

HOUSE BILL REPORT

2SSB 5237

As Passed House
April 7, 1993

Title: An act relating to charitable solicitations.

Brief Description: Regulating charitable solicitations.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators M. Rasmussen, A. Smith, Nelson, Winsley, Haugen, von Reichbauer, Oke, Roach and Spanel; by request of Attorney General and Secretary of State).

Brief History:

Reported by House Committee on:
Judiciary, March 30, 1993, DPA;
Passed House - Amended, April 7, 1993, 98-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Bill Perry (786-7123).

Background: A variety of organizations solicit the public for charitable contributions. Some of this fund-raising is done by charitable organizations themselves. Some of it is done by commercial operations that are employed by charities to raise money. Some professional fund-raising has been criticized because too much of the funds collected go to the fund-raising operation itself, rather than to the charity for which donations were ostensibly solicited.

Many states, including Washington, have regulated the practice of charitable soliciting. These statutes generally require registration and disclosure of certain information. The United States Supreme Court has ruled, however, that the constitution prohibits regulating the percentage of contributions that a fund-raiser actually contributes to a charity, and that it also prohibits states from requiring point of solicitation disclosure of these percentages.

Washington's charitable solicitation law is administered by the secretary of state. The law requires organizations to register, to keep certain records, and to conform to certain standards. The stated goal of the law is to prevent deceptive and dishonest practices and to prevent the improper use of contributions intended for charitable purposes.

The law covers "charitable organizations," "independent fund-raisers" and "nonprofit fund-raisers" that solicit funds for charitable purposes. Charitable purposes include "educational, recreational, social, patriotic, legal defense, benevolent or health causes." However, exemptions are provided for religious and political activities.

Separate registration and reporting requirements apply to charitable organizations, independent fund-raisers, and nonprofit fund-raisers. Certain organizations need not register. Those groups exempted include organizations that use volunteers and raise less than \$5,000 per year, and out-of-state organizations that have registered in their home states and also registered in either New York or California.

A charitable organization is one that solicits funds from the general public, i.e., not just from the organization's own membership, for a charitable purpose. Before conducting charitable solicitation in this state, an organization must register with the Secretary of State's Office and pay a \$10 fee. The application for registration must contain a variety of information regarding the organization, its officers, its purposes, and its tax status. The application must also contain a "solicitation report" for the preceding year indicating how much money was raised and what percent of it went to the charitable purpose, to fund-raising costs, and to other expenses. The report must also indicate whether the organization used an independent fund-raiser.

An independent fund-raiser is defined as an entity that for compensation plans, conducts, manages, or administers fund-raising for a charity. An independent fund-raiser must also apply for registration with the Secretary of State's Office, must pay a \$50 fee, and must supply much the same kind of identifying information as a charitable organization. An independent fund-raiser must also reveal the name of its auditor, if any, and a solicitation report indicating the number of fund-raising activities conducted and for whom, the total value of contributions received, and the amount disbursed to charities, minus any fees paid by charities to the fund-raiser, and the name of any other independent fund-raiser used as a subcontractor.

A nonprofit fund-raiser is defined as a nonprofit corporation under Washington law, or a tax exempt entity under federal law, that collects more than \$5,000 per year on behalf of charities other than itself. Nonprofit fund-raisers must also register and must pay a \$10 fee. In addition to revealing identifying information, a nonprofit fund-raiser must reveal the name of its auditor, if any, and must supply a solicitation report indicating the names of charities on whose behalf it conducted fund-raising, the amount of money raised, and the amount of money disbursed to the charities.

Contracts between charitable organizations and independent fund-raisers must be registered with the Secretary of State's Office. A \$5 fee is charged. Financial records, books, contracts, and financial statements of charities and fund-raisers must be maintained and kept available for at least three years. These records may be obtained by the attorney general upon request.

The actual practice of soliciting the public for charitable contributions is also regulated. When soliciting, a person must disclose orally or in writing:

- o The solicitor's name;
- o The charity's name;
- o The purpose of the solicitation; and
- o Whether the charity is registered, and if so, that financial information about the charity is available through the Secretary of State's Office.

The current law also requires solicitors to supply at the point of an in-person solicitation, or within five days of a phone solicitation, certain information about the percentage of funds raised that actually go for charitable purposes.

Certain practices in soliciting are prohibited. Generally, a solicitor may not misrepresent his or her connection with a charitable organization or his or her paid or volunteer status, the organization's tax exempt status, or the organization's connection to any governmental entity.

