CHAPTER 56

Solicitation of Charitable Funds

CROSS REFERENCES

Nonprofit organization qualification to conduct raffles, exemptions, annual raffle form and fee, revocation of registration, investigation, see Section 33‑57‑120.

Nonprofit raffles for charitable purposes, “nonprofit organization” defined, see Section 33‑57‑110.

**SECTION 33‑56‑10.** Short Title.

 This chapter may be cited as the “South Carolina Solicitation of Charitable Funds Act”.

HISTORY: 1994 Act No. 461, Section 1; 2000 Act No. 336, Section 1.

RESEARCH REFERENCES

Encyclopedias

74 Am. Jur. Proof of Facts 3d 63, Scams and Cons.

S.C. Jur. Medical and Health Professionals Section 44, Charitable Hospitals.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 411, The Attorney General as the Protector, Supervisor and Enforcer of Charitable Trusts.

**SECTION 33‑56‑20.** Definitions.

 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 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, 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 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 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 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), 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 or through agents, servants, or employees who are specially employed by or for a charitable organization, 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.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28C; 1998 Act No. 368, Section 4; 2000 Act No. 336, Section 1; 2014 Act No. 135 (H.3367), Section 1, eff March 13, 2014.

Effect of Amendment

2014 Act No. 135, Section 1, rewrote subsections (1)(b)(i), (4), (5), (8), and (9).

CROSS REFERENCES

Trafficking in persons, definitions, see Section 16‑3‑2010.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Charities Section 38, Duties and Responsibilities of Directors and Trustees.

S.C. Jur. Criminal Sexual Conduct Section 9.50, Trafficking in Persons.

Attorney General’s Opinions

A civic club is a “charitable organization” as defined by the Solicitation of Charitable Funds Act, former Sections 33‑55‑10 through 33‑55‑190, Code of Laws of South Carolina (1976). 1981 Op Atty Gen, No. 81‑72, p 94.

**SECTION 33‑56‑30.** Registration statement; filing; form; contents; fee.

 (A) Except as otherwise provided in this chapter, a charitable organization which intends to solicit contributions within this State or have contributions solicited on its behalf must file a registration statement with the Secretary of State, on forms prescribed by the Secretary of State, by the date provided pursuant to Section 33‑56‑60 (A) but in all cases before solicitation. The registration forms and other documents prescribed by the Secretary of State must be (i) signed by the chief executive officer and chief financial officer of the charitable organization, (ii) certified as true, and (iii) filed, along with a fee of fifty dollars.

 (B) The statements must contain:

 (1) the name of the organization;

 (2) the purpose for which it was organized;

 (3) the principal address of the organization and the address of offices in this State. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

 (4) the names and addresses of the chief executive officer, chief financial officer, directors, trustees, officers, and board members;

 (5) the names and addresses of chapters, branches, or affiliates in this State;

 (6) the place and date the organization was legally established and the form of its organization;

 (7) whether the organization intends to use a professional fundraising counsel, professional solicitor, or commercial co‑venturer or hire individuals to solicit and, if so, their names and contact information;

 (8) a copy of any determination letter recognizing the charitable organization’s tax‑exempt status from the Internal Revenue Service and any changes, amendments, or revocations to that letter unless those documents have been previously filed with the Secretary of State;

 (9) the general purpose for which the solicited contributions are to be used;

 (10) whether the organization is authorized by another local, state, or federal governmental authority to solicit contributions and, if so, a list of each;

 (11) whether the organization is or has been the subject of a legal or administrative action 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, or suspensions, and an explanation of all actions;

 (12) whether any of the organization’s officers, directors, trustees, or board members have been the subject of a criminal conviction, including guilty or nolo contendere pleas, involving any charitable solicitations act, fraud, dishonesty, or false statement in a jurisdiction within the United States and, if so, a description and date of any such conviction;

 (13) the charitable organization’s Federal Employer’s Identification Number (EIN);

 (14) the name and address of the registered agent of the charitable organization, if incorporated;

 (15) an annual financial report for the immediately preceding fiscal year filed on forms prescribed by the Secretary of State or on the Internal Revenue Service Form 990, 990EZ, or 990PF, unless that report already has been filed with the Secretary of State;

 (16) a statement as to the relationship of any of the charitable organization’s officers, directors, trustees, or board members by blood, marriage, or adoption to:

 (a) each other; or

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

 If so, the names and addresses of the related parties.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28D; 1998 Act No. 368, Section 5; 2000 Act No. 336, Section 1; 2007 Act No. 69, Section 1, eff June 13, 2007.

Effect of Amendment

The 2007 amendment, in subsection (A), substituted “the date provided pursuant to Section 33‑56‑30(A)” for “July first of each year”.

CROSS REFERENCES

Report of financial activities, filing requirements, contents, filing IRS Form 990, 990‑EZ, or 990‑PF, exemption, penalty for failure to file, see Section 33‑56‑60.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

Attorney General’s Opinions

When a civic club undertakes a fund‑raising project in which it makes no specific charitable appeal, it must nevertheless register with the Secretary of State under former Section 33‑55‑40. 1981 Op Atty Gen, No. 81‑72, p 94.

