

The House Committee on Judiciary offers the following substitute to HB 1104:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 17 of Title 43 of the Official Code of Georgia Annotated, relating to  
2 charitable solicitations, so as to revise certain provisions related to charitable solicitations;  
3 to add and revise definitions of certain terms; to specify certain requirements for solicitation  
4 of contributions in person; to revise certain provisions relating to registration and other  
5 actions of paid solicitors, solicitor agents, and charitable organizations; to provide an  
6 exemption for certain volunteer fire departments and rescue services; to make it unlawful to  
7 violate a subpoena issued by the Secretary of State; to prohibit the making of any untrue or  
8 misleading written or oral statements to the Secretary of State by anyone registered as, or  
9 making application for registration as, a solicitor agent, paid solicitor, or charitable  
10 organization; to change certain provisions concerning the entry of certain orders; to provide  
11 for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 17 of Title 43 of the Official Code of Georgia Annotated, relating to charitable  
15 solicitations, is amended by revising Code Section 43-17-2, relating to definitions relative  
16 to charitable contributions, as follows:

17 "43-17-2.

18 As used in this chapter, the term:

19 (1) 'Administrator' means the office created in subsection (a) of Code Section 10-1-395.

20 (2) 'Charitable organization' means any benevolent, philanthropic, patriotic, or  
21 eleemosynary (of, relating to, or supported by charity or alms) person, as that term is  
22 defined in this Code section, who solicits or obtains contributions solicited from the  
23 general public, any part of which contributions is used for charitable purposes; and any  
24 person who or which falsely represents himself, herself, or itself to be a charitable  
25 organization as defined by this paragraph. The term charitable organization shall not  
26 include a religious organization as defined in paragraph (12) of this Code section.

1 (3) 'Charitable purpose' means any charitable, benevolent, philanthropic, patriotic, or  
 2 eleemosynary purpose for religion, health, education, social welfare, arts and humanities,  
 3 environment, civic, or public interest; and any purpose which is falsely represented to be  
 4 a charitable purpose as defined by this paragraph.

5 (4) 'Charitable sales promotion' means an advertising or sales campaign, conducted by  
 6 a commercial coventurer, which represents that the purchase or use of goods or services  
 7 offered by the commercial coventurer will benefit, in whole or in part, a charitable  
 8 organization or purpose.

9 (5) 'Commercial coventurer' means a person who for profit is regularly and primarily  
 10 engaged in trade or commerce other than in connection with soliciting for charitable  
 11 organizations or purposes and who conducts a charitable sales promotion.

12 (6) 'Contribution' means the promise or grant of any money or property of any kind or  
 13 value.

14 (7) 'Educational institution' means an entity organized and operated exclusively for  
 15 educational purposes and which either:

16 (A) Maintains a regular faculty and curriculum and has a regularly enrolled body of  
 17 students in attendance at the place where its educational activities are regularly carried  
 18 on; or

19 (B) Is accredited by a nationally recognized, independent higher education  
 20 accreditation body.

21 ~~(7)~~(8) 'Executive officer' means the chief executive officer, the president, the principal  
 22 financial officer, the principal operating officer, each vice president with responsibility  
 23 involving policy-making functions for a significant aspect of a person's business, the  
 24 secretary, the treasurer, or any other person performing similar functions with respect to  
 25 any organization, whether incorporated or unincorporated.

26 ~~(8)~~(9) 'Fundraising counsel' ~~means any person who, for compensation, plans, manages,~~  
 27 ~~advises, consults, or prepares material for, or with respect to, the solicitation in this state~~  
 28 ~~of contributions for a charitable organization, but who does not solicit contributions and~~  
 29 ~~who does not employ, procure, or engage any compensated person to solicit~~  
 30 ~~contributions.~~ means any person, other than a paid solicitor required to register under this  
 31 chapter, who plans, advises, consults, or prepares material for a solicitation of charitable  
 32 contributions within, into, or from this state and who does not either:

33 (A) Solicit such contributions or employ, procure, engage, direct, or supervise any  
 34 compensated person to solicit such contributions; or

35 (B) Have custody or control of contributions.

36 A natural person who is a volunteer, employee, or salaried officer of a charitable  
 37 organization is not a fundraising counsel with respect to the charitable organization of

1 which he or she is a volunteer, individual, or officer. ~~A lawyer, An attorney,~~ accountant,  
 2 investment counselor, or banker who, solely incidental to his or her profession, renders  
 3 professional services to a charitable organization, paid solicitor, or fundraising counsel  
 4 or advises a person to make a charitable contribution ~~or holds charitable funds subject to~~  
 5 ~~an escrow or trust agreement shall not be deemed, as a result of such actions, to be a~~  
 6 ~~fundraising counsel. A bona fide salaried officer, employee, or volunteer of a charitable~~  
 7 ~~organization shall not be deemed to be a fundraising counsel~~ is not a fundraising counsel  
 8 as a result of such advice.

9 (10) 'General public' or 'public,' with respect to a charitable organization, means any  
 10 person in the State of Georgia without a membership in or other bona fide relationship  
 11 with such charitable organization.

12 ~~(9)~~(11) 'Membership' or 'member' means a status by which, for the payment of fees, dues,  
 13 assessments, and other similar payments, an organization provides services to the payor  
 14 and confers on the payor a bona fide right, privilege, professional standing, honor, or  
 15 other direct benefit other than the right to vote, elect officers, or hold offices. The term  
 16 'membership' or 'member' shall not be construed to apply to a person on whom an  
 17 organization confers a membership solely as a consideration for making a contribution.

18 ~~(10)~~(12) 'Paid solicitor' means a person other than a commercial coventurer ~~or charitable~~  
 19 ~~organization~~ who, for compensation, performs for a charitable organization any service  
 20 in connection with which contributions are, or will be, solicited within or from this state  
 21 by such ~~compensated~~ person or by any compensated person he or she employs, procures,  
 22 ~~or engages, or contracts with,~~ directly or indirectly, to so solicit. A paid solicitor shall  
 23 also ~~include any~~ mean any person who would be a fundraising counsel ~~who~~ but for the  
 24 fact that such person at any time has custody of contributions from a solicitation as  
 25 defined by this chapter. An attorney, investment counselor, accountant, or banker who,  
 26 solely incidental to his or her profession, advises a person to make a charitable  
 27 contribution or who holds funds subject to an escrow or trust agreement shall not be  
 28 deemed, as the result of such actions, to be a paid solicitor. A bona fide ~~salaried~~ officer,  
 29 employee, or volunteer of a charitable organization or commercial coventurer shall not  
 30 be deemed to be a paid solicitor with respect to contributions solicited for that charitable  
 31 organization.

