

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **HB 2079** be amended on page 1, following line 7, by inserting:

"New Section 1. There is hereby created in the state treasury the charitable organizations fee fund. The attorney general shall remit all moneys received pursuant to the charitable organizations and solicitations act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the charitable organizations fee fund. Moneys in the charitable organizations fee fund shall be used by the attorney general to carry out the provisions and purposes of the charitable organizations and solicitations act. All expenditures from the charitable organizations fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or a person designated by the attorney general.

New Sec. 2. The attorney general shall have the legal custody of all records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the secretary of state relating to the charitable organizations and solicitations act.

Sec. 3. K.S.A. 17-1759 is hereby amended to read as follows: 17-1759. This act K.S.A. 17-1759 through 17-1776, and amendments thereto and section 2, and amendments thereto, shall be known and may be cited as the "charitable organizations and solicitations act."

Sec. 4. K.S.A. 2020 Supp. 17-1762 is hereby amended to read as follows: 17-1762. The following persons shall not be required to register with the ~~secretary of state~~ attorney general:

(a) State educational institutions under the control and supervision of the state board of regents, unified school districts, educational interlocals, educational cooperatives, area vocational-technical schools, all educational institutions that are accredited by a regional accrediting association or by an organization affiliated with the national commission of accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution confining its solicitation of contributions to the student body, alumni, faculty and trustees of such institution, and their families, or a library established under the laws of this state, provided that the annual financial report of such institution or library shall be filed with the attorney general;

(b) fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is confined to their membership. This exemption shall be extended to any subsidiary of a parent or superior organization exempted by this subsection where such solicitation is confined to the membership of the subsidiary, parent or superior organization;

(c) persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets, or social gatherings, if any, provided all ~~fund-raising~~ fundraising functions are carried on by persons who are unpaid, directly or indirectly, for such services;

(d) any charitable organization ~~which~~ that does not intend to solicit and receive and does not actually receive contributions in excess of \$10,000 during such organization's tax

period, as defined by K.S.A. 17-7501, and amendments thereto, if all of such organization's ~~fund-raising~~ fundraising functions are carried on by persons who are unpaid for such services. ~~However,~~ If the gross contributions received by such charitable organization during any such tax period is in excess of \$10,000, such organization, within 30 days after the end of such tax period, shall register with the ~~secretary of state~~ attorney general as provided in K.S.A. 17-1763, and amendments thereto;

(e) any incorporated community chest, united fund, united way or any charitable organization receiving an allocation from an incorporated community chest, united fund or united way;

(f) a bona fide organization of volunteer firemen, or a bona fide auxiliary or affiliate of such organization, if all ~~fund-raising~~ fundraising activities are carried on by members of such organization or an affiliate thereof and such members receive no compensation, directly or indirectly, therefor;

(g) any charitable organization operating a nursery for infants awaiting adoption if all ~~fund-raising~~ fundraising activities are carried on by members of such an organization or an affiliate thereof and such members receive no compensation, directly or indirectly, therefor;

(h) any corporation established by the federal congress that is required by federal law to submit annual reports of such corporation's activities to congress containing itemized accounts of all receipts and expenditures after being duly audited by the department of defense or other federal department;

(i) any girls' club ~~which~~ that is affiliated with the girls' club of America, a corporation chartered by congress, if such an affiliate properly files the reports required by the girls' club of America and that the girls' club of America files with the government of the United States the

reports required by such federal charter;

(j) any boys' club ~~which~~ that is affiliated with the boys' club of America, a corporation chartered by congress, if such an affiliate properly files the reports required by the boys' club of America and that the boys' club of America files with the government of the United States the reports required by such federal charter;

(k) any corporation, trust or organization incorporated or established for religious purposes, or established for charitable, hospital or educational purposes and engaged in effectuating one or more of such purposes, that is affiliated with, operated by or supervised or controlled by a corporation, trust or organization incorporated or established for religious purposes, or to any other religious agency or organization which serves religion by the preservation of religious rights and freedom from persecution or prejudice or by fostering religion, including the moral and ethical aspects of a particular religious faith;

(l) the boy scouts of America and the girl scouts of America, including any regional or local organization affiliated therewith;

(m) the young men's christian association and the young women's christian association, including any regional or local organization affiliated therewith;

(n) any licensed medical care facility ~~which~~ that is organized as a nonprofit corporation under the laws of this state;

(o) any licensed community mental health center or licensed mental health clinic;

(p) any licensed community center for people with intellectual disability and its affiliates as determined by the Kansas department for aging and disability services;

