

The House Committee on Regulated Industries offers the following substitute to HB 863:

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 define certain terms; to require certain information be provided as part of the accounting
4 relating to certain contributions; to provide for applicability of provisions relating to
5 disclosures required by charitable and religious organizations, paid solicitors, or solicitor
6 agents; to provide requirements for use of collection receptacles for certain donations; to
7 provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 17 of Title 43 of the Official Code of Georgia Annotated, relating to charitable
11 solicitations, is amended by revising Code Section 43-17-2, relating to definitions relative
12 to charitable solicitations, by adding a new paragraph to read as follows:

13 "(4.1) 'Collection receptacle' means an unattended container for the purpose of collecting
14 donations of clothing, books, personal or household items, or other goods. Such term shall
15 not include containers used for the purpose of collecting monetary donations."

16 **SECTION 2.**

17 Said chapter is further amended by revising paragraph (12) of Code Section 43-17-2, relating
18 to definitions relative to charitable solicitations, as follows:

19 "(12)(A) 'Paid solicitor' means a person;

20 (i) ~~other~~ Other than a commercial coventurer who, for compensation, performs for
21 a charitable organization any service in connection with which contributions are, or
22 will be, solicited within or from this state by such person or by any compensated
23 person he or she employs, procures, engages, or contracts with, directly or indirectly,
24 to so solicit;

25 ~~(ii) Who A paid solicitor shall also mean any person who would be a fundraising~~
 26 ~~counsel but for the fact that such person at any time has custody of contributions from~~
 27 ~~a solicitation as defined by this chapter; or~~

28 ~~An attorney, investment counselor, accountant, or banker and who, solely incidental~~
 29 ~~to his or her profession, advises a person to make a charitable contribution or who~~
 30 ~~holds funds subject to an escrow or trust agreement shall not be deemed, as the result~~
 31 ~~of such actions, to be a paid solicitor.~~

32 (iii) Who services a collection receptacle which purports, either through language
 33 appearing on the receptacle itself or otherwise, to be collecting items for the purpose
 34 of benefitting a charitable purpose or one or more entities espousing a charitable
 35 purpose.

36 (B) A 'paid solicitor' shall not mean:

37 (i) A bona fide officer, employee, or volunteer of a charitable organization or
 38 commercial coventurer shall not be deemed to be a paid solicitor with respect to
 39 contributions solicited for that charitable organization;

40 (ii) An attorney, investment counselor, accountant, or banker who, solely incidental
 41 to his or her profession, advises a person to make a charitable contribution or who
 42 holds funds subject to an escrow or trust agreement;

43 (iii) A person who removes or delivers donations placed in a collection receptacle for
 44 a fixed fee and who does not otherwise directly or indirectly receive any of the
 45 proceeds of the sale of such donations or derive any other benefit from such activity;

46 or

47 (iv) A charitable organization registered with the Secretary of State which operates
 48 collection receptacles or a religious organization which operates collection
 49 receptacles."

50

SECTION 3.

51 Said chapter is further amended by revising subsection (g) of Code Section 43-17-3, relating
 52 to registration of paid solicitors, renewal, financial statements, denial of registration,
 53 amendments, contracts, solicitation notices, accounting, deposit of contributions, and records,
 54 as follows:

55 "(g) Within 90 days after a solicitation campaign has been completed, and on the
 56 anniversary of the commencement of a solicitation campaign lasting more than one year,
 57 the paid solicitor shall account to the charitable organization with whom it has contracted
 58 and to the Secretary of State for all contributions collected and expenses paid. The
 59 accounting shall be in the form of a written report, submitted to the charitable organization

60 and to the Secretary of State, shall be retained by the charitable organization for three
61 years, and shall contain the following information:

62 (1) The total gross receipts;

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

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

72 (4) With respect to any contributions other than monetary donations and securities,
73 including, but not limited to, boats, motor vehicles, clothing, shoes, books, appliances,
74 and other household items received as a result of solicitations by a paid solicitor:

75 (A) The names and addresses of any persons to whom such contributions were
76 delivered by the paid solicitor, by the charitable organization whose name was used in
77 connection with the solicitation, or by their agents; provided, however, that this
78 subparagraph shall not require the names and addresses of donees or retail purchasers
79 of consumer products which are delivered to a charitable organization to be given away
80 or sold at retail by the charitable organization with the proceeds of such sales being
81 used to further the stated charitable purpose of the organization;

82 (B) The total consideration, if any, received by the paid solicitor, by the charitable
83 organization, or by their agents from such persons for such contributions; and

84 (C) The manner in which such consideration was calculated; and

85 ~~(4)~~(5) Such other information as the Secretary of State by rule may require."

86 **SECTION 4.**

87 Said chapter is further amended by revising Code Section 43-17-8, relating to registration of
88 paid solicitors and certain disclosures, as follows:

89 "43-17-8.