32 ~~(11)~~(13) 'Person' means an individual, a corporation, a partnership, a limited liability  
 33 company, an association, a joint-stock company, a trust, or any unincorporated  
 34 organization.

35 ~~(12)~~(14) 'Religious organization' means an entity which:

36 (A) Conducts regular worship services; or

1 (B) Is qualified as a religious organization under Section 501(c)(3) of the Internal  
 2 Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS  
 3 Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

4 ~~(13)~~(15) 'Solicitation,' 'solicitation of funds,' or 'solicit' means the request or acceptance  
 5 directly or indirectly of money, credit, property, financial assistance, or any other thing  
 6 of value to be used for any charitable purpose; and such act shall be a consumer act or  
 7 practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title  
 8 10, the 'Fair Business Practices Act of 1975.'

9 ~~(14)~~(16) 'Solicitor agent' means any person, other than a ~~charitable organization~~, paid  
 10 solicitor; or commercial coventurer, who or which solicits charitable contributions for  
 11 compensation. The term 'solicitor agent' shall not include, with respect to a particular  
 12 charitable organization which is either registered or exempt from registration under this  
 13 chapter, any person who is an employee of a charitable organization itself or a bona fide  
 14 officer, employee, or volunteer of such charitable organization which is either registered  
 15 or exempt from registration under this chapter and who is neither supervised by, nor  
 16 whose activities are directed by, any paid solicitor or its agent.

17 ~~(15)~~(17) 'State' means any state, territory, or possession of the United States, the District  
 18 of Columbia, Puerto Rico, and the Virgin Islands."

## 19 SECTION 2.

20 Said chapter is further amended by revising Code Section 43-17-3, relating to registration of  
 21 paid solicitors, financial statements, denial of registration, amendments, contracts,  
 22 solicitation notices, accounting, deposit of contributions, and records, as follows:

23 "43-17-3.

24 (a) No paid solicitor shall solicit contributions for a charitable purpose in or from this state  
 25 or on behalf of a charitable organization within this state, unless such paid solicitor is a  
 26 registered paid solicitor pursuant to this Code section. No paid solicitor shall solicit  
 27 contributions in person unless such paid solicitor has been qualified for such means of  
 28 solicitation by the Secretary of State.

29 (b) A fundraising counsel who at any time has custody of contributions from a ~~charitable~~  
 30 ~~solicitation on behalf of a charitable organization required to be registered pursuant to Code~~  
 31 ~~Section 43-17-5~~ solicitation for a charitable purpose must be registered as a paid solicitor  
 32 and comply with the provisions of this Code section. ~~Registration is not required for~~  
 33 ~~attorneys, accountants, investment counselors, and bankers who, solely incidental to their~~  
 34 ~~profession have custody of such funds pursuant to an escrow or trust agreement.~~

35 (c)(1) A paid solicitor shall ~~register~~ be registered with the Secretary of State prior to  
 36 engaging in any solicitation. ~~Each~~ A registration shall expire on December 31 of ~~each~~

1 the year in which the registration became effective and may be renewed for additional  
2 one-year periods upon application and the payment of the appropriate fee.

3 (2) ~~Applications~~ An application for registration as a paid solicitor may be made by any  
4 person and shall be accompanied by the registration fee set forth in subsection (d) of this  
5 Code section. Such application for registration shall be made in a manner prescribed by  
6 the Secretary of State, which may include, in whole or in part, electronic filing, shall be  
7 verified by the applicant, shall be filed with the Secretary of State, and shall contain the  
8 information and documents set forth in this paragraph and such other information as may  
9 be prescribed by rules and regulations promulgated by the Secretary of State:

10 (A) The name of the applicant;

11 (B) The address of the principal place of business of the applicant and the addresses  
12 of all branch offices of the applicant in this state;

13 (C) The form of business organization; the date of organization of the applicant; and  
14 if the business entity is a corporation or limited partnership, the date it qualified to do  
15 business in Georgia;

16 (D) The names and business addresses of all general partners, limited partners,  
17 directors, affiliates, or executive officers of the applicant; if the applicant is a limited  
18 liability company, the names and business addresses of all members of the limited  
19 liability company; a statement of the limitations, if any, of the liability of any general  
20 partner, limited partner, director, member, affiliate, or executive officer; and a  
21 statement setting forth in chronological order the occupational activities of each such  
22 general partner, limited partner, director, member, affiliate, or executive officer during  
23 the preceding ten years;

24 (E) A brief description of the general character of the business conducted or proposed  
25 to be conducted by the applicant;

26 (F) A list of any other states in which the applicant is registered as a paid solicitor and,  
27 if registration of the applicant as a paid solicitor has ever been denied, revoked,  
28 suspended, or withdrawn or if such a proceeding is pending in any state, full details  
29 with respect thereto;

30 (G) Whether the applicant or any general partner, limited partner, director, member,  
31 affiliate, or executive officer of such applicant has ever been subject to any injunction  
32 or disciplinary proceeding by any state agency involving any aspect of fund raising or  
33 solicitation, has ever been convicted of or charged with a misdemeanor of which fraud  
34 is an essential element or which involved charitable fund raising, or has ever been  
35 convicted of or charged with a felony and, if so, all pertinent information with respect  
36 to such injunction, disciplinary proceeding, conviction, or charge;

1 (H) Whether the applicant or any general partner, limited partner, director, member,  
2 affiliate, or executive officer of such applicant has ever been subject to an order,  
3 consent order, or any other disciplinary or administrative proceeding pursuant to the  
4 unfair and deceptive acts and practices law of any state and, if so, all pertinent  
5 information with respect to such order or proceedings; and

6 (I) Written consent by each control person of the paid solicitor, as described by rule of  
7 the Secretary of State, to a criminal background investigation for the purpose of  
8 verification by the Secretary of State of information provided in the application.

9 (3) If the paid solicitor will have physical possession or legal control over any  
10 contributions collected by it in or from this state ~~on behalf of any charitable organization,~~  
11 the applicant shall attach to the application for registration as a paid solicitor a financial  
12 statement for the fiscal year of the applicant which ended within one year prior to the date  
13 of filing unless the fiscal year of the applicant has ended within 90 days prior to the date  
14 of filing, in which case the financial statement may be dated as of the end of the fiscal  
15 year preceding such last fiscal year. Such financial statement shall be prepared in  
16 accordance with generally accepted accounting principles.