“Duly constituted religious organizations or any group affiliated with and forming an integral part of such organizations” are specifically exempt from the provisions of the Act; religious organizations, religious societies, as well as those institutions which meet the requirements provided in former Section 33‑55‑60, are exempt from the filing of registration statements as required in former Section 33‑55‑40. 1976‑77 Op Atty Gen, No. 77‑294, p 223.

**SECTION 33‑56‑40.** Children’s Trust Fund of South Carolina exempt from fee.

 The Children’s Trust Fund of South Carolina as established by Section 63‑11‑910 is required to register with the Secretary of State but is not required to pay the annual registration fee provided for in Section 33‑56‑30.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28E; 1998 Act No. 368, Section 6; 2000 Act No. 336, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 20‑7‑5010 was changed to Section 63‑11‑910 in accordance with 2008 Act No. 361 (Children’s Code).

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

**SECTION 33‑56‑45.** Registration and fee requirements for fire departments.

 A fire department conducting or intending to conduct a professional solicitation of charitable funds may comply with the registration and fee requirements of this chapter if the local governing body having jurisdiction over that department and other departments in its area singly registers the multiple departments annually and pays a single annual registration fee of fifty dollars pursuant to Section 33‑56‑30. The single annual registration and fee payment of fifty dollars effectively registers all fire departments within the jurisdiction of the local governing body. Recordkeeping is the responsibility of individual fire departments, and the Secretary of State shall provide all registered fire departments with the appropriate forms.

HISTORY: 2000 Act No. 338, Section 1.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

**SECTION 33‑56‑50.** Organizations exempt from registration provisions; alternate filings; fundraising activities.

 (A) The following are not required to file registration statements with the Secretary of State if their fundraising activities are not conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:

 (1) an educational institution which solicits contributions from only its students and their families, alumni, faculty, friends, and other constituencies, trustees, corporations, foundations, and individuals who are interested in and supportive of the programs of the institution;

 (2) a person requesting contributions for the relief of an individual specified by name at the time of the solicitation when all of the contributions collected, without deductions of any kind, are turned over to the named beneficiary for his use, as long as the person soliciting the contributions is not a named beneficiary;

 (3) a charitable organization which (a) does not intend to solicit or receive contributions from the public in excess of twenty thousand dollars in a calendar year and (b) has received a letter of tax exemption from the Internal Revenue Service, if all functions, including fundraising activities, of the organization exempted pursuant to this item are conducted by persons who are compensated no more than five hundred dollars in a year for their services and no part of their assets or income inures to the benefit of or is paid to an officer or a member. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, within thirty days after the date the contributions exceed these amounts, the organization must register with and report to the Secretary of State as required by this chapter;

 (4) an organization which solicits exclusively from its membership, including a utility cooperative;

 (5) a veterans’ organization which has a congressional charter; and

 (6) the State, its political subdivisions, and an agency or a department of the State which are subject to the disclosure provisions of the Freedom of Information Act.

 (B) The following are not required to file registration statements with the Secretary of State regardless of whether or not their fundraising activities are conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:

 (1) a public school district located in the State and any public school teaching pre‑K through grade twelve located within the public school district. For purposes of this chapter, the term “public school” includes any student organization within the school that does not maintain separate financial accounts or a separate federal Employer’s Identification Number (EIN) from the school and whose fundraising revenues are deposited in the school’s student activity fund; and

 (2) a charitable organization that does not intend to solicit or receive contributions from the public in excess of seven thousand five hundred dollars during a calendar year. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, the organization shall register and report to the Secretary of State as required by this chapter within thirty days after the date the contributions exceed these amounts.

 (C) A charitable organization claiming to be exempt from the registration provisions of this chapter and which solicits charitable contributions must submit annually to the Secretary of State, on forms prescribed by the Secretary of State, the name, address, and purpose of the organization and a statement setting forth the reason for the claim for exemption. If appropriate, the Secretary of State or his appropriate division shall issue a letter of exemption that may be exhibited to the public. A filing fee is not required of an exempt organization.

 (D) A professional solicitor, professional fundraising counsel, or commercial coventurer conducting fundraising activities on behalf of an exempt organization must comply with the registration and filing requirements of this chapter.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 294, Section 1; 1996 Act No. 458, Part II, Section 28F; 1998 Act No. 368, Section 7; 2000 Act No. 336, Section 1; 2007 Act No. 69, Section 2, eff June 13, 2007; 2013 Act No. 43, Section 1, eff June 7, 2013.

Effect of Amendment

The 2007 amendment deleted subparagraph (A)(3)(a) which provided “does not intend to solicit or receive contributions from the public in excess of five thousand dollars during a calendar year” and redesignated subparagraphs (A)(3)(b)(i) and (A)(3)(b)(ii) as subparagraphs (A)(3)(a) and (A)(3)(b), respectively; added subsection (B) exempting from registration charities not intending to solicit more than seven thousand five hundred dollars a year; and redesignated subsection (B) as subsection (C).