Violations of the charitable solicitation law are also violations of the Consumer Protection Act. Charitable organizations are subject to a \$5 late filing fee for failure to register on time. A willful violation of the law is a gross misdemeanor; other violations are misdemeanors.

CHARITABLE TRUSTS.

Generally, trusts that are set up for charitable purposes are required to register with the attorney general. Such

trusts are defined as those "subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, education, or similar purposes."

Summary of Bill: Substantial changes are made in the laws relating to charitable solicitations, and the attorney general is given specified enforcement powers under the charitable solicitation law. In addition, the secretary of state is given administrative authority with respect to the registration of charitable trusts.

CHARITABLE SOLICITATIONS.

The term "independent" fund-raiser is replaced with the term "commercial" fund-raiser, and the definition of the term is modified. Consultants who may plan or organize fund-raising, but do not themselves engage in fund-raising, are excluded from the definition. The separate definition for "nonprofit" fund-raiser is eliminated. New disclosure and reporting requirements for commercial fund-raisers are imposed. The content of contracts between commercial fund-raisers and charities is regulated. The separate registration and regulation of "nonprofit" fund-raisers is removed. New regulatory and fee setting authority is given to the secretary of state. The attorney general is given additional enforcement power. Specific provisions are added regarding solicitations involving alleged connection to police, fire fighters, or veterans. Provisions are repealed that required point of solicitation disclosure of the percentage of donations actually contributed to charity.

Commercial fund-raisers are required to make certain additional disclosures. At the point of solicitation, the solicitor must identify both the charity and the commercial fund-raiser involved in the solicitation. If asked, the solicitor must disclose the toll free number at which additional financial disclosure information may be obtained. Phone solicitations must contain the same disclosures, and if a pledge is made, the disclosures must be made in writing within five days of the pledge. Similar disclosure requirements are also imposed on mass distributions of solicitations and on containers or vending machine displays asking for contributions. Where applicable, these requirements also apply to entities that do not have to register with the secretary of state, such as entities that raise less than \$5,000 per year and solicit only with the volunteers.

If a commercial fund-raiser represents that contributions will be used to buy tickets for donation to other persons, there must be prior written commitment from the planned recipients of the tickets indicating their willingness to

accept a certain number of tickets. Contributions solicited for donated tickets may not exceed the amount necessary to purchase the number of tickets indicated in the prior written commitment. The fund-raiser must also give the tickets to the donee at least seven days before the event for which the ticket purchases were solicited.

Any contract between a charity and a commercial fund-raiser must contain certain provisions. The contract must provide that both parties will comply with the law. It must also give the charity access to the fund-raiser's financial records and telephone solicitation operations.

No solicitation may use terms such as "police" or "fire fighter" unless properly authorized by a bona fide law enforcement agency or fire department. A similar prohibition is provided regarding the use of the name of a federally chartered veterans' organization.

The Secretary of State's Office is authorized to require charities and commercial fund-raisers to file financial statements as part of their registration. The individual fees in the law are removed, and the secretary of state is given authority to set fees for filings and registration.

The attorney general is given new authority under the charitable solicitations law. The attorney general may conduct investigations, publish information concerning violations, subpoena individuals and records, issue cease and desist orders, and impose civil penalties of up to \$1,000.

The secretary of state is given authority to set reasonable fees for a variety of specified services. Those services include: in-person service; expedited service; electronic transmittals; providing microfiche documents; handling overdrafts; resubmission of documents for corrections handling telephone requests; and special search charges.

The secretary of state is to publish an annual report indicating what percentage of money collected by an entity actually goes to charitable purposes.

CHARITABLE TRUSTS.

The secretary of state, rather than the attorney general, is given administrative authority over charitable trusts. Registrations and filings formerly made with the attorney general are to be made with the secretary of state. The secretary of state is given the same fee setting authority as granted under the charitable solicitations law.

The attorney general retains authority to investigate violations and to secure compliance with the charitable trust law. The attorney general also retains access to the registrations and other filings that are now to be made with the secretary of state.

Provisions are made for the transfer to the secretary of state of documents, material, equipment, personnel, and appropriations relating to the supervision of charitable trusts.

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 1993.

Testimony For: The bill responds to United States Supreme Court rulings on the constitutionality of solicitation laws. It will allow better control of the few unscrupulous entities that divert money from charities and reduce public confidence in the integrity of charitable organizations. The bill also improves administrative efficiency.

Testimony Against: None.

Witnesses: Christine Gregoire, Attorney General (pro); Ralph Munro, Secretary of State (pro); Sharon Foster, YMCAs of Washington (pro); and Beau Bergeron, Washington State Department of Veterans' Affairs (pro).