17 (4) Within 15 business days after an applicant has fully complied with this subsection,  
18 the Secretary of State shall examine each paid solicitor's registration application,  
19 solicitation notice, and contract to determine whether the applicable requirements of this  
20 chapter relating to the same are satisfied and shall register such applicant as a paid  
21 solicitor unless he or she shall find that there are grounds for denial as provided in Code  
22 Section 43-17-7. When the Secretary of State has registered an applicant as a paid  
23 solicitor, he or she shall immediately notify the applicant of such registration. In the event  
24 the Secretary of State has not notified the applicant of deficiencies or grounds for denial  
25 of the application within such period, the applicant may conduct himself or herself in a  
26 manner as if registered until and unless such applicant is so notified.

27 (5) If the Secretary of State finds that there are sufficient grounds to deny the registration  
28 of the applicant as provided in Code Section 43-17-7, he or she shall issue an order  
29 refusing to register the applicant. The order shall state specifically the grounds for its  
30 issuance. A copy of the order shall be mailed to the applicant at his or her business  
31 address and to any charitable organization who proposes to employ such applicant.

32 (6) Every registration under this Code section shall expire on December 31 of each year.  
33 The registration of a paid solicitor must be renewed each year by the submission of a  
34 renewal application containing the information required in an application for registration,  
35 except to the extent that the Secretary of State by rule does not require the resubmission  
36 of such information which has previously been included in an application or renewal  
37 application previously filed; by the payment of the proper registration fee; and, if it would

1 be required in the event of an initial application, by the filing of a financial statement as  
 2 of a date within one year prior to the date of filing unless the fiscal year of the applicant  
 3 has ended within 90 days prior to the date of filing, in which case the financial statement  
 4 may be dated as of the end of the preceding fiscal year. Such financial statements shall  
 5 be prepared in accordance with generally accepted accounting principles.

6 (7) The registration of a paid solicitor shall be amended within 30 days to reflect a  
 7 change of name, address, principals, state of incorporation, or other changes which  
 8 materially affect the business of the paid solicitor. Such amendments shall be filed in a  
 9 manner which the Secretary of State may prescribe by rule or regulation.

10 (d) The fee for the initial registration of a paid solicitor shall be \$250.00. The fee to amend  
 11 the registration shall be \$15.00. The annual renewal fee for a paid solicitor registration  
 12 shall be \$100.00.

13 (e)(1) There shall be a contract between a paid solicitor and a charitable organization  
 14 which shall be in writing, shall clearly state the respective obligations of the paid solicitor  
 15 and the charitable organization, and shall state the amount of compensation that the paid  
 16 solicitor will receive. Such compensation shall be stated as a fixed amount, as an amount  
 17 to be derived from a formula, or as a percentage of the gross revenue derived from the  
 18 solicitation campaign, the gross revenue from the solicitation campaign that the charitable  
 19 organization will receive. Such amount shall be expressed as a fixed percentage of the  
 20 gross revenue or as a reasonable estimate of the gross revenue, subject to and in  
 21 accordance with the provisions of paragraphs (2), (3), and (4) of this subsection.

22 (2) If the compensation of the paid solicitor is contingent upon the number of  
 23 contributions or the amount of revenue received from the solicitation campaign, the stated  
 24 amount shall be expressed as a fixed percentage of the gross revenue.

25 (3) If the compensation of the paid solicitor is not contingent upon the number of  
 26 contributions or the amount of revenue received, the stated amount shall be a reasonable  
 27 estimate, expressed as a percentage of the gross revenue, and the contract shall clearly  
 28 disclose the assumptions upon which the estimate is based. The stated assumptions shall  
 29 be based upon all the relevant facts known to the paid solicitor regarding the solicitation  
 30 to be conducted as well as the past performance of solicitations conducted by the paid  
 31 solicitor. ~~If the stated amount is a reasonable estimate, rather than a fixed percentage of~~  
 32 ~~the gross revenue, the contract shall also provide that the charitable organization is~~  
 33 ~~guaranteed a percentage of the gross revenue which is no less than the reasonable~~  
 34 ~~estimate less 10 percent of the gross revenue.~~

35 (4) The ~~stated percentages~~ compensation description required by this subsection shall  
 36 exclude any amount which the charitable organization is to pay as expenses of the  
 37 solicitation campaign, including the cost of merchandise or services sold or events staged.

1 The contract shall clearly describe who shall pay such expenses, how they will be paid,  
 2 and whether such payment is contingent upon any event or fact, including, but not limited  
 3 to, the amount of funds raised through the solicitation campaign. If any portion of the  
 4 expenses are paid separately by the charitable organization apart from the other fees paid  
 5 to the paid solicitor, the contract shall include a reasonable estimate of such expenses.

6 (f) Prior to the commencement of each solicitation campaign the paid solicitor shall file  
 7 with the Secretary of State a completed 'solicitation notice' on forms prescribed by the  
 8 Secretary of State. The Secretary of State may provide that said filing be made, in whole  
 9 or in part, through electronic means. The solicitation notice shall include a copy of the  
 10 contract described in subsection (e) of this Code section, the projected dates when  
 11 soliciting will commence and terminate, the location and telephone number from which the  
 12 solicitation will be conducted, the name and residence address of each person responsible  
 13 for directing and supervising the conduct of the campaign, a statement as to whether the  
 14 paid solicitor will at any time have custody of contributions, and a full and fair description  
 15 of the charitable program for which the solicitation campaign is being carried out.

16 (g) Within ~~30~~ 90 days after a solicitation campaign has been completed, and on the  
 17 anniversary of the commencement of a solicitation campaign lasting more than one year,  
 18 the paid solicitor shall account to the charitable organization with whom it has contracted  
 19 and to the Secretary of State for all contributions collected and expenses paid. The  
 20 accounting shall be in the form of a written report, submitted to the charitable organization  
 21 and to the Secretary of State, ~~writing~~, shall be retained by the charitable organization for  
 22 three years, and shall contain the following information:

23 (1) The total gross receipts;

24 (2) A description of how the gross receipts were distributed, including an itemized list  
 25 of all expenses, commissions, and other costs of the fundraising campaign and the net  
 26 amount paid to the charitable organization for its charitable purposes after payment of all  
 27 fundraising expenses, commissions, and other costs; ~~and~~

28 (3) The signature of the charitable organization acknowledging its agreement with the  
 29 accuracy of the report, or a statement from the paid solicitor stating the reasons why such  
 30 signature has not been obtained within the prescribed period, including a summary of any  
 31 communications from the charitable organization contesting the accuracy of the report;  
 32 and

33 (4) Such ~~such~~ other information as the Secretary of State by rule may require.