The 2013 amendment rewrote paragraph (B); added subparagraphs (B)(1) and (B)(2); added paragraph (D); and made other nonsubstantive changes.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 411, The Attorney General as the Protector, Supervisor and Enforcer of Charitable Trusts.

Attorney General’s Opinions

“Duly constituted religious organizations or any group affiliated with and forming an integral part of such organizations” are specifically exempt from the provisions of the Act; religious organizations, religious societies, as well as those institutions which meet the requirements provided in former Section 33‑55‑60, are exempt from the filing of registration statements as required in former Section 33‑55‑40. 1976‑77 Op Atty Gen, No. 77‑294, p 223.

Political parties are not required to register under our “Solicitation of Charitable Funds Act” when they make a public appeal for contributions (decided under former law). 1978 Op Atty Gen, No. 78‑36, p 60.

**SECTION 33‑56‑55.** Application of chapter to parent‑teacher associations or local chambers of commerce; reporting not required.

 The provisions of this chapter do not apply to a parent‑teacher association affiliated with a school or to a local chamber of commerce. Reporting of fundraising activities or other reporting pursuant to this chapter is not required of a parent‑teacher association or a local chamber of commerce whether or not they would be considered exempt organizations under Section 33‑56‑50, if none of the fundraising activities are conducted by professional solicitors.

HISTORY: 1997 Act No. 47, Section 1; 2000 Act No. 336, Section 1.

Library References

Charities 45(1).

Schools 17.

Westlaw Topic Nos. 345, 75.

C.J.S. Charities Sections 64 to 65.

C.J.S. Schools and School Districts Section 9.

**SECTION 33‑56‑60.** Report of financial activities; filing requirements; contents; filing IRS Form 990, 990‑EZ, or 990‑PF as an alternative; exemption; penalty for failure to file.

 (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 contributions in this State, whether individually or collectively with other organizations, 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.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 294, Section 2; 1996 Act No. 458, Part II, Section 28G; 1998 Act No. 368, Section 8; 2000 Act No. 336, Section 1; 2014 Act No. 135 (H.3367), Section 2, eff March 13, 2014.

Effect of Amendment

2014 Act No. 135, Section 2, in the first sentence of subsection (A), substituted “that has filed a registration statement with the Secretary of State pursuant to Section 33‑56‑30, or that is soliciting contributions in this State, whether individually or collectively with other organizations” for “soliciting funds in this State, whether individually or collectively with other organizations, and not exempt pursuant to Section 33‑56‑50”; in the last sentence of subsection (A), added “written request for an extension or a”; added subsection (D), relating to an exemption; and made other nonsubstantive changes.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Charities Section 38, Duties and Responsibilities of Directors and Trustees.

**SECTION 33‑56‑70.** Contracts with professional solicitors to be in writing; filing requirements; joint financial report for each campaign; penalty for noncompliance.

 (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 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. 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 will commence;

 (6) date the solicitation or campaign 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 or commercial co‑venturer;

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

 (3) date the solicitation activity will commence and 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, a professional solicitor or commercial co‑venturer 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 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.

 (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.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28H; 1998 Act No. 368, Section 9; 2000 Act No. 336, Section 1; 2014 Act No. 135 (H.3367), Section 3, eff March 13, 2014.

Effect of Amendment

2014 Act No. 135, Section 3, rewrote subsection (A); in subsection (B)(5), substituted “will commence” for “commences”; in subsection (B)(6), substituted “will terminate” for “terminates”; in subsections (B)(7) and (B)(8), inserted “amount or” after “statement of the”; in subsection (C)(1), deleted “professional fundraising counsel,” following “professional solicitor”; in subsection (C)(3), substituted “will commence and terminate in this State” for “commences and terminates”; inserted subsection (D) and renumbered former subsection (D) as (E); in subsection (E), substituted “a professional” for “the professional”, substituted “a professional solicitor or commercial co‑venturer shall” for “professional solicitor must”, substituted “charitable organization” for “sponsor”, and inserted “or commercial co‑venturer”; added subsection (F); and redesignated former subsection (E) as subsection (G).

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Charities Section 38, Duties and Responsibilities of Directors and Trustees.

**SECTION 33‑56‑75.** Donor list; professional fundraising counsel or professional solicitor; responsibilities and prohibitions; violations; fines.

 (A) A list provided by the charitable organization of the names, postal addresses, telephone numbers, email addresses, and the dates and amounts of each donation, of each contributor to a solicitation campaign organized pursuant to this chapter conducted by a professional fundraising counsel or professional solicitor is the property of the charitable organization for which the solicitation campaign is conducted. The professional fundraising counsel or professional solicitor must maintain this list throughout the duration of the solicitation campaign until the list is transferred to the charitable organization pursuant to subsection (B).

 (B) If the contributions are received by a professional fundraising counsel or professional solicitor, his agent or subcontractor, then the professional fundraising counsel or professional solicitor shall deliver the list of contributors, including the names, postal addresses, telephone numbers, email addresses, and dates and amounts of donations, to the charitable organization within ninety days after the solicitation campaign has been completed, or within ninety days after each anniversary of a solicitation campaign that lasted for more than one year.