(q) any charitable organization of employees of a corporation whose principal gifts are made to an incorporated community chest, united fund or united way, and whose solicitation is

limited to such employees;

(r) any community foundation or community trust to which deductible contributions can be made by individuals, corporations, public charities and private foundations, as well as other charitable organizations and governmental agencies for the overall purposes of the foundation or to particular charitable and endowment funds established under agreement with the foundation or trust for the charitable benefit of the people of a specific geographic area and ~~which that~~ is a nonprofit organization exempt from federal income taxation pursuant to section 501(a) of the internal revenue code of 1986, as in effect on the effective date of this act, by reason of qualification under section 501(c)(3) of the internal revenue code of 1986, as in effect on the effective date of this act, and ~~which that~~ is deemed a publicly supported organization and not a private foundation within the meaning of section 509(a)(1) of the internal revenue code of 1986, as in effect on the effective date of this act;

(s) any charitable organization ~~which that~~ does not intend to or does not actually solicit or receive contributions from more than 100 persons;

(t) any charitable organization the funds of which are used to support an activity of a municipality of this state;

(u) the junior league, including any local community organization affiliated therewith;
and

(v) any charitable organization that is an animal shelter licensed pursuant to K.S.A. 47-1701 et seq., and amendments thereto.

Sec. 5. K.S.A. 17-1763 is hereby amended to read as follows: 17-1763. (a) Except for charitable organizations exempt under K.S.A. 17-1762, and amendments thereto, no charitable organization shall solicit funds in this state, nor employ a professional fund raiser to solicit funds

in this state, for any charitable purpose, unless such organization has filed ~~with the office of the secretary of state of the state of Kansas~~, a registered statement with the attorney general prior to solicitation.

(b) ~~The secretary of state~~ attorney general shall prescribe registration forms ~~which that~~ shall be signed and sworn to by two authorized officers of the organization, including the chief fiscal officer, and ~~which~~ shall include the following information about such organization's activities in this state:

(1) The name of the organization and the name or names under which it intends to solicit;

(2) the purpose for which such organization was organized;

(3) the principal mailing address and street address of the organization and the mailing addresses and street addresses of any offices in this state;

(4) the names and mailing addresses and street addresses of any subsidiary or subordinate chapters, branches or affiliates in this state;

(5) the place where and the date when the organization was legally established, the form in which such organization is organized and a reference to any determination of such organization's tax-exempt status, if any, under the federal internal revenue code of 1986;

(6) the names and mailing addresses and street addresses of the officers, directors, trustees and principal salaried employees of the organization;

(7) the name and mailing address and street address of the person having custody of such organization's financial records;

(8) the names of the individuals or officers of the organization who will have responsibility for the custody of the contributions;

(9) the names of the individuals or officers of the organization who will have responsibility for the distribution of the contributions;

(10) the names of the individuals or officers of the organization who will have responsibility for the conduct of solicitation activities;

(11) the general purposes for which the organization intends to solicit contributions;

(12) a statement indicating whether the organization intends to solicit contributions directly or have such solicitation done on such organization's behalf by others and naming any professional fund raiser the organization intends to use;

(13) a statement indicating whether the organization is authorized by any other governmental authority to solicit contributions and whether such organization is or has ever been enjoined by any court from soliciting contributions;

(14) the cost of ~~fund raising~~ fundraising incurred or anticipated to be incurred by the organization, including a statement of such costs as a percentage of contributions received; and

(15) a copy of the federal income tax return of the charitable organization, if the charitable organization is required to file such; otherwise a financial statement covering complete disclosure of the fiscal activities of the organization during the preceding year. The financial statement shall be submitted on forms approved by the ~~secretary of state~~ attorney general, signed and sworn by at least two authorized officers of the organization, including the chief fiscal officer. Such financial statement shall include a balance sheet and statement of income and expense, clearly setting forth the following: Gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or source; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of this state, with explanation as to recipient and purpose; and

total net amount disbursed or dedicated for each major purpose, charitable or otherwise.

(c) A charitable organization that received contributions in excess of \$500,000 during the organization's most recently completed fiscal year shall file, in addition to the federal income tax returns or the statement required by subsection (b), an audited financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and the opinion of an independent certified public accountant on the financial statement.

(d) Upon receipt of ~~any such a proper~~ registration and payment of applicable fees, the ~~secretary of state~~ attorney general shall issue a charitable solicitation license and identification number. All certificates of registration and identification numbers issued to charitable organizations shall expire on the last day of the sixth month following the month in which the fiscal year of the charitable organization ends.