34 ~~The original of the report shall be forwarded to the charitable organization within the time~~  
 35 ~~prescribed above, and a copy shall be filed simultaneously with the Secretary of State.~~

36 (h) Each monetary contribution ~~collected~~ received by the paid solicitor shall, in its entirety  
 37 and within ~~ten~~ three business days of its receipt, be deposited in an account at a ~~bank or~~

1 ~~other~~ federally insured financial institution. The account shall be in the name of the  
2 charitable organization with whom the paid solicitor has contracted and the charitable  
3 organization shall have sole control of all withdrawals from the account.

4 (i)(1) The paid solicitor shall maintain during each solicitation campaign and for not less  
5 than three years after its completion, the following records:

6 (A) The name and, if known to the paid solicitor, the address of each person pledging  
7 to contribute together with the date and amount of the pledge;

8 (B) The name and residence address of each employee, agent, or other person, however  
9 styled, involved in the solicitation;

10 (C) A record of all contributions at any time in the custody of the paid solicitor;

11 (D) A record of all expenses incurred by the paid solicitor for which the charitable  
12 organization is liable for payment;

13 (E) The location and account number of all ~~bank or other financial institution~~ accounts  
14 in which the paid solicitor has deposited revenue from the solicitation campaign; and

15 (F) Such other records as may be prescribed by the Secretary of State by rule and  
16 regulation.

17 (2) If the paid solicitor sells tickets to an event and represents that tickets will be donated  
18 for use by another, the paid solicitor shall also maintain for the same period as specified  
19 in paragraph (1) of this subsection:

20 (A) The name and address of those contributors donating tickets and the number of  
21 tickets donated by each contributor; and

22 (B) The name and address of all organizations receiving donated tickets for use by  
23 others, including the number of tickets received by each organization.

24 (3) All records of such paid solicitor are subject to such reasonable periodic, special, or  
25 other examinations by representatives of the Secretary of State, within or outside this  
26 state, as the Secretary of State deems necessary or appropriate in the public interest or for  
27 the protection of the public, provided that the Secretary of State shall not disclose this  
28 information except to the extent he or she reasonably deems necessary for investigative  
29 or law enforcement purposes.

30 (j) Not later than ~~30~~ 90 days following the end of each solicitation campaign, the paid  
31 solicitor shall provide to the charitable organization, at no cost, a copy of all records  
32 described in subsection (i) of this Code section. In the event any such campaign exceeds  
33 six months in length, such records shall be provided, in addition, not less than 30 days  
34 following the end of each six-month period."

**SECTION 3.**

Said chapter is further amended by revising Code Section 43-17-3.1, relating to registration as a solicitor agent, as follows:

"43-17-3.1.

(a) No solicitor agent shall solicit contributions on behalf of a charitable organization within or from this state, unless such solicitor agent is a registered solicitor agent pursuant to this Code section and is affiliated through employment or as an independent contractor pursuant to a written agreement with a paid solicitor or charitable organization which is either registered or exempt from registration. No solicitor agent shall solicit contributions in person unless such solicitor agent has been qualified for such means of solicitation by the Secretary of State.

(b)(1) A solicitor agent shall register with the Secretary of State prior to engaging in any solicitation. Each registration shall expire on December 31 of each year and may be renewed for additional one-year periods upon application and the payment of the fee.

(2) Applications for registration may be made by any person and shall be accompanied by the registration fee set forth in subsection (c) of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of each place of business of the applicant;

(C) The name and address of the paid solicitor or charitable organization with which the solicitor agent will be affiliated by employment or as an independent contractor;

(D) If the solicitor agent is to be an independent contractor, a copy of the contract setting forth the terms and conditions thereof;

(E) A list of any other states in which the applicant is registered as a paid solicitor agent and, if any registration of the applicant under the charitable solicitation law of any state has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

(F) Whether the applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

1 (G) Whether the applicant has ever been subject to an order, consent order, or any  
 2 other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts  
 3 and practices law of any state and, if so, all pertinent information with respect to such  
 4 order or proceedings; ~~and~~

5 (H) Whether the applicant seeks to be qualified to contact contributors and potential  
 6 contributors in person, as distinguished from mail, telephonic, or electronic contact; and

7 ~~(H)~~(I) With respect to applicants who seek to be qualified to contact contributors or  
 8 potential contributors in person, written ~~Written~~ consent to a criminal background  
 9 investigation for the purpose of verification by the Secretary of State of information  
 10 provided in the application.

11 (3) Except as provided in paragraph (7) of this subsection, within ~~Within~~ 15 business  
 12 days after an applicant has fully complied with this subsection, the Secretary of State  
 13 shall register such applicant as a solicitor agent unless he or she shall find that there are  
 14 grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has  
 15 registered an applicant, he or she shall immediately notify the applicant of such  
 16 registration. In the event the Secretary of State has not notified the applicant of  
 17 deficiencies or grounds for denial of the application within such period, the applicant may  
 18 conduct itself in a manner as if registered until and unless it is so notified.

19 (4) If the Secretary of State finds that there are sufficient grounds to deny the registration  
 20 of the applicant as provided in Code Section 43-17-7, he or she shall issue an order  
 21 refusing to register the applicant. The order shall state specifically the grounds for its  
 22 issuance. A copy of the order shall be mailed to the applicant at his or her business  
 23 address and to any charitable organization or paid solicitor who proposes to employ such  
 24 applicant.

25 (5) Every registration under this Code section shall expire on December 31 of each year.  
 26 The registration of a solicitor agent must be renewed each year by the submission of a  
 27 renewal application containing the information required in an application for registration,  
 28 except to the extent that the Secretary of State by rule does not require the resubmission  
 29 of such information which has previously been included in an application or renewal  
 30 application previously filed, and by the payment of the proper registration fee.

31 (6) The registration of a solicitor agent shall be promptly amended to reflect a change of  
 32 name or address or other changes in the information previously provided to the Secretary  
 33 of State. Such amendments shall be filed in a manner which the Secretary of State may  
 34 prescribe by rule or regulation.

35 (7) With respect to applicants for solicitor agent seeking to be qualified to solicit in  
 36 person, the applicant shall not be qualified to so solicit until the Secretary of State  
 37 affirmatively notifies the applicant that he or she has been so qualified.

1 (c) The fee for the initial registration of a solicitor agent shall be \$50.00. The fee to amend  
 2 the registration shall be \$15.00. The annual renewal fee for a ~~paid~~ solicitor agent shall be  
 3 \$50.00."