 (C) A professional fundraising counsel or professional solicitor must not:

 (1) withhold from the charitable organization the list referenced in subsection (A);

 (2) restrict any use by the charitable organization of the list referenced in subsection (A);

 (3) transfer possession or control of the list referenced in subsection (A) to any person other than the charitable organization that owns the list;

 (4) permit the use of the list referenced in subsection (A) by any person not so authorized by the charitable organization; or

 (5) use the list referenced in subsection (A) for the benefit of any person other than the owner of the list, without the explicit written consent of the charitable organization that owns this list.

 (D)(1) If a professional fundraising counsel or a professional solicitor violates a provision of this section, the Secretary of State must notify the professional fundraising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to the last known address of the violator. If the violation is not remedied within fifteen days after the formal notification or receipt of the notice, the Secretary of State may assess an administrative fine of one hundred dollars for each day of noncompliance, not to exceed a maximum fine of twenty‑five thousand dollars for each violation.

 (2) A person who is assessed an administrative fine pursuant to this section shall, within thirty days from receipt of certified or registered notice from the Secretary of State, pay the assessed fine or request a contested case hearing before the Administrative Law Court. If no fine is remitted or no contested case is requested, then the Secretary of State may suspend the registration of the person and is authorized to request an injunction against the person in the Administrative Law Court to prohibit the person from engaging in further charitable solicitation activities in this State. The decision of the Administrative Law Court may be appealed as provided in Section 1‑23‑610.

 (E) The provisions of this section do not apply to a professional fundraising counsel or a professional solicitor used for a political campaign subject to disclosure requirements of Section 8‑13‑920.

HISTORY: 2010 Act No. 156, Section 1, eff May 11, 2010.

Editor’s Note

2010 Act No. 156, Section 3, provides as follows:

“This act takes effect upon approval by the Governor and applies to all transactions or contracts entered into on or after that date.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Charities Section 38, Duties and Responsibilities of Directors and Trustees.

**SECTION 33‑56‑80.** Filings to be public records.

 Registration statements and applications, reports, professional fundraising counsel contracts, professional solicitor contracts, or commercial co‑venturer contracts, and all other documents and information required to be filed pursuant to this chapter or by the Secretary of State are public records in the office of the Secretary of State and are open to the general public for inspection at a time and under conditions as the Secretary of State may prescribe. The Secretary of State shall publish and make available to the public and to persons subject to this chapter explanatory information concerning this chapter, the duties imposed by this chapter, and the means for enforcing this chapter.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28I; 1998 Act No. 368, Section 10; 2000 Act No. 336, Section 1.

Library References

Charities 45(1).

Records 51.

Westlaw Topic Nos. 326, 75.

C.J.S. Charities Sections 64 to 65.

C.J.S. Records Sections 97, 99.

**SECTION 33‑56‑90.** Disclosures to solicited parties; penalties.

 (A) At the initial time of solicitation, a professional solicitor must disclose its status as a “professional” or “paid” solicitor. The professional solicitor also must disclose the registered true name of the professional fundraising organization for which it works and the registered true name, location, and purpose of the charitable organizations for which it is soliciting. Upon oral or written request of the solicited party, a professional solicitor also must disclose the percentage of gross receipts with which the professional solicitor is compensated including the amount the professional solicitor must be reimbursed as payment for fundraising costs. The professional solicitor also must disclose the 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.

 (B) Upon oral or written request by the solicited party, the professional solicitor must deliver to the solicited party within fifteen business days of the request a:

 (1) financial statement of the charitable organization disclosing assets, liabilities, fund balances, revenue, and expenses for the preceding fiscal year. This financial statement must be the most recently submitted annual financial report pursuant to Section 33‑56‑60; and

 (2) copy of the professional solicitor’s or charitable organization’s current registration certification from the Secretary of State.

 (C) A professional solicitor that fails to comply with the provisions of this section is liable for an administrative fine not to exceed two thousand dollars for each separate violation.

 (D) An offense committed in violation of this section is considered to have been committed at the place where the solicitation either was initiated or was received.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28J; 1998 Act No. 368, Section 11; 2000 Act No. 336, Section 1; 2000 Act No. 404, Section 11.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

RESEARCH REFERENCES

Encyclopedias

74 Am. Jur. Proof of Facts 3d 63, Scams and Cons.

**SECTION 33‑56‑100.** Fiscal records; retention for three years.

 In accordance with the regulations promulgated by the Secretary of State, a charitable organization, professional solicitor, professional fundraising counsel, or commercial co‑venturer subject to the provisions of this chapter must keep the true fiscal records as to its activities in this State. The records must be retained for at least three years after the end of the period of registration to which they relate.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28K; 1998 Act No. 368, Section 12; 2000 Act No. 336, Section 1.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

**SECTION 33‑56‑110.** Registration of professional solicitor, fund‑raising counsel, or commercial co‑venturer; application; surety bond; duration of registration; penalties; ineligible persons.

 (A) A person may not act as a professional solicitor, professional fundraising counsel, or 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 and accompanied by an annual fee of fifty dollars.

