**South Carolina General Assembly**

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**H. 4568**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Mitchell, Allen, Butler Garrick, Dillard, Hart and Howard

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Introduced in the House on January 11, 2012

Currently residing in the House Committee on **Ways and Means**

Summary: Charitable Fund Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/11/2012 House Introduced and read first time

1/11/2012 House Referred to Committee on **Ways and Means**

**VERSIONS OF THIS BILL**

[1/11/2012](file:///p:\pprever\2011-12\4568_20120111.docx)

**A** **BILL**

TO AMEND SECTION 33‑56‑20, OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE SOUTH CAROLINA SOLICITATION OF CHARITABLE FUNDS ACT, SO AS TO CLARIFY CERTAIN TERMS; TO AMEND SECTION 33‑56‑55, RELATING TO THE APPLICATION OF THE ACT, SO AS TO PROVIDE THAT THE ACT DOES NOT APPLY TO CERTAIN PARENT‑TEACHER ASSOCIATIONS AND TRADE ASSOCIATIONS; TO AMEND SECTION 33‑56‑60, RELATING TO CERTAIN FILING REQUIREMENTS, SO AS TO CLARIFY WHICH CHARITABLE ORGANIZATIONS ARE REQUIRED TO FILE; TO AMEND SECTION 33‑56‑70, RELATING TO CONTRACTS WITH PROFESSIONAL SOLICITORS, SO AS TO CLARIFY WHEN A PROFESSIONAL SOLICITOR, COMMERCIAL CO‑VENTURER, OR PROFESSIONAL FUNDRAISING COUNSEL MAY BEGIN PROVIDING SOLICITATIONS AND SERVICES IN THIS STATE; AND TO AMEND SECTION 33‑56‑120, RELATING TO MISREPRESENTATIONS, SO AS TO CORRECT A SCRIVENER’S ERROR.

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 thereof, or a religious organization that the Internal Revenue Service determines 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;

(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~~.~~; or

(iii) a committee that solicits contributions from the public for the purpose of influencing the outcome of an election, and that is required to file statements or report with the State Ethics Commission pursuant to Chapter 13, Title 8.

(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. However, it does include fees, dues, assessments, or sponsorships paid by members primarily to support the organization’s activities, so long as the benefits obtained have nominal or insubstantial monetary value.

(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 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 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. 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 consideration, solicits contributions for or on behalf of a charitable organization, either personally or through its 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 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 33‑56‑55 of the 1976 Code is amended to read:

“Section 33‑56‑55. ~~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.~~ (A) The provisions of this chapter do not apply to a parent‑teacher association affiliated with a public or private elementary or secondary school located within this State, if none of the parent‑teacher association’s fundraising activities are conducted by professional solicitors.

(B) The provisions of this chapter do not apply to a trade association that the Internal Revenue Service determines to be a tax exempt organization pursuant to Section 501(c)(6) of the Internal Revenue Code, if the trade association does not solicit contributions from nonmembers, and if none of its fundraising activities are conducted by professional solicitors. For purpose of this subsection, ‘contributions’ do not include money or funds generated through sales of tickets to nonmembers or admission on nonmembers to trade association events, shows, tours, or conventions, if the price of the ticket or admittance fee compares reasonably to the monetary value of the benefit or service provided in exchange for the ticket or admittance fee.”

SECTION 3. 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 that the Secretary of State determines 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 4. 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 must 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 or professional fundraising counsel 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 or professional fundraising counsel are registered properly with the Secretary of State. Solicitations or services pursuant to a contract or agreement between a charitable organization and a commercial co‑venturer may not begin in this State until the contract or agreement has been filed with the Secretary of State and until the charitable organization is 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 professional solicitor must 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 and an authorized official of the charitable organization, and certified to be true.

~~(E)~~(F) A professional fundraising counsel, professional solicitor, or commercial co‑venturer must 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 33‑56‑120(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 6. This act takes effect upon approval by the Governor.

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