~~Indicates Matter Stricken~~

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COMMITTEE REPORT

March 6, 2013

**H. 3367**

Introduced by Rep. J.E. Smith

S. Printed 3/6/13--H.

Read the first time January 17, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3367) to amend Section 33‑56‑20, Code of Laws of South Carolina, 1976, relating to definitions for purposes of the South Carolina Solicitation of Charitable Funds Act, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 33‑56‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE SOUTH CAROLINA SOLICITATION OF CHARITABLE FUNDS ACT, SO AS TO REVISE SPECIFIC DEFINITIONS; TO AMEND SECTION 33‑56‑60, RELATING TO CERTAIN FILING REQUIREMENTS, SO AS TO FURTHER PROVIDE FOR WHICH CHARITABLE ORGANIZATIONS ARE REQUIRED TO FILE AND THE APPLICABLE FILING REQUIREMENTS; TO AMEND SECTION 33‑56‑70, RELATING TO CONTRACTS WITH PROFESSIONAL SOLICITORS REQUIRED TO BE FILED WITH THE SECRETARY OF STATE, SO AS TO PROVIDE FOR ADDITIONAL FILING INFORMATION AND TO FURTHER PROVIDE WHEN A PROFESSIONAL SOLICITOR, COMMERCIAL CO‑VENTURER, OR PROFESSIONAL FUNDRAISING COUNSEL MAY BEGIN PROVIDING OR CONTINUE PROVIDING SOLICITATIONS AND SERVICES IN THIS STATE; TO AMEND SECTION 33‑56‑110, RELATING TO REGISTRATION OF CERTAIN PERSONS, SO AS TO REVISE THE PROVISIONS OF THE SECTION IN REGARD TO THE REQUIREMENTS OF AND PROCEDURES FOR REGISTRATION, INCLUDING THE SANCTIONS OR PENALTIES FOR NONCOMPLIANCE OR VIOLATION; AND TO AMEND SECTION 33‑56‑120, RELATING TO PROHIBITED MISREPRESENTATIONS, SO AS TO CLARIFY A REFERENCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 33‑56‑20 of the 1976 Code is amended to read:

“Section 33‑56‑20. As used in this chapter, unless a different meaning is required by the context:

(1)(a) ‘Charitable organization’ means a person, as defined in item (7):

(i) determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code;

(ii) that is or holds itself out to be established for any benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety; or

(iii) that employs a charitable appeal as the basis of solicitation or an appeal that suggests that there is a charitable purpose to a solicitation, or that solicits or obtains contributions solicited from the public for a charitable purpose.

(b) This definition does not include:

(i) ~~a bona fide religious organization or group affiliated with and forming an integral part of the religious organization where no part of the net income inures to the direct benefit of an individual and its conduct is supported primarily by government grants or contracts, funds solicited from its own membership, congregation, or previous donors, or fees charged for services rendered in furtherance of its tax‑exempt purpose; or~~ a church, synagogue, mosque, or other congregation organized for the purpose of divine worship, and integrated auxiliaries of them, or a religious organization determined by the Internal Revenue Service to be a tax exempt organization that is not required to file Internal Revenue Service Form 990, Form 990‑EZ, or Form 990‑N based on its religious classification. ‘Integrated auxiliaries’, as used in this subsection, include men’s or women’s organizations, seminaries, mission societies, and youth groups affiliated with a church, synagogue, mosque, or other congregation organized for the purpose of divine worship; or

(ii) a candidate for national, state, or local office or a political party or other group required to file information with the Federal Election Commission or State Election Commission.

(2) ‘Charitable purpose’ means a purpose described in Section 501(c)(3) of the Internal Revenue Code or a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary objective, including an objective of an organization of law enforcement personnel, firefighters, or other persons who protect the public safety if a stated purpose of the solicitations includes a benefit to a person outside the actual service membership of the organization.

(3) ‘Commercial co‑venturer’ means a person that regularly and primarily engages in trade or commerce for profit that, for the benefit of a charitable organization, may raise funds by advertising that the purchase or use of goods, services, entertainment, or other thing of value benefits the charitable organization, if it is offered at a price comparable to similar goods or services in the market.

(4) ‘Contribution’ means the promise, grant, or pledge of money, credit, assistance, or property of any kind or value. It does not include bona fide fees, dues, ~~or~~ assessments, or sponsorships paid by members of an organization if membership is not conferred solely as consideration for making a contribution in response to a solicitation, and ~~that membership does not bestow only a right to vote~~ the monetary value of the fees, dues, assessments, or sponsorships compares reasonably with the monetary value of benefits provided to members. Fees, dues, assessments, or sponsorships paid by members primarily to support the organization’s activities, and not to obtain benefits of more than nominal or insubstantial monetary value, are contributions within the meaning of this chapter.