 (B) The application for a 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 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, 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) list of individuals who serve as couriers or employees to personally collect contributed funds from solicited parties, as applicable; and

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

 (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.

 (H) A professional solicitor, 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.

 (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, 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.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28L; 1998 Act No. 368, Section 13, eff July 1, 1998; 2000 Act No. 336, Section 1; 2014 Act No. 135 (H.3367), Section 4, eff March 13, 2014.

Effect of Amendment

2014 Act No. 135, Section 4, rewrote the section.

Library References

Charities 45(1).

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 65.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Charities Section 38, Duties and Responsibilities of Directors and Trustees.

**SECTION 33‑56‑120.** Misrepresentations prohibited.

 (A) In connection with the solicitation of contributions 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.

 (B) A charitable organization, professional fundraising counsel, or professional solicitor shall not use or exploit the fact of registration so as to lead the public to believe that the registration in any way constitutes an endorsement or approval by the State. However, the use of the following statement is not considered a prohibited exploitation: “Registered with the Secretary of State as required by law”. Registration does not imply endorsement of a public solicitation for contributions.

 (C) In connection with the solicitation of contributions or the sale of goods or services for charitable purposes, a person shall not represent to or mislead a person by any manner, means, practice, or device to believe that another person sponsors or endorses the solicitation of contributions, sale of goods or services for charitable purposes, or approves of the charitable purposes or a charitable organization connected with it when the other person has not given written consent to the use of his name for these purposes. A member of the board of directors or trustees of a charitable organization or another person who has agreed either to serve or to participate in a voluntary capacity in the campaign is considered to have given his consent to the use of his name in the campaign.

 (D) A person shall not make any representation that he is soliciting contributions for or on behalf of a charitable organization or shall not use or display any emblem, device, or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

 (E) For the purpose of soliciting contributions from a person in this State, a person shall not use the name of another person except that of an officer, a director, or a trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other person. A person is considered to have used the name of another person for the purpose of soliciting contributions if the latter person’s name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or if his name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

 (F) Nothing contained in subsection (E) prevents 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.

 (G) A person shall not knowingly or wilfully use a misleading practice or device to solicit the contribution or sale of goods or services for a charitable purpose in connection with a declared state of emergency or disaster as described in Section 39‑5‑147. Penalties provided in this chapter are cumulative of and in addition to those provided in Section 39‑5‑147.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28M; 1998 Act No. 368, Section 14; 2000 Act No. 336, Section 1; 2002 Act No. 339, Section 20; 2014 Act No. 135 (H.3367), Section 5, eff March 13, 2014.

Effect of Amendment

2014 Act No. 135, Section 5, in subsection (A), substituted “or the sale of goods or services for charitable purposes” for “for or the sale of goods or services”.

Library References

Charities 45.

Westlaw Topic No. 75.

C.J.S. Charities Sections 64 to 66.

RESEARCH REFERENCES

Encyclopedias

74 Am. Jur. Proof of Facts 3d 63, Scams and Cons.

S.C. Jur. Charities Section 38, Duties and Responsibilities of Directors and Trustees.

**SECTION 33‑56‑130.** Foreign organizations and solicitors deemed to appoint secretary as agent for service.

 If a charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer soliciting contributions from people in this State and having a principal place of business outside the State, or organized under and by virtue of the laws of a foreign state, is subject to the provisions of this chapter and does not otherwise appoint a registered agent for service of process, that charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer is considered to have appointed irrevocably the Secretary of State as an agent upon whom may be served summons, subpoena, subpoena duces tecum, or other process directed to the charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer or a partner, principal officer, or director of it in any action or proceeding brought pursuant to this chapter. Service of process is made by delivering to and leaving with the Secretary of State, or with any person designated to receive service at the office of the Secretary of State, duplicate copies of the process, notice, or demand. The service is sufficient service if notice of the service and a copy of the process are sent by the Secretary of State to the charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer, by registered or certified mail with return receipt requested, at the address provided for in the registration form required to be filed with the Secretary of State pursuant to this chapter or, in default of the filing of the form, at the last address known to the Secretary of State. Service of process is complete ten days after the receipt by the Secretary of State of a return receipt purporting to be signed by the addressee or a person qualified to receive the registered or certified mail, in accordance with the accepted practices of the United States Postal Service or, if acceptance was refused by the addressee, ten days after the return to the Secretary of State of the original envelope bearing a notation by the postal authorities that receipt of it was refused.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28N; 1998 Act No. 368, Section 15; 2000 Act No. 336, Section 1.

Library References

Charities 50.

Westlaw Topic No. 75.

C.J.S. Charities Sections 52 to 57.

**SECTION 33‑56‑140.** Investigations; notice of noncompliance; grounds for injunction; rejection of filings; hearings and appeals.

 (A) Upon his own motion or upon complaint of any person, the Secretary of State may investigate any charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer to determine if it has violated the provisions of this chapter or has filed an application, or other information required by this chapter, which contains false or misleading statements. The Secretary of State may subpoena or audit persons and require the production of books, papers, and other documents to aid in the investigation of alleged violations of this chapter.