#### 4 SECTION 4.

5 Said chapter is further amended by revising subsections (a) through (c) of Code Section  
 6 43-17-5, relating to registration of charitable organizations, service of process, financial  
 7 statement, tax exemption determination, denial and renewal, amendments, and fees, as  
 8 follows:

9 "(a) It shall be unlawful for any person:

10 (1) Wherever located to solicit or accept charitable contributions from any person located  
 11 in this state;

12 (2) While in this state to solicit or accept charitable contributions from any person,  
 13 wherever located; or

14 (3) Wherever located to solicit or accept charitable contributions from any person,  
 15 wherever located, on behalf of a charitable organization located in this state,

16 unless the charitable organization on whose behalf such contributions are being solicited  
 17 or accepted is:

18 ~~(1) Subject~~ subject to an effective registration statement under this chapter; or

19 ~~(2) Exempt~~ exempt from registration pursuant to Code Section 43-17-9.

20 (b)(1) Every charitable organization, except those exempt from registration pursuant to  
 21 Code Section 43-17-9, which intends to solicit in this state or have contributions solicited  
 22 in this state on its behalf by other charitable organizations, commercial coventurers, or  
 23 paid solicitors shall, prior to any solicitation, file a registration statement with the  
 24 Secretary of State upon a form prescribed by the Secretary of State. No charitable  
 25 organization required to be registered under this Code section shall solicit prior to  
 26 registration.

27 (2) A registration statement, which the Secretary of State may require to be in whole or  
 28 in part an electronic filing, shall be signed by an authorized executive officer of the  
 29 charitable organization and shall contain the following information:

30 (A) The name under which the charitable organization intends to solicit contributions;

31 (B) The names and addresses of officers, directors, trustees, and executive personnel  
 32 and, in the case of a state-wide parent organization, the communities in which the  
 33 chapters, branches, or affiliates are located and their directors;

34 (C) The names and addresses of any fundraising counsel or paid solicitor who acts or  
 35 will act on behalf of the charitable organization, together with a statement setting forth

1 the terms of the arrangements for salaries, bonuses, commissions, or other remuneration  
2 to be paid to the fundraising counsel or paid solicitor;

3 (D) The general purposes for which the charitable organization is organized;

4 (E) The purposes for which the contributions to be solicited will be used;

5 (F) The period of time during which the solicitation will be made;

6 (G) The method of solicitation; and

7 (H) Such other information as the Secretary of State may require.

8 (3) There shall be filed with such application an irrevocable written consent of the  
9 applicant to the service of process upon the Secretary of State in actions against such  
10 applicant in the manner and form provided in Code Section 43-17-18.

11 (4) There shall be filed with such application a financial statement of the charitable  
12 organization or a consolidated financial statement of the charitable organization and its  
13 subsidiaries as of a date within one year prior to the filing of the registration statement.

14 If the charitable organization has received or collected more than \$1 million during its  
15 preceding fiscal year, the financial statement shall be prepared by an independent  
16 certified public accountant and shall be a certified financial statement of the charitable  
17 organization or a certified consolidated financial statement of the charitable organization  
18 and its subsidiaries prepared in accordance with generally accepted accounting principles  
19 as of a date within one year prior to the date of filing unless the last fiscal year of the  
20 charitable organization has ended within 90 days prior to the date of filing, in which case  
21 such certified financial statement may be as of the end of the fiscal year preceding such  
22 last fiscal year. If the charitable organization has received or collected more than  
23 \$500,000.00 but not more than \$1 million during its preceding fiscal year, the financial  
24 statement shall be reviewed by an independent certified public accountant and such  
25 certified public accountant's review report, prepared in accordance with generally  
26 accepted accounting principles as of a date within one year prior to the date of filing,  
27 shall be filed with the financial statement. If the charitable organization has received or  
28 collected any charitable contributions during its preceding fiscal year, the financial  
29 statement shall have attached thereto a copy of the Form 990, Return of Organization  
30 Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization  
31 Exempt From Income Tax, which the organization filed for the previous taxable year  
32 pursuant to the United States Internal Revenue Code. In the event a charitable  
33 organization did not file a Form 990 or 990EZ, such charitable organization shall be  
34 required to file, with such financial statement, such form as may be prescribed by rule  
35 and regulation of the Secretary of State which requires information substantially similar  
36 to that required to be provided on Form 990 or 990EZ.

1 (5) Every charitable organization registered with the Secretary of State shall file with the  
 2 Secretary of State copies of any federal or state tax exemption determination letters  
 3 received after the initial registration within 30 days after receipt and shall file any  
 4 amendments to its organizational instrument within 30 days after adoption.

5 (6) The Secretary of State may waive or extend the time period for the furnishing of any  
 6 information required by this subsection and may require such additional information as  
 7 to the previous history, records, or association of the applicant, general partners, limited  
 8 partners, directors, affiliates, or executive officers or members in the case of a limited  
 9 liability company as he or she may deem necessary to establish whether or not the  
 10 applicant should be registered as a charitable organization under this chapter.

11 (7) When an applicant has fully complied with this subsection, the Secretary of State  
 12 shall register such applicant as a charitable organization unless he or she shall find that  
 13 there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of  
 14 State has registered an applicant as a charitable organization, he or she he shall  
 15 immediately notify the applicant of such registration.

16 (8) If the Secretary of State finds that there are sufficient grounds to deny the registration  
 17 of the applicant as provided in Code Section 43-17-7, he or she shall issue an order  
 18 refusing to register the applicant. The order shall state specifically the grounds for its  
 19 issuance. A copy of the order shall be mailed to the applicant at its business address and  
 20 to any paid solicitor who proposes to solicit contributions on behalf of the charitable  
 21 organization.