(5) ‘Educational institution’ means an organization organized and operated exclusively for educational purposes, which usually maintains a regular faculty and curriculum and usually has a regularly enrolled body of pupils or students in attendance at the place where educational activities are regularly conducted. The term ‘educational institution’ also includes the following persons, entities, or institutions if their fundraising activities are not conducted by professional solicitors as defined by this chapter:

(a) an educational institution that is ~~an eleemosynary~~ a nonprofit junior or senior college in South Carolina whose major campus and headquarters are located within this State and which is accredited by the Southern Association of Colleges and ~~Secondary~~ Schools or other accreditation commission that is recognized by the United States Department of Education; and

(b) a person or an entity performing sanctioned fundraising activities on behalf of the educational institutions referenced in subitem (a) above, its foundations, or related or affiliated funds.

(6) ‘Parent organization’ means that part of a charitable organization which coordinates, supervises, or exercises control over policy, fundraising, and expenditures, or assists or advises one or more chapters, branches, or affiliates in this State.

(7) ‘Person’ means an individual, an organization, a trust, a foundation, a group, an association, a partnership, a corporation, a society, or a combination of them.

(8) ‘Professional fundraising counsel’ means a person that for a fixed rate of compensation plans, conducts, manages, prepares materials for, advises, or acts as a consultant, directly or indirectly, in connection with soliciting contributions for or on behalf of a charitable organization, but that actually does not solicit, receive, or collect contributions as a part of these services. A person whose compensation is computed on the basis of funds actually raised or to be raised is not a professional fundraising counsel pursuant to the provisions of this chapter. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within this State, or the bona fide salaried officer or employee of a parent organization certified as tax exempt, is not a professional fundraising counsel.

(9) ‘Professional solicitor’ means a person that, for monetary or other consideration, solicits contributions for or on behalf of a charitable organization, either personally or through its agents, servants, or employees ~~who are~~ or through agents, servants, or employees who are specially employed by or for a charitable organization ~~and~~, who are engaged in the solicitation of contributions under the direction of that person. ‘Professional solicitor’ also means a person that plans, conducts, manages, carries on, advises, or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as ‘professional fundraising counsel’ within the meaning of this chapter. A bona fide salaried officer, unpaid director, a bona fide employee of a charitable organization, or a part‑time student employee of an educational institution is not a professional solicitor. A paid director or employee of a charitable organization is not a professional solicitor unless his salary or other compensation is paid as a commission computed on the basis of funds actually raised or to be raised.

(10) ‘Solicit’ and ‘solicitation’ means to request and the request for money, credit, property, financial assistance, or other thing of value, or a portion of it, to be used for a charitable purpose or to benefit a charitable organization. A solicitation takes place whether or not the person making the request receives a contribution.”

SECTION 2. Section 33‑56‑60 of the 1976 Code is amended to read:

“Section 33‑56‑60. (A) A charitable organization that has filed a registration statement with the Secretary of State pursuant to Section 33‑56‑30, or that is soliciting ~~funds~~ contributions in this State, whether individually or collectively with other organizations~~, and not exempt pursuant to Section 33‑56‑50~~, shall file in the office of the Secretary of State an annual report of its financial activities, on forms prescribed by the Secretary of State or on Internal Revenue Service Form 990, 990‑EZ, or 990‑PF, certified to be true by the organization’s chief executive officer and chief financial officer. The report must cover the preceding fiscal year and must be filed within four and one‑half months of the close of the organization’s fiscal year unless a written extension has been granted by the Secretary of State. To receive an extension, the organization must file with the Secretary of State a written request for an extension or a copy of the extension request submitted to the Internal Revenue Service.

(B) The annual financial report must include:

(1) specific and itemized support and revenue statements disclosing direct public support from solicitation, indirect public support, government grants, program service revenue, and other revenue. The report must disclose the amount of direct public support received from direct mail solicitation, telephone solicitation, commercial co‑venturers, door‑to‑door solicitations, telethons, and all other itemized sources;

(2) specific and itemized expense statements disclosing program services, public information expenditures, fundraising costs, payments to affiliates, management costs, and salaries paid; and

(3) balance sheet disclosures containing total assets and liabilities.

(C) If a charitable organization is required or elects to file a completed Internal Revenue Service Form 990, 990‑EZ, or 990‑PF, the organization may file the form with the Secretary of State instead of the report required by subsection (A); however, the form may exclude the information which the Internal Revenue Service would not release pursuant to a Freedom of Information request.