 (B) If a charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer fails to file a registration application, statement, report, or other information required to be filed with the Secretary of State by this chapter, or otherwise violates the provisions of this chapter, the Secretary of State must notify the delinquent charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer of this fact by mailing a notice by registered or certified mail, with return receipt requested, to its last known address. If the required registration application, statement, annual report, assurance of voluntary compliance, or other information is not filed, or if the other existing violation is not discontinued, within fifteen days after the formal notification or receipt of the notice, the Secretary of State may assess an administrative fine not to exceed two thousand dollars for each separate violation against the charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer.

 (C) In addition to other actions authorized by law, the Secretary of State, if he has reason to believe that one or more of the following acts or violations listed below has occurred or may occur, may bring an action before an administrative law judge to enjoin the charitable organization, professional fundraising counsel, professional solicitor, commercial co‑venturer, or other person from continuing the act or violation, or committing other acts in furtherance of it, and for other relief as the court considers appropriate:

 (1) a person knowingly and wilfully operates in violation of the provisions of this chapter;

 (2) a person knowingly and wilfully makes a false statement in any registration application, statement, report, or other information required to be filed by this chapter;

 (3) a person fails to file a registration statement, annual financial report, or other document required to be filed by this chapter;

 (4) a person is using in the solicitation or collection of contributions any device, scheme, or artifice to defraud or to obtain money or property by means of false pretense, representation, or promise;

 (5) the officers or representatives of a charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer refuse or fail, after notice, to produce records of the organization; or

 (6) the funds raised by solicitation activities are not devoted to the charitable purposes of the charitable organization.

 (D) Any registration application, statement, report, or other information required to be filed with the Secretary of State pursuant to this chapter by a charitable organization, professional fundraising counsel, professional solicitor, or commercial co‑venturer which contains false or misleading statements may be rejected by the Secretary of State and returned to the submitting party without being filed.

 (E) A person who is assessed an administrative fine, has had his registration suspended, or who is denied registration has thirty days from receipt of certified notice from the Secretary of State to pay the fine or request an evidentiary hearing before an administrative law judge. If a person fails to remit fines or request a hearing after the required notice is given and after thirty days from the date of receipt of certified notice has elapsed the Secretary of State may suspend his registration pending final resolution and may bring action before the administrative law judge to enjoin the person from engaging in further charitable solicitation activities in this State. The decision of the administrative law judge may be appealed as provided in Section 1‑23‑610.

 (F) The Secretary of State may exercise the authority granted in this section against a person that operates under the guise or pretense of being an organization exempted by the provisions of Section 33‑56‑40 or 33‑56‑50 but is not in fact an organization entitled to the exemption.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28O; 1998 Act No. 368, Section 16; 2000 Act No. 336, Section 1; 2006 Act No. 387, Sections 17, 18, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment, in subsection (C), in the introductory paragraph added “before an administrative law judge” and substituted “committing” for “doing any”; and rewrote subsection (E).

Library References

Charities 49, 50.

Westlaw Topic No. 75.

C.J.S. Charities Sections 48 to 57.

**SECTION 33‑56‑145.** Penalties.

 (A) A person that knowingly and wilfully violates a provision of this chapter with the intent to deceive or defraud an individual or a charitable organization is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than five thousand dollars or imprisoned not more than one year, or both. For a second offense or subsequent offense, a person is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

 (B) A person that knowingly and wilfully gives false or misleading information to the Secretary of State in a registration, filing statement, or report required by this chapter is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than two thousand dollars or imprisoned not more than one year, or both. For a second offense or subsequent offense, a person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

 (C) A person that is convicted or pleads guilty or nolo contendere pursuant to subsection (A) or (B) forfeits the bond described in Section 33‑56‑110 to the Secretary of State and is prohibited from serving as a professional solicitor or fundraising counsel in this State for a minimum of five years from the date of the conviction.

 (D) A violation of this chapter involving a solicitation is considered to be committed at the place where the solicitation was either initiated or was received.

HISTORY: 2000 Act No. 336, Section 1.

Library References

Charities 50.

Fraud 68.

Westlaw Topic Nos. 184, 75.

C.J.S. Charities Sections 52 to 57.

**SECTION 33‑56‑150.** Division of Public Charities; Director.

 There is created in the office of the Secretary of State a Division of Public Charities which, under the direction and control of the Secretary of State, shall perform the duties imposed upon it by the provisions of this chapter. The executive and administrative head of the division is the Director of Public Charities designated by the Secretary of State.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28P; 1998 Act No. 368, Section 17; 2000 Act No. 336, Section 1.

Library References

Charities 42.

Westlaw Topic No. 75.

C.J.S. Charities Section 46.

**SECTION 33‑56‑160.** Administrative fines and fees; disposition.

 (A) The first two hundred thousand dollars in administrative fine revenue received pursuant to this chapter in a fiscal year, not including fine revenues collected pursuant to Section 33‑56‑75, may be retained by the Secretary of State to offset the expenses of enforcing this chapter. All administrative fines collected pursuant to this chapter in excess of two hundred thousand dollars in a fiscal year, not including fine revenues collected pursuant to Section 33‑56‑75, must be transmitted to the State Treasurer and deposited in the state general fund. All fees collected pursuant to this chapter must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the state general fund and used by the Secretary of State for the purpose of administering the provisions of this chapter.