(e) Every charitable organization required to register with the ~~secretary of state~~ attorney general shall pay a fee of ~~\$20~~ \$25 with each registration.

(f) (1) The ~~secretary of state~~ attorney general may adopt rules and regulations necessary for the administration of ~~this~~ the charitable organizations and solicitations act.

(2) All rules and regulations, orders, directives and standards of the secretary of state relating to the charitable organizations and solicitations act that are in effect on June 30, 2021, shall be deemed to be the rules and regulations, orders, directives and standards of the attorney general and shall continue to be effective until amended, revoked or nullified pursuant to law.

Sec. 6. K.S.A. 17-1764 is hereby amended to read as follows: 17-1764. (a) No person shall act as a professional fund raiser for a charitable organization or for any religious organization as described in ~~subsection (k)~~ (k) of K.S.A. 17-1762(k), and amendments thereto,

before such person has registered with the ~~secretary of state~~ attorney general or after the expiration or cancellation of such registration or any renewal of such registration.

~~(b) Applications~~ An application for registration ~~and reregistration or renewal~~ shall be in writing and under oath in the form prescribed by the ~~secretary of state~~ attorney general. Registration ~~or reregistration~~ shall be in effect for a period of one year, or a part thereof, expiring on June 30, and may be renewed ~~upon written application, under oath, in the form prescribed by the secretary of state~~ for additional ~~one year~~ one-year periods.

~~(c) Every professional fund raiser required to register pursuant to this act with the attorney general shall:~~

~~(1) Pay a fee of \$25 with each registration or renewal; and~~

~~(2) file an annual written report with the secretary of state~~ attorney general containing such information as the ~~secretary~~ attorney general may require by ~~rule and regulation~~ rules and regulations adopted pursuant to K.S.A. 17-1763, and amendments thereto.

Sec. 7. K.S.A. 17-1765 is hereby amended to read as follows: 17-1765. ~~(a) No person shall act as a professional solicitor in the employ of a professional fund raiser before such person has registered with the secretary of state~~ attorney general or after the expiration or cancellation of such registration or any renewal of such registration.

~~(b) An application for registration or reregistration~~ renewal shall be in writing, ~~and under oath and in the form prescribed by the secretary of state. Upon receipt of any such registration, the secretary of state shall issue a professional solicitor's license and identification number~~ attorney general. ~~Such registration or reregistration~~ Registration shall be in effect for a period of one year, or a part thereof, expiring on June 30, and may be renewed ~~upon written application, under oath, in the form prescribed by the secretary of state~~ for an additional one-year

~~period~~ for additional one-year periods.

(c) Upon receipt of a proper registration or renewal and payment of applicable fees, the attorney general shall issue a professional solicitor's license and identification number.

(d) Every professional solicitor required to register with the attorney general shall pay a fee of \$25 with each registration or renewal.

Sec. 8. K.S.A. 17-1766 is hereby amended to read as follows: 17-1766. All solicitations by professional solicitors shall contain the following disclosures at the point of solicitation:

(a) The name, address and telephone number of the charitable organization;

(b) the registration number, obtained pursuant to K.S.A. 17-1763, and amendments thereto, for the charitable organization;

(c) if the solicitation is made by a person acting as a professional solicitor, the registration number obtained pursuant to K.S.A. 17-1765, and amendments thereto; and

(d) that an annual financial report required by K.S.A. 17-1763, and amendments thereto, for the preceding fiscal year is on file with the ~~secretary of state~~ attorney general.

Sec. 9. K.S.A. 17-1769 is hereby amended to read as follows: 17-1769. The following acts and practices are hereby declared unlawful as applied to the planning, conduct or execution of any solicitation or charitable purpose:

(a) Operating in violation of, or failing to comply with, any of the requirements of ~~this~~ the charitable organizations and solicitations act;

(b) utilizing any deceptive acts or practices whether or not any person has in fact been misled. Deceptive acts or practices include, but are not limited to, the following:

(1) The intentional use in any solicitation of exaggeration, innuendo or ambiguity as to a material fact; and

(2) the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact in any solicitation;

(c) utilizing any unconscionable acts or practices. An unconscionable act or practice violates ~~this~~ the charitable organizations and solicitations act whether it occurs before, during or after the solicitation.

(1) The unconscionability of an act or practice is a question for the court.