(D) A charitable organization determined by the Secretary of State to be exempt from registration pursuant to Section 33‑56‑50 is not required to file an annual financial report.

(E) An organization which fails to file a timely annual financial report required by this section may be enjoined from further solicitation of funds in this State in an action brought by the Secretary of State and is ineligible to renew its registration as a charitable organization until the required financial statements are filed with the Secretary of State. An organization which fails to file a timely annual financial report required by this section may be assessed by the Secretary of State administrative fines of ten dollars for each day of noncompliance for each delinquent report not to exceed two thousand dollars for each separate violation.”

SECTION 3. Section 33‑56‑70 of the 1976 Code is amended to read:

“Section 33‑56‑70. (A) A contract or agreement between any professional fundraising counsel, professional solicitor, or commercial co‑venturer and a charitable organization must be in writing and filed~~, along with a Notice of Solicitation form,~~ with the Secretary of State at least ten days before the professional fundraising counsel, professional solicitor, or commercial co‑venturer begins any solicitation activity or any other activity contemplated by the contract or agreement in this State. ~~Solicitations or services pursuant to a contract may not begin in this State until the contract has been filed with the Secretary of State and until both the charitable organization and the professional solicitor or professional fundraising counsel are registered properly with the Secretary of State.~~ In addition, a professional solicitor or commercial co‑venturer shall attach a completed Notice of Solicitation form that complies with the requirements of this section to the contract or agreement filed with the Secretary of State.

(B) A contract filed pursuant to this section must disclose the following, if applicable:

(1) legal name and alias name, address, and registration number, if any, of the professional solicitor, professional fundraising counsel, or commercial co‑venturer;

(2) legal name, address, and registration number of the charitable organization;

(3) name and residence address of each person directing or supervising the contract solicitation services;

(4) description of the event or campaign;

(5) date the solicitation or campaign ~~commences~~ will commence;

(6) date the solicitation or campaign ~~terminates~~ will terminate;

(7) statement of the amount or guaranteed minimum percentage of gross receipts to be remitted or retained by the charitable organization, excluding the amount which the charitable organization must pay for fundraising costs;

(8) statement of the amount or percentage of gross receipts with which the professional solicitor, professional fundraising counsel, or commercial co‑venturer is compensated, including the amount the professional solicitor, professional fundraising counsel, or commercial co‑venturer must be reimbursed as payment for fundraising costs; and

(9) if applicable, the maximum dollar amount that will benefit the charitable organization.

(C) Every Notice of Solicitation form filed pursuant to this section must disclose:

(1) legal name and alias name, address, and registration number of the professional solicitor~~, professional fundraising counsel,~~ or commercial co‑venturer;

(2) legal name, address, and registration number of the charitable organization;

(3) date the solicitation activity ~~commences~~ will commence and ~~terminates~~ terminate in this State;

(4) name and residence address of phone room directors for any solicitation activities;

(5) location, including physical address, and telephone numbers from which the solicitation activity, including telephone solicitations, is conducted;

(6) description of all solicitation activity; and

(7) the terms of remuneration for the campaign or event pursuant to the contract.

(D) Solicitations or services pursuant to a contract or agreement between a charitable organization and a professional solicitor, professional fundraising counsel, or commercial co‑venturer may not begin in this State until the contract or agreement has been filed with the Secretary of State and until both the charitable organization and the professional solicitor, professional fundraising counsel, or commercial co‑venturer are registered properly with the Secretary of State.

(E) Within ninety days after a solicitation campaign has been completed, or within ninety days after the anniversary of a solicitation campaign lasting more than one year, ~~the~~ a professional solicitor or commercial co‑venturer ~~must~~ shall file with the Secretary of State a joint financial report for the campaign, including gross revenue, an itemization of expenses, and the amount paid to the ~~sponsor~~ charitable organization. This joint financial report must be completed on the form prescribed by the Secretary of State, signed by both an authorized official of the professional solicitor or commercial co‑venturer and an authorized official of the charitable organization, and certified to be true.

~~(E)~~(F) A professional solicitor, professional fundraising counsel, or commercial co‑venturer shall cease all solicitation or any other activity conducted pursuant to a contract or agreement with a charitable organization in this State, upon receipt of notice from the charitable organization or the Secretary of State that the registration of the charitable organization with the Secretary of State has expired or has been terminated or suspended.

(G) A professional fundraising counsel, professional solicitor, or commercial co‑venturer failing to comply with this section is ineligible to renew its registration or continue solicitation activities or campaigns until the required information is filed and is liable for an administrative fine not to exceed ten dollars for each day of noncompliance, with a maximum fine of two thousand dollars for each separate violation.”