90 (a) Every charitable organization, paid solicitor, or solicitor agent required to be registered
91 under this Code section, at the time of any solicitation that occurs in or from this state, shall
92 include the following disclosures:

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

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

- 96 (3) That the following information will be sent upon request:
- 97 (A) A full and fair description of the charitable program for which the solicitation
- 98 campaign is being carried out and, if different, a full and fair description of the
- 99 programs and activities of the charitable organization on whose behalf the solicitation
- 100 is being carried out; and
- 101 (B) A financial statement or summary which shall be consistent with the financial
- 102 statement required to be filed with the Secretary of State pursuant to Code Section
- 103 43-17-5; and
- 104 (4) If made by a solicitor agent or paid solicitor, that the solicitation is being made by a
- 105 paid solicitor on behalf of the charitable organization and not by a volunteer and inform
- 106 the person being solicited that the contract disclosing the financial arrangements between
- 107 the paid solicitor and the charity is on file with and available from the Secretary of State.
- 108 (b) This Code section shall not apply to charitable solicitations subject to and in
- 109 compliance with the provisions of Code Section 43-17-8.1."

110 SECTION 5.

111 Said chapter is further amended by adding a new Code section to read as follows:

112 "43-17-8.1.

113 (a) When any person makes a solicitation to the public by encouraging donations into a

114 collection receptacle, the provisions of this Code section shall apply to such solicitations.

115 (b) If the collection receptacle is owned or operated entirely by a charitable organization

116 exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue

117 Code of 1986 or by a religious organization, the receptacle shall contain the following

118 information in boldface letters at least two inches high on the front of the collection

119 receptacle and directly underneath the deposit door stating:

120 (1) The name, address, website, if any, and telephone number of the charitable

121 organization or religious organization that owns or operates the collection receptacle,

122 from which persons may obtain additional information about the religious or charitable

123 organization, including the address of its principal office and its telephone number; and

124 (2) Whether or not the charitable organization or religious organization is registered with

125 the Secretary of State and, if it is registered, a statement that additional information may

126 be obtained from the Secretary of State, including the charitable or religious purpose for

127 which the charitable organization or religious organization exists.

128 (c) If the collection receptacle is owned or operated entirely or in part by any entity other

129 than a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the

130 United States Internal Revenue Code of 1986 or by a religious organization, then the

131 following shall apply:

132 (1) In the case where any of the items collected are to be sold and none of the proceeds
 133 of such sale are to be paid over or otherwise given to a charitable organization exempt
 134 from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code
 135 of 1986 or to a religious organization, it shall be unlawful for any person to collect
 136 donations of goods or tangible items in such collection receptacle unless the collection
 137 receptacle displays the following statement: 'DONATIONS ARE NOT FOR THE
 138 BENEFIT OF ANY CHARITABLE OR RELIGIOUS ORGANIZATION.' The name,
 139 address, website, if any, and telephone number of the operator of the collection receptacle
 140 shall also be provided; and

141 (2) In the case where any of the items collected are to be sold and some or all of the
 142 proceeds from such sale are to be paid over or otherwise given to one or more charitable
 143 organizations exempt from taxation pursuant to Section 501(c)(3) of the United States
 144 Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any
 145 person to collect donations of goods or tangible items in a collection receptacle unless the
 146 collection receptacle displays the following statement: 'THIS COLLECTION BOX IS
 147 OPERATED BY [NAME OF OPERATOR]. THE ITEMS DEPOSITED IN THIS BOX
 148 WILL BE SOLD, AND A PORTION OF THE PROCEEDS WILL BE PAID TO
 149 [NAME OF CHARITABLE ORGANIZATION OR RELIGIOUS ORGANIZATION].
 150 FURTHER INFORMATION ABOUT THESE PAYMENTS CAN BE OBTAINED
 151 FROM [NAME OF OPERATOR] AT [ADDRESS, WEBSITE, IF ANY, AND
 152 TELEPHONE NUMBER OF THE OPERATOR] AND [ADDRESS, WEBSITE, IF
 153 ANY, AND TELEPHONE NUMBER OF THE CHARITABLE ORGANIZATION OR
 154 RELIGIOUS ORGANIZATION]. IN ADDITION, FURTHER INFORMATION
 155 ABOUT THE CHARITABLE ORGANIZATION MAY BE OBTAINED FROM THE
 156 SECRETARY OF STATE.'

157 The statements and all information required by paragraphs (1) and (2) of this subsection
 158 shall be prominently displayed in boldface letters at least two inches high located on the
 159 front of the collection receptacle and directly underneath the deposit door.

160 (d) The Secretary of State may by rule specify additional contact information required to
 161 be disclosed pursuant to subsections (b) and (c) of this Code section."

162 **SECTION 6.**

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