22 (9) Every registration under this Code section shall be valid for a period of ~~12~~ 24 months  
 23 from its date of effectiveness. The registration must be renewed on or before the  
 24 expiration date ~~each year~~ by the submission of a renewal application containing the  
 25 information required in an application for registration, to the extent that such information  
 26 has not previously been included in an application or renewal application previously  
 27 filed, by the payment of the proper ~~registration~~ fee, and by the filing of a financial  
 28 ~~statement as of a date within one year prior to the date of filing.~~ statements covering the  
 29 periods since the most recent financial statement previously filed. If the charitable  
 30 organization has received or collected more than \$1 million during either of its two  
 31 preceding fiscal year years, the financial ~~statement~~ statements for the years with such  
 32 revenue level shall be prepared by an independent certified public accountant and shall  
 33 be a certified financial statement of the charitable organization or a certified consolidated  
 34 financial statement of the charitable organization and its subsidiaries ~~as of a date within~~  
 35 ~~one year of the date of filing unless the fiscal year of the applicant has ended within 90~~  
 36 ~~days prior to the date of filing, in which case the financial statement may be dated as of~~  
 37 ~~the end of the preceding fiscal year.~~ If the charitable organization has received or

1 collected more than \$500,000.00 but not more than \$1 million during either of its two  
 2 preceding fiscal year years, the financial ~~statement~~ statements for the years with such  
 3 revenue level shall be reviewed by an independent certified public accountant and such  
 4 certified public accountant's review report, prepared in accordance with generally  
 5 accepted accounting principles ~~as of a date within one year prior to the date of filing,~~  
 6 ~~shall be filed with the financial statement.~~ If the charitable organization has received or  
 7 collected any charitable contributions during its preceding two fiscal year years, the  
 8 financial ~~statement~~ statements shall have attached thereto a copy of the Form 990, Return  
 9 of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of  
 10 Organization Exempt From Income Tax, which the organization filed for the previous  
 11 two taxable year years pursuant to the United States Internal Revenue Code. In the event  
 12 a charitable organization did not file a Form 990 or 990EZ, such charitable organization  
 13 shall be required to file, with such financial statement, such form as may be prescribed  
 14 by rule and regulation of the Secretary of State which requires information substantially  
 15 similar to that required to be provided on Form 990 or 990EZ. Such financial statements  
 16 shall be prepared in accordance with generally accepted accounting principles and, if  
 17 required to be certified, shall be certified by an independent public accountant duly  
 18 registered and in good standing as such under the laws of the place of his or her residence  
 19 or principal office.

20 (10) The registration of a charitable organization shall be amended within 30 days to  
 21 reflect a change of name, address, principals, state of incorporation, corporate forms  
 22 (including a merger of two charitable organizations), or other changes which materially  
 23 affect the business of the charitable organization. Such amendments shall be filed in a  
 24 manner which the Secretary of State may prescribe by rule or regulation.

25 (c) The fee for the initial registration of a charitable organization shall be ~~\$25.00~~ \$35.00.  
 26 ~~The fee for filing amendments to the registration shall be \$15.00. The annual renewal fee~~  
 27 ~~for a charitable organization shall be \$10.00.~~ The fee for renewal of a charitable  
 28 organization's registration shall be \$20.00."

## 29 SECTION 5.

30 Said chapter is further amended by revising subsection (a) of Code Section 43-17-7, relating  
 31 to financial statements and denial, suspension, or revocation of registration and other  
 32 disciplinary actions, as follows:

33 "(a) The Secretary of State, by order, may deny, suspend, or revoke a registration, limit the  
 34 fundraising activities that an applicant or registered person may perform in this state, bar  
 35 an applicant or registered person from association with a paid solicitor or charitable  
 36 organization, or bar a person who is a partner, officer, director, or employee of, or a

1 member of a limited liability company which is, an applicant or registered person from  
2 employment with a paid solicitor or charitable organization if the Secretary of State finds  
3 that the order is in the public interest and that the applicant, registered person, or such other  
4 person:

5 (1) Has filed an application for registration with the Secretary of State which, as of its  
6 effective date or any date after filing in the case of an order denying effectiveness, was  
7 incomplete in a material respect or contained a statement that was, in light of the  
8 circumstances under which it was made, false or misleading with respect to a material  
9 fact;

10 (2) Has willfully violated or failed to comply with this chapter, a prior enactment, or a  
11 rule promulgated by the Secretary of State under this chapter or a prior enactment;

12 (3) Is the subject of an adjudication or determination, after notice and opportunity for  
13 hearing, within the last five years by a state or federal agency or a court of competent  
14 jurisdiction that the person has violated the charitable organizations regulatory act or the  
15 unfair and deceptive acts and practices law of any state, but only if the acts constituting  
16 the violation of that state's law would constitute a violation of this chapter had the acts  
17 occurred in this state;

18 (4) Within the last ten years has been convicted of a felony or misdemeanor which the  
19 Secretary of State finds:

20 (A) Involves the solicitation or acceptance of charitable contributions or the making  
21 of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to  
22 commit any of the foregoing offenses;

23 (B) Arises out of the conduct of solicitation of contributions for a charitable  
24 organization;

25 (C) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent  
26 concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

27 (D) Involves murder or rape; or

28 (E) Involves assault or battery if such person proposes to be engaged in counseling,  
29 advising, housing, or sheltering individuals;

30 (5) Is permanently or temporarily enjoined by a court of competent jurisdiction from  
31 acting as a charitable organization, paid solicitor, or as an affiliated person or employee  
32 of such;

33 (6) Is the subject of an order of the Secretary of State denying, suspending, or revoking  
34 the person's registration as a charitable organization or paid solicitor;

35 (7) Has violated a law or any rule or regulation of this state, any other state, the United  
36 States, or any other lawful authority (without regard to whether the violation is criminally  
37 punishable), which law or rule or regulation relates to or in part regulates charitable

1 organizations or paid solicitors regulated under this chapter, when the charitable  
 2 organization or paid solicitor knows or should know that such action is in violation of  
 3 such law, rule, or regulation; or

4 (8) Has failed to pay the proper filing fee within 30 days after being notified by the  
 5 Secretary of State of a deficiency, but the Secretary of State may provide for the  
 6 reinstatement of the registration or the suspension of a fine or penalty at such time as the  
 7 deficiency is corrected; or

8 (9) Has failed to comply with a subpoena or order issued by the Secretary of State."

#### 9 SECTION 6.

10 Said chapter is further amended by revising Code Section 43-17-8, relating to required  
 11 disclosures, as follows:

12 "43-17-8.

13 Every charitable organization, paid solicitor, or solicitor agent required to be registered  
 14 under this Code section ~~and soliciting in this state~~, at the time of any solicitation that occurs  
 15 in or from this state, shall include the following disclosures ~~at the point of solicitation~~:

16 (1) The name and location of the paid solicitor and solicitor agent, if any;

17 (2) The name and location of the charitable organization for which the solicitation is  
 18 being made;

19 (3) That the following information will be ~~made available~~ sent upon request:

20 (A) A full and fair description of the charitable program for which the solicitation  
 21 campaign is being carried out and, if different, a full and fair description of the  
 22 programs and activities of the charitable organization on whose behalf the solicitation  
 23 is being carried out; and

24 (B) A financial statement or summary which shall be consistent with the financial  
 25 statement required to be filed with the Secretary of State pursuant to Code Section  
 26 43-17-5; and

27 (4) If made by a solicitor agent or paid solicitor, that the solicitation is being made by a  
 28 paid ~~person~~ solicitor on behalf of the charitable organization and not by a volunteer and  
 29 inform the person being solicited that the contract disclosing the financial arrangements  
 30 between the paid solicitor and the charity is on file with and available from the Secretary  
 31 of State."