SECTION 5. Section 33‑56‑110 of the 1976 Code is amended to read:

“Section 33‑56‑110. (A) A person may not act as a professional solicitor, professional fundraising counsel, or ~~professional solicitor~~ commercial co‑venturer for a charitable organization subject to the provisions of this chapter without first having registered with the Secretary of State. Registration includes filing of a complete application and filing fee. An application for registration must be in writing under oath or affirmation in the form prescribed by the Secretary of State~~. The application for registration by a professional fundraising counsel or professional solicitor must be signed by its chief executive officer and chief financial officer, certified as true,~~ and accompanied by an annual fee of fifty dollars.

(B) The application for a ~~professional fundraising counsel or~~ professional solicitor must be signed by its chief executive officer and chief financial officer and certified as true, and must include the following:

(1) legal name of the applicant and all other names under which the professional solicitor is known or operates;

(2) principal address of the applicant and address of officers and directors of the applicant;

(3) list of employees, whether full time, part time, or contract, and their job titles;

(4) form of the applicant’s business;

(5) names, addresses, and titles of all current principal officers, directors, individual owners, or partners, and those for the preceding three years;

(6) list of the full names and addresses of each state in which an applicant is registered currently as a ~~professional fundraising counsel or~~ professional solicitor or professional fundraising counsel;

(7) list of charitable organizations with which an applicant contracted in this State for the previous three years;

(8) registration fee of fifty dollars;

(9) statement as to whether the applicant, or its directors, principal officers, individual owners, or partners is or has been the subject of a legal or administrative action, including an injunction, concerning a charitable solicitation, fundraising campaign, or campaign with a commercial co‑venturer by another local, state, or federal governmental authority including, but not limited to, registration or license revocation or denial, fines, injunctions, suspensions, or voluntary agreement to discontinue any charitable solicitation activity and, if so, a written explanation of those actions;

(10) statement as to whether the applicant, or its directors, principal officers, individual owners, or partners has been the subject of a criminal conviction, including guilty or nolo contendere pleas, involving any charitable solicitations act, fraud, dishonesty, ~~or~~ false statement, forgery, or theft, including identity theft, in a jurisdiction within the United States and, if so, a description and date of any such conviction;

(11) ~~applicant’s Federal EIN if incorporated or Social Security number if acting as a sole proprietor;~~

~~(12)~~ list of individuals who serve as couriers or employees to personally collect contributed funds from solicited parties, as applicable; and

~~(13)~~(12) statement as to the relationship of any of the officers, directors, trustees, or board members of ~~a professional fundraising counsel or~~ the professional solicitor to:

(a) each other; or

(b) a director, officer, agent, or employee of a charitable organization under contract with the professional fundraising counsel or solicitor.

(C) The application for an individual professional solicitor employed by a professional solicitor company registered pursuant to subsection (B) must be signed by the applicant and certified as true, and must include the following:

(1) legal name and address of the applicant;

(2) legal name and address of the applicant’s employer;

(3) list of the full names and addresses of each state in which an applicant is registered currently as a professional solicitor or professional fundraising counsel;

(4) list of charitable organizations with which an applicant contracted in this State for the previous three years;

(5) registration fee of fifty dollars;

(6) statement as to whether the applicant is or has been the subject of a legal or administrative action, including an injunction, concerning a charitable solicitation, fundraising campaign, or campaign with a commercial co‑venturer by another local, state, or federal governmental authority including, but not limited to, registration or license revocation or denial, fines, injunctions, suspensions, or voluntary agreement to discontinue any charitable solicitation activity and, if so, a written explanation of those actions; and

(7) statement as to whether the applicant is or has been the subject of a criminal conviction, including guilty or nolo contendere pleas, involving any charitable solicitations act, fraud, dishonesty, false statement, forgery, or theft, including identity theft, in a jurisdiction within the United States and, if so, a description and date of any such conviction.