(2) In determining whether an act or practice is unconscionable, the court shall consider circumstances ~~which~~ that the charitable organization or fund raiser knew or had reason to know including, but not limited to, the following:

(A) Taking advantage of a person's inability to reasonably protect such person's interests because of the person's physical infirmity, ignorance, illiteracy, inability to understand the language of a solicitation or similar factor; and

(B) using undue pressure in soliciting;

(d) utilizing any representation that implies the contribution is for or on behalf of a charitable organization or utilizing any emblem, device or printed matter belonging to or associated with a charitable organization, without obtaining authorization in writing from the charitable organization;

(e) utilizing 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, whether or not any person has in fact been misled;

(f) misrepresenting or misleading any person in any manner to believe that the person on whose behalf a solicitation or charitable purpose is being conducted is a charitable organization;

(g) using donations for purposes other than those stated in an organization's articles of incorporation or current registration statements filed with the ~~secretary of state~~ attorney general;

(h) using donations for purposes other than those stated in solicitations;

(i) using donations for other than charitable purposes;

(j) misrepresenting or misleading any person in any matter, to believe that any other person or governmental unit sponsors, endorses or approves such solicitation or charitable purpose when such other person has not given consent in writing to the use of such person's name for these purposes; and

(k) utilizing or exploiting the fact of registrations so as to lead any person to believe that such registration in any manner constitutes an endorsement or approval by the state.

Sec. 10. K.S.A. 17-1771 is hereby amended to read as follows: 17-1771. Registration under ~~this~~ the charitable organizations and solicitations act shall not be deemed to constitute an endorsement by the state of Kansas of any registering charitable organization, professional fund raiser or professional solicitor. It shall be unlawful for any charitable organization, professional fund raiser or professional solicitor to represent, directly or indirectly, by advertising or any other manner, that such charitable organization, professional fund raiser or professional solicitor has registered or otherwise complied with the provisions of ~~this~~ the charitable organizations and solicitations act, for the purpose of solicitation and collection of funds for charitable purposes. The ~~secretary of state~~ attorney general shall cancel the registration of any organization, professional fund raiser or professional solicitor that violates the provisions of this section.

Sec. 11. K.S.A. 17-1772 is hereby amended to read as follows: 17-1772. (a) ~~The secretary of state~~ attorney general may enter into reciprocal agreements relating to the charitable organizations and solicitations act with a like authority of any other state or states for the purpose

of exchanging information made available to the ~~secretary of state~~ attorney general or to such other like authority.

(b) All reciprocal agreements entered into by the secretary of state relating to the charitable organizations and solicitations act that are in effect on June 30, 2021, shall be deemed to be reciprocal agreements entered into by the attorney general and shall continue to be effective until amended, revoked or nullified pursuant to law.

Sec. 12. K.S.A. 46-236 is hereby amended to read as follows: 46-236. (a) No state officer or employee, candidate for state office or state officer elect shall solicit any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service from any person known to have a special interest, under circumstances where such officer, employee, candidate or state officer elect knows or should know that a major purpose of the donor in granting the same could be to influence the performance of the official duties or prospective official duties of such officer, employee, candidate or state officer elect.

(b) Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to: (1) Any contribution reported in compliance with the campaign finance act; (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business; (3) any solicitation for the benefit of any charitable organization ~~which is required to file a registration statement with the secretary of state~~ attorney general pursuant to K.S.A. 17-1761, and amendments thereto, or ~~which is~~ exempted from filing such statement pursuant to K.S.A. 17-1762, and amendments thereto, or for the benefit of any educational institution or such institution's endowment association, if such association has qualified as a nonprofit organization under ~~paragraph (3) of subsection (e) of section 501(c)(3)~~ of the internal revenue code of 1986, as amended; (4) any solicitation for the benefit of any national

nonprofit, nonpartisan organization established for the purpose of serving, informing, educating and strengthening state legislatures in all states of the nation; or (5) any solicitation for the benefit of any national, nonprofit organization established for the purpose of serving, informing and educating elected executive branch officials in all states of the nation.";

On page 6, in line 19, after "K.S.A." by inserting "17-1759, 17-1763, 17-1764, 17-1765, 17-1766, 17-1769, 17-1771, 17-1772, 46-236,"; in line 20, after "75-458" by inserting "and K.S.A. 2020 Supp. 17-1762";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, after the semicolon by inserting "charitable organizations; increasing fees for certain charitable organizations; creating the charitable organizations fee fund; relating to"; in line 4, after "K.S.A." by inserting "17-1759, 17-1763, 17-1764, 17-1765, 17-1766, 17-1769, 17-1771, 17-1772, 46-236,"; in line 5, after the second "and" by inserting "K.S.A. 2020 Supp. 17-1762 and"; and the bill be passed as amended.

Chairperson