#### 32 SECTION 7.

33 Said chapter is further amended by revising subsections (a) and (b) of Code Section 43-17-9,  
 34 relating to exemptions, as follows:

1 "(a) The following persons are exempt from the provisions of Code Sections 43-17-5,  
2 43-17-6, and 43-17-8:

3 (1) Educational institutions and those organizations, foundations, associations,  
4 corporations, charities, and agencies operated, supervised, or controlled by or in  
5 connection with a nonprofit educational institution, provided that any such institution or  
6 organization is qualified under Section 501(c) of the Internal Revenue Code of 1986, as  
7 amended;

8 (2) Business, professional, and trade associations and federations which do not solicit  
9 members or funds from the general public;

10 (3) Fraternal, civic, benevolent, patriotic, and social organizations, when solicitation of  
11 contributions is carried on by persons without any form of compensation and which  
12 solicitation is confined to their membership;

13 (4) Persons requesting any contributions for the relief of any other individual who is  
14 specified by name at the time of the solicitation if all of the contributions collected,  
15 without any deductions whatsoever, are turned over to the named beneficiary; provided,  
16 however, that any such person who collects contributions in excess of \$5,000.00 in order  
17 to claim benefit of this exemption shall file with the Secretary of State a written  
18 accounting of funds so collected on forms prescribed by the Secretary of State at the end  
19 of the first 90 days of solicitation and, thereafter, at the end of every subsequent 90 day  
20 period until said solicitation is concluded;

21 (5) Any charitable organization which does not have any agreement with a paid solicitor  
22 and whose total gross revenue from contributions has been less than \$25,000.00 for both  
23 the immediately preceding and current calendar years ~~or which is exempt from filing a~~  
24 ~~federal annual information return pursuant to Section 6033(a)(2)(A)(i) and (iii) of the~~  
25 ~~Internal Revenue Code and Section 6033(a)(2)(C)(i) of the Internal Revenue Code;~~

26 (6) Any local or state-wide organization of hunters, fishermen, and target shooters which  
27 has been recognized as an organization described in Section 501(c)(3) or Section  
28 501(c)(4) of the Internal Revenue Code, as amended, or the corresponding provisions of  
29 any future federal revenue law;

30 (7) Any volunteer fire department or rescue service operating in conjunction with a city  
31 or county government in this state and which has received less than \$25,000.00 in both  
32 the immediately preceding and current calendar years;

33 ~~(7)~~(8) Religious organizations; or

34 ~~(8)~~(9) Political parties, candidates for federal or state office, and political action  
35 committees required to file financial information with federal or state elections  
36 commissions.

1 (b) Local community and state-wide organizations ~~or local fundraising campaign managers~~  
 2 affiliated with or acting ~~for a~~ on behalf of a registered or exempt state-wide or national  
 3 parent organization by contract or agreement need not register separately with the Secretary  
 4 of State; provided, however, that all records of such organizations which relate to charitable  
 5 solicitations or charitable contributions shall be subject to such reasonable periodic, special,  
 6 or other examinations by the Secretary of State, within or outside this state, as the Secretary  
 7 of State deems necessary or appropriate for the protection of the public. The single  
 8 registration of the state-wide or national parent organization shall be considered all  
 9 inclusive of all of its chapters, branches, or affiliates and individuals, which will be  
 10 identified by listing the communities in which they are located and their directors, as  
 11 provided in Code Section 43-17-5."

### 12 SECTION 8.

13 Said chapter is further amended by revising subsections (a) through (c) of Code Section  
 14 43-17-12, relating to prohibited acts relative to charitable solicitations, as follows:

15 "(a) It shall be unlawful for any person to violate any provision of this chapter or any rule,  
 16 regulation, subpoena, or order promulgated or issued by the Secretary of State under this  
 17 chapter.

18 (b) It shall be unlawful for any person who is registered as, or making application for  
 19 registration as, a solicitor agent or paid solicitor or charitable organization or is an affiliate  
 20 of such registrant or applicant knowingly to make or cause to be made; ~~in any document~~  
 21 ~~filed with the Secretary of State or in any proceeding under this chapter, any statement~~  
 22 ~~which is, at the time it is made and in light of the circumstances under which it is made,~~  
 23 ~~false or misleading in any material respect~~ to the Secretary of State or anyone acting on his  
 24 or her behalf any written or oral statement or statements which the person knows to contain  
 25 any untrue statement of material fact or to omit to state a material fact that is necessary in  
 26 order to make any statement or statements made, in light of the circumstances under which  
 27 they were made, not misleading.

28 (c) It shall be unlawful for any person in connection with the planning, conduct, or  
 29 execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

30 (1) To utilize any representation that implies the contribution is for or on behalf of a  
 31 charitable organization or to utilize any emblem, device, or printed matter belonging to  
 32 or associated with a charitable organization, without first being authorized in writing to  
 33 do so by the charitable organization;

34 (2) To utilize a name, symbol, or statement so closely related or similar to that used by  
 35 another charitable organization that the use thereof would tend to confuse or mislead a  
 36 solicited person;

1 (3) To misrepresent to or mislead anyone in any manner to believe that any other person  
 2 sponsors, endorses, or approves such solicitation or charitable sales promotion when such  
 3 other person has not given consent in writing to the use of his or her name for these  
 4 purposes;

5 (4) To utilize or exploit the fact of registration so as to lead any person to believe that  
 6 such registration in any manner constitutes an endorsement or approval by the state;

7 (5) To represent directly or by implication that a charitable organization will receive a  
 8 fixed or estimated percentage of the gross revenue from a solicitation campaign greater  
 9 than that identified in filings with the Secretary of State pursuant to this chapter;

10 (6) To represent that tickets to events will be donated for use by another, unless the paid  
 11 solicitor shall have commitments, in writing, from charitable organizations stating that  
 12 they will accept donated tickets and specifying the number of tickets they are willing to  
 13 accept; ~~or~~

14 (7) To represent that any part of the contributions received will be given or donated to  
 15 any other charitable organization unless such organization has consented in writing to the  
 16 use of its name prior to the solicitation; or

17 (8) To fail to provide to a person who has been solicited for a contribution the  
 18 information described in Code Section 43-17-8."