(D) The application for a professional fundraising counsel must be signed by its chief executive officer and chief financial officer and certified as true, and must include the following:

(1) legal name of the applicant and all other names under which the professional fundraising counsel is known or operates;

(2) principal address of the applicant and address of officers and directors of the applicant;

(3) list of employees, whether full time, part time, or contract, and their job titles;

(4) form of the applicant’s business;

(5) names, addresses, and titles of all current principal officers, directors, individual owners, or partners, and those for the preceding three years;

(6) list of the full names and addresses of each state in which an applicant is registered currently as a professional fundraising counsel or professional solicitor;

(7) list of charitable organizations with which an applicant contracted in this State for the previous three years;

(8) registration fee of fifty dollars;

(9) statement as to whether the applicant, or its directors, principal officers, individual owners, or partners is or has been the subject of a legal or administrative action, including an injunction, concerning a charitable solicitation, fundraising campaign, or campaign with a commercial co‑venturer by another local, state, or federal governmental authority including, but not limited to, registration or license revocation or denial, fines, injunctions, suspensions, or voluntary agreement to discontinue any charitable solicitation activity and, if so, a written explanation of those actions;

(10) statement as to whether the applicant, or its directors, principal officers, individual owners, or partners has been the subject of a criminal conviction, including guilty or nolo contendere pleas, involving any charitable solicitations act, fraud, dishonesty, false statement, forgery, or theft, including identity theft, in a jurisdiction within the United States and, if so, a description and date of any such conviction;

(11) statement as to the relationship of any of the officers, directors, trustees, or board members to:

(a) each other; or

(b) a director, officer, agent, or employee of a charitable organization under contract with the professional fundraising counsel.

(E) The application for a commercial co‑venturer must be signed by its chief executive officer and chief financial officer and certified as true, and must include the following:

(1) legal name of the applicant and all other names under which the commercial co‑venturer is known or operates;

(2) principal address of the applicant and address of officers and directors of the applicant;

(3) form of the applicant’s business;

(4) list of the full names and addresses of each state in which an applicant is registered currently as a commercial co‑venturer;

(5) list of charitable organizations with which an applicant contracted in this State for the previous three years;

(6) registration fee of fifty dollars;

(7) statement as to whether the applicant, or its directors, principal officers, individual owners, or partners is or has been the subject of a legal or administrative action, including an injunction, concerning a charitable solicitation, fundraising campaign, or campaign with a commercial co‑venturer by another local, state, or federal governmental authority including, but not limited to, registration or license revocation or denial, fines, injunctions, suspensions, or voluntary agreement to discontinue any charitable solicitation activity and, if so, a written explanation of those actions;

(8) statement as to whether the applicant, or its directors, principal officers, individual owners, or partners has been the subject of a criminal conviction, including guilty or nolo contendere pleas, involving any charitable solicitations act, fraud, dishonesty, false statement, forgery, or theft, including identity theft, in a jurisdiction within the United States and, if so, a description and date of any such conviction;

(9) statement as to the relationship of any of the officers, directors, trustees, or board members to:

(a) each other; or

(b) a director, officer, agent, or employee of a charitable organization under contract with the commercial co‑venturer.

(F) At the time of application, a professional solicitor registered pursuant to subsection (B) ~~must~~ shall file with and have approved by the Secretary of State a surety bond, and a list of all professional solicitors operating under the bond. The applicant or its employer must be the principal obligor in the sum of fifteen thousand dollars, with one or more sureties that are satisfactory to the Secretary of State and whose liability in the aggregate as the sureties at least equals that sum, and ~~must~~ shall maintain the bond in effect so long as a registration is in effect. A deposit of cash in the amount of fifteen thousand dollars may be accepted instead of the bond. The bond shall run to the State of South Carolina for the use of the Secretary of State or his appropriate division and a person who has cause of action against the obligor of the bond for losses resulting from malfeasance, nonfeasance, or misfeasance in the conduct of solicitation activities or any violation of this chapter. A partnership or corporation which is a professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

~~(D)~~(G) Each registration is valid throughout the State for one year and may be renewed for additional one‑year periods upon written application under oath in the form prescribed by the Secretary of State and upon payment of the fee prescribed in this chapter.

~~(E)~~(H) A professional solicitor, ~~or~~ professional fundraising counsel, or commercial co‑venturer that fails to comply with the provisions of this section is liable for an administrative fine of ten dollars for each day of noncompliance, not to exceed two thousand dollars for each separate violation.

~~(F)~~(I) A professional solicitor or professional fundraising counsel that has been convicted of or pled guilty or nolo contendere to a crime involving charitable solicitation activities or a felony involving fraud, dishonesty, ~~or~~ false statement, forgery, or theft, including identity theft, in a jurisdiction within the United States in the past five years may be ineligible for registration as a professional solicitor or professional fundraising counsel in the State of South Carolina.”

SECTION 6. Section 33‑56‑120(A) of the 1976 Code is amended to read:

“(A) In connection with the solicitation of contributions ~~for~~ or the sale of goods or services for charitable purposes, a person shall not misrepresent or mislead, knowingly and wilfully, a person by any manner, means, practice, or device.”

SECTION 7. This act takes effect upon approval by the Governor.

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