

House Bill 1104 (COMMITTEE SUBSTITUTE)

By: Representatives Dempsey of the 13th, Burns of the 157th, Chambers of the 81st, Freeman of the 140th, Jacobs of the 80th, and others

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"43-17-2.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Have custody or control of contributions.

A natural person who is a volunteer, employee, or salaried officer of a charitable 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

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

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

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

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

SECTION 2.

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

"43-17-3.

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

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

(c)(1) A paid solicitor shall ~~register~~ be registered with the Secretary of State prior to 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.

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

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

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

(1) The total gross receipts;

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

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

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

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

(h) Each monetary contribution ~~collected~~ received by the paid solicitor shall, in its entirety 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;

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

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

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

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

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

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

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

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

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

SECTION 4.

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

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

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

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

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

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

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

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

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

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

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

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

(C) The names and addresses of any fundraising counsel or paid solicitor who acts or 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.

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

SECTION 8.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9.

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

"43-17-16.

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

(b) Notices of opportunity for hearing shall be served by investigators appointed by the Secretary of State or sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or directed for service to the 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.