 (B) All administrative fines collected pursuant to Section 33‑56‑75 in a fiscal year must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the state general fund. The revenue collected from these fines must be directed to the Secretary of State for the purpose of administering the provisions of that section.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28Q; 1998 Act No. 368, Section 18; 2000 Act No. 336, Section 1; 2010 Act No. 156, Section 2, eff May 11, 2010.

Editor’s Note

2010 Act No. 156, Section 3, provides as follows:

“This act takes effect upon approval by the Governor and applies to all transactions or contracts entered into on or after that date.”

Effect of Amendment

The 2010 amendment designated the existing section as (A), added exclusionary language to subsection (A), and added subsection (B) relating to treatment of administrative fines collected pursuant to section 33‑56‑75.

Library References

States 121.

Westlaw Topic No. 360.

C.J.S. States Sections 203, 223.

**SECTION 33‑56‑170.** Definitions of “charitable organization” and “employee” for purposes of Section 33‑56‑180.

 For purposes of Section 33‑56‑180:

 (1) “Charitable organization” means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended.

 (2) “Employee” means an agent, servant, employee, or officer of a charitable organization.

HISTORY: 1994 Act No. 461, Section 1; 2000 Act No. 336, Section 1.

Library References

Charities 1.

Westlaw Topic No. 75.

C.J.S. Charities Sections 2 to 3.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 402, Tort Liability of Charitable Corporation and of Trustees for Charity.

NOTES OF DECISIONS

In general 1

1. In general

A negligence action against a rehabilitation hospital that was both a government health care facility and a charitable organization was governed by the Tort Claims Act (Sections 15‑78‑10 et seq.), rather than the liability statute for charitable organizations (former Section 33‑55‑200), since the Tort Claims Act clearly states that it provides the exclusive remedy for governmental torts such as those at issue. Benton v. Roger C. Peace Hosp. (S.C. 1994) 313 S.C. 520, 443 S.E.2d 537, rehearing denied.

**SECTION 33‑56‑180.** Limitation of liability for injury or death caused by employee of charitable organization.

 (A) A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.

 (B) If the actual damages from the injury or death giving rise to the action arose from the use or operation of a motor vehicle and exceed two hundred fifty thousand dollars, this section does not prevent the injured person from recovering benefits pursuant to Section 38‑77‑160 but in an amount not to exceed the limits of the uninsured or underinsured coverage.

HISTORY: 1994 Act No. 461, Section 1; 2000 Act No. 336, Section 1.

Library References

Charities 45(2).

Westlaw Topic No. 75.

C.J.S. Charities Sections 65 to 66.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Charities Section 5, Charitable Immunity.

S.C. Jur. Medical and Health Professionals Section 44, Charitable Hospitals.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 402, Tort Liability of Charitable Corporation and of Trustees for Charity.

Attorney General’s Opinions

A physician giving high school athletic physicals on a volunteer basis, without compensation, would probably be immune from liability provided that a proper agreement as to the voluntary nature of the services was executed beforehand; former Section 33‑55‑210 did not expressly require that the agreement be in writing. 1989 Op Atty Gen, No. 89‑83, p 218.

NOTES OF DECISIONS

In general 2

Care exercised 3

Lack of exercise of care 4

Validity 1

1. Validity

Former Sections 33‑55‑200(a) and 33‑55‑210 (which defined “charitable organization” as including any organization, institution, association, society, or corporation exempt from taxation under the Internal Revenue Code and limited tort liability of charitable organizations to actual damages not exceeding $200,000) satisfy due process, since a statutory limitation on damages infringes no fundamental right, and tax exempt status under the Internal Revenue Code constitutes an objective criterion bearing close nexus with an underlying legislative policy to preserve the resources of charitable organizations. Lazerson v. Hilton Head Hosp., Inc. (S.C. 1994) 312 S.C. 211, 439 S.E.2d 836. Charities 45(2); Constitutional Law 4420

Former Section 33‑55‑210 did not violate equal protection since its limitation on the tort liability of charitable institutions bore a rational relationship to the legislative goal of promoting charitable activities, potential plaintiffs were not treated disparately because the same monetary cap applied equally to the entire class of plaintiffs, and the classification rested on a reasonable basis as there is a reasonable relationship between promoting charitable activities and limiting the liability of entities that engage in such activities. Doe v. American Red Cross Blood Services, S.C. Region (S.C. 1989) 297 S.C. 430, 377 S.E.2d 323, answer to certified question conformed to 125 F.R.D. 637.