## 19 SECTION 9.

20 Said chapter is further amended by revising Code Section 43-17-16, relating to hearings,  
 21 notice, and powers and orders of the Secretary of State, as follows:

22 "43-17-16.

23 (a) Where the Secretary of State has issued any order forbidding the solicitation or  
 24 acceptance of contributions under Code Section 43-17-7, he or she shall promptly send to  
 25 the charitable organization a notice of opportunity for hearing. Before entering an order  
 26 refusing to register any person under Code Section 43-17-3 or 43-17-5 and after the  
 27 entering of any order for revocation or suspension, the Secretary of State shall promptly  
 28 send to such person and if such person is a paid solicitor to the charitable organization who  
 29 employs or proposes to employ such person, a notice of opportunity for hearing. Hearings  
 30 shall be conducted pursuant to this Code section by the Secretary of State or a person  
 31 designated by the Secretary of State.

32 (b) Notices of opportunity for hearing shall be served by investigators appointed by the  
 33 Secretary of State or sent by registered or certified mail or statutory overnight delivery,  
 34 return receipt requested, to the addressee's business mailing address or residential address  
 35 as shown on information filed with the Secretary of State or directed for service to the  
 36 sheriff of the county where such person resides or is found. Such notice shall state:

1 (1) The order which has been issued or which is proposed to be issued;

2 (2) The ground for issuing such order or proposed order; and

3 (3) That the person to whom such notice is sent will be afforded a hearing upon request  
4 if such request is made within ten days after receipt of the notice.

5 (c) Whenever a person requests a hearing in accordance with this Code section, there shall  
6 immediately be set a date, time, and place for such hearing and the person requesting such  
7 hearing shall forthwith be notified thereof. Except as provided in subsection (b) of Code  
8 Section 43-17-7, the date set for such hearing shall be within ~~15~~ 30 days, but not earlier  
9 than five days after the request for hearing has been made, unless otherwise agreed to by  
10 the charitable organization and the persons requesting the hearing.

11 (d) For the purpose of conducting any hearing as provided in this Code section, the  
12 Secretary of State shall have the power to administer oaths, to call any party to testify under  
13 oath at such hearing, to require the attendance of witnesses and the production of books,  
14 records, and papers, and to take the depositions of witnesses; and for such purposes the  
15 Secretary of State is authorized, at the request of the person requesting the hearing or upon  
16 his or her own initiative, to issue a subpoena for any witness or a subpoena for production  
17 of documentary evidence to compel the production of any books, records, or papers. The  
18 subpoenas may be served by registered or certified mail or statutory overnight delivery,  
19 return receipt requested, to the addressee's business mailing address or residential address  
20 as shown on information filed with the Secretary of State or by investigators appointed by  
21 the Secretary of State or shall be directed for service to the sheriff of the county where such  
22 witness resides or is found or where the person in custody of any books, records, or papers  
23 resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid  
24 from the funds in the state treasury for the use of the Secretary of State in the same manner  
25 that other expenses of the Secretary of State are paid.

26 (e)(1) At any hearing conducted under this Code section, a party or any affected person  
27 may appear in his or her own behalf or may be represented by an attorney.

28 (2) A stenographic record of the testimony and other evidence submitted shall be taken  
29 unless the Secretary of State and the persons requesting the hearing shall agree that such  
30 a stenographic record of the testimony shall not be taken.

31 (3) The Secretary of State shall pass upon the admissibility of such evidence, but a party  
32 may at any time make objections to any such rulings thereon; and, if the Secretary of  
33 State refuses to admit evidence, the party offering the same shall make a proffer thereof  
34 and such proffer shall be made a part of the record of the hearing.

35 (f)(1) In the case of any hearing conducted under this Code section, the Secretary of  
36 State may conduct the hearing or ~~he~~ may appoint a referee to conduct the hearing who

1 shall have the same powers and authority in conducting the hearing as are granted in this  
2 Code section to the Secretary of State.

3 (2) The referee shall have been admitted to the practice of law in this state and possess  
4 such additional qualifications as the Secretary of State may require.

5 (3) In any case where a hearing is conducted by a referee, the referee shall submit to the  
6 Secretary of State a written report including the transcript of the testimony and evidence  
7 (if such transcript is requested by the Secretary of State), the findings of fact and  
8 conclusions of law, and a recommendation of action to be taken by the Secretary of State.

9 Within five days of the time of submission thereof to the Secretary of State, a copy of  
10 such written report and recommendations shall be served upon the person who requested  
11 the hearing or his or her attorney or other representative of record by registered or  
12 certified mail or statutory overnight delivery. That person or his or her attorney, within  
13 ten days of service of the copy of such written report and recommendations, may file with  
14 the Secretary of State written objections to the report and recommendations which shall  
15 be considered by the Secretary of State before a final order is entered.

16 (4) No recommendation of the referee shall be approved, modified, or disapproved by  
17 the Secretary of State until after ten days after service of such report and  
18 recommendations as provided in this subsection.

19 (5) The recommendations of the referee may be approved, modified, or disapproved by  
20 the Secretary of State. The Secretary of State may direct his or her referee to take  
21 additional testimony or to permit the introduction of further documentary evidence.

22 (6) In any hearing conducted by a referee, a transcript of testimony, evidence, and  
23 objections, if any, shall have the same force and effect as if such hearing or hearings had  
24 been conducted by the Secretary of State.

25 (7) All recommendations of the referee shall be advisory only and shall not have the  
26 effect of an order of the Secretary of State.

27 (g) If the Secretary of State does not receive a request for a hearing within the prescribed  
28 time, he or she may permit an order previously entered to remain in effect or he may enter  
29 a proposed order. If a hearing is requested and conducted as provided in this Code section,  
30 the Secretary of State shall issue a written order which shall:

31 (1) Set forth his or her findings with respect to the matters involved; and

32 (2) Enter an order in accordance with his or her findings.

33 (h) All orders entered pursuant to Code Sections 43-17-3, 43-17-5, 43-17-7, and 43-17-13  
34 shall be entered pursuant to this Code section, except where:

35 (1) The Secretary of State deems that the public health, safety, or welfare imperatively  
36 requires emergency action and incorporates a finding to that effect in the order, in which

1 case the order may be effective immediately pending proceedings, which proceedings  
2 shall be promptly instituted and determined; or  
3 (2) The order is expressly required by a court order, to be made without the right to a  
4 hearing or continuance of any type."

5 **SECTION 10.**

6 All laws and parts of laws in conflict with this Act are repealed.