (1)(a), (b), (c), (d), or (e) if the amount of money fraudulently collected or wrongfully diverted from the charitable purpose for which the money was solicited exceeds, in the aggregate, \$1,000.00.

(b) Engages in any practice or practices described in subsection (1)(g) and wrongfully obtains more than \$5,000.00, in the aggregate, as a result of the practice or practices.

(c) Knowingly submits any of the following in materials or statements required under this act or requested by the attorney general:

(i) Any document or statement purporting to have been signed, certified, attested to, approved by, or endorsed by a person if the signature, certification, attestation, approval, or endorsement is not genuine or has not been given by that person.

(ii) Any document containing any materially false statement.

(3) For purposes of this section, a person is 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 in violation of subsection (1) or (2) occurred.

(4) In addition to pursuing a criminal action under this section, the attorney general may bring a civil action for damages or equitable relief to enforce the provisions of this act.

(5) This section does not limit or restrict prosecution under the general criminal statutes of this state.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

400.293a Persons subject to act.

Sec. 23a. (1) A person that is not a charitable organization, a professional fund raiser, or a volunteer supervised by a charitable organization, but that solicits contributions, conducts a fund-raising event, or conducts a charitable sales promotion for a charitable purpose is subject to this act.

(2) A person subject to this act under subsection (1) is not required to register or file reports required under this act.

History: Add. 2010, Act 377, Eff. Mar. 30, 2011.

400.293b Authority of prosecuting attorney to prosecute person subject to act.

Sec. 23b. The prosecuting attorney for a county may prosecute a person subject to this act in the same manner as the attorney general. A county prosecuting attorney shall notify the attorney general when he or she begins a prosecution under this section and provide the attorney general with a copy of the final judgment in that action.

History: Add. 2010, Act 377, Eff. Mar. 30, 2011.

400.294 Repeal of MCL 400.301 to 400.304.

Sec. 24. Act No. 68 of the Public Acts of 1915, being sections 400.301 to 400.304 of the Compiled Laws of 1970, is repealed.

History: 1975, Act 169, Imd. Eff. July 20, 1975.