

House Bill 863 (AS PASSED HOUSE AND SENATE)

By: Representatives Dempsey of the 13th, Peake of the 137th, Smith of the 131st, Carter of the 175th, Stephens of the 164th, 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 define certain terms; to require certain information be provided as part of the accounting relating to certain contributions; to provide for applicability of provisions relating to disclosures required by charitable and religious organizations, paid solicitors, or solicitor agents; to provide requirements for use of collection receptacles for certain donations; 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 solicitations, by adding a new paragraph to read as follows:

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

SECTION 2.

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.

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

"(g) Within 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, 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;

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

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

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

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

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

SECTION 4.

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

"43-17-8.

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

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

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

(3) That the following information will be sent upon request:

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

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

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

(b) This Code section shall not apply to charitable solicitations subject to and in compliance with the provisions of Code Section 43-17-8.1."

SECTION 5.

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

"43-17-8.1.

(a) When any person makes a solicitation to the public by encouraging donations into a collection receptacle, the provisions of this Code section shall apply to such solicitations.

(b) If the collection receptacle is owned or operated entirely by a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, the receptacle shall contain the following information in boldface letters at least two inches high on the front of the collection receptacle and directly underneath the deposit door stating:

(1) The name, address, website, if any, and telephone number of the charitable organization or religious organization that owns or operates the collection receptacle, from which persons may obtain additional information about the religious or charitable organization, including the address of its principal office and its telephone number; and
(2) Whether or not the charitable organization or religious organization is registered with the Secretary of State and, if it is registered, a statement that additional information may be obtained from the Secretary of State, including the charitable or religious purpose for which the charitable organization or religious organization exists.

(c) If the collection receptacle is owned or operated entirely or in part by any entity other than a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, then the following shall apply:

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

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

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

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

SECTION 6.

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