2. In general

Under South Carolina law, reformation of church’s business automobile policy was warranted to extent that prerequisite that $1,000,000 liability limits of policy be exhausted before underinsured motorist (UIM) coverage was available was contrary to statute providing that UIM coverage must be offered “to provide coverage in the event that damages are sustained in excess of any damages cap or limitation imposed by statute,” and reformation would require insurer to provide UIM coverage up to $1,000,000 in the event that church’s liability exceeded damages cap of $600,000 under statute limiting liability for injury or death caused by employee of charitable organization. Smith ex rel. Estate of Smith v. Church Mut. Ins. Co., 2005, 375 F.Supp.2d 451. Insurance 2787

Under South Carolina law, to extent that church members who were injured in single‑vehicle accident while traveling to church event in church van insured under a business automobile policy obtained underinsured motorist (UIM) coverage from insurer up to amount of $1,000,000 if damages recovered against church in underlying liability actions exceeded $600,000, under statute providing that UIM coverage must be offered “to provide coverage in the event that damages are sustained in excess of any damages cap or limitation imposed by statute,” insurer was entitled to a setoff for amount of liability coverage not exhausted under the statutory cap. Smith ex rel. Estate of Smith v. Church Mut. Ins. Co., 2005, 375 F.Supp.2d 451. Insurance 2806

Under South Carolina law, church members who were injured in single‑vehicle accident while traveling to church event in church van insured under a business automobile policy did not join van driver in their underlying liability lawsuits against church to recover for injuries sustained in accident, or prove that driver acted in a reckless, wilful, or grossly negligent manner, and, thus, liability coverage under policy was capped at $600,000 under statute limiting liability for injury or death caused by employee of charitable organization. Smith ex rel. Estate of Smith v. Church Mut. Ins. Co., 2005, 375 F.Supp.2d 451. Insurance 2756(1)

Patient did not meet her burden of proving that there was more than one occurrence, and, thus, her damages were limited to $300,000 in medical malpractice action against charitable health care facility and nurses; it was impossible to determine from jury instruction and verdict forms whether jury found that one or more than one nurse had rendered negligent care to patient. Chastain v. AnMed Health Foundation (S.C. 2010) 388 S.C. 170, 694 S.E.2d 541. Health 834(1)

While gross negligence, for the purpose of the gross negligence exception to the limited liability of a charitable organization, ordinarily is a mixed question of law and fact when the evidence supports but one reasonable inference, the question becomes a matter of law for the court. Pack v. Associated Marine Institutes, Inc. (S.C.App. 2004) 362 S.C. 239, 608 S.E.2d 134. Charities 45(2)

Reckless, willful, or grossly negligent conduct by employee of charitable organization must be established for that employee to be individually liable. Brown v. Pearson (S.C.App. 1997) 326 S.C. 409, 483 S.E.2d 477. Charities 46

Former Section 33‑55‑210 could not be used to deny plaintiff’s right to recover for an injury allegedly caused by malpractice while she was receiving treatment in a charitable hospital, since that statute was enacted 2 years after the injury. Hasell v. Medical Soc. of South Carolina, Inc. (S.C. 1986) 288 S.C. 318, 342 S.E.2d 594.

3. Care exercised

Employees of residential rehabilitation facility for juveniles exercised at least slight care, for the purpose of determining whether the gross negligence exception to the limited liability of a charitable organization for an injury or death caused by its employee applied, in their supervision and control of two juveniles who murdered farmer while on work release; employees addressed the behavior problem of one juvenile. Pack v. Associated Marine Institutes, Inc. (S.C.App. 2004) 362 S.C. 239, 608 S.E.2d 134. Charities 45(2)

4. Lack of exercise of care

Parents of a child who contracted meningitis while in the neonatal intensive care unit of a hospital (for treatment of injuries sustained in an automobile accident) were not barred under the Charitable Immunity Act (former Section 33‑55‑210) from recovering against the hospital for actual damages for medical and related expenses incurred in caring for the child, despite settlement of a suit by the child against the hospital for the maximum amount recoverable under the Act; the legislature could have provided a limitation for the maximum amount recoverable under the Act but did not do so, and the court would not read such limitation into the Act. Endres v. Greenville Hosp. System (S.C. 1993) 312 S.C. 64, 439 S.E.2d 261. Charities 45(2)

A member of a church was permitted to maintain an action against the church, a charitable association, where he sustained injuries in a fall from the church rafters while voluntarily repairing the church’s sound system, and the fall was caused by the negligence of another church member who had cut the rafter and left it unsecured; however, the jury award of $300,000 would be reduced to the statutory maximum of $200,000, as provided by Section 33‑55‑210. Crocker v. Barr (S.C. 1991) 305 S.C. 406, 409 S.E.2d 368.

**SECTION 33‑56‑190.** Exchange of information with other states.

 The Secretary of State may enter into agreements with the appropriate authority of another state for the purpose of exchanging information with respect to charitable organizations, professional fundraising counsel, professional solicitors, and commercial co‑venturers.

HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 458, Part II, Section 28R; 1998 Act No. 368, Section 19; 2000 Act No. 336, Section 1.

**SECTION 33‑56‑200.** Severability of provisions.

 The provisions of this chapter are severable. The unconstitutionality of one section or clause does not affect the constitutionality of the entire chapter.

HISTORY: 1994 Act No. 461, Section 1; 2000 Act No. 336, Section 1.

Library References

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