

HOUSE BILL No. 2080

By Committee on Judiciary

1-20

1 AN ACT concerning state officers; relating to certain powers; duties and
2 functions of the secretary of state and the attorney general; charitable
3 organizations; transferring duties to the attorney general; increasing
4 certain fees; creating the charitable organizations fee fund; amending
5 K.S.A. 17-1759, 17-1763, 17-1764, 17-1765, 17-1766, 17-1769, 17-
6 1771, 17-1772 and 46-236 and K.S.A. 2020 Supp. 17-1762 and
7 repealing the existing sections.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. There is hereby created in the state treasury the
11 charitable organizations fee fund. The attorney general shall remit all
12 moneys received pursuant to the charitable organizations and solicitations
13 act to the state treasurer in accordance with the provisions of K.S.A. 75-
14 4215, and amendments thereto. Upon receipt of each such remittance, the
15 state treasurer shall deposit the entire amount in the state treasury to the
16 credit of the charitable organizations fee fund. Moneys in the charitable
17 organizations fee fund shall be used by the attorney general to carry out
18 the provisions and purposes of the charitable organizations and
19 solicitations act. All expenditures from the charitable organizations fee
20 fund shall be made in accordance with appropriation acts upon warrants of
21 the director of accounts and reports issued pursuant to vouchers approved
22 by the attorney general or a person designated by the attorney general.

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

28 Sec. 3. K.S.A. 17-1759 is hereby amended to read as follows: 17-
29 1759. ~~This act K.S.A. 17-1759 through 17-1776, and amendments thereto~~
30 ~~and section 2, and amendments thereto, shall be known and~~ may be cited
31 as the "charitable organizations and solicitations act."

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

35 (a) State educational institutions under the control and supervision of
36 the state board of regents, unified school districts, educational interlocals,

1 educational cooperatives, area vocational-technical schools, all educational
2 institutions that are accredited by a regional accrediting association or by
3 an organization affiliated with the national commission of accrediting, any
4 foundation having an established identity with any of the aforementioned
5 educational institutions, any other educational institution confining its
6 solicitation of contributions to the student body, alumni, faculty and
7 trustees of such institution, and their families, or a library established
8 under the laws of this state, provided that the annual financial report of
9 such institution or library shall be filed with the attorney general;

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

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

22 (d) any charitable organization ~~which~~ *that* does not intend to solicit
23 and receive and does not actually receive contributions in excess of
24 \$10,000 during such organization's tax period, as defined by K.S.A. 17-
25 7501, and amendments thereto, if all of such organization's ~~fund-raising~~
26 *fundraising* functions are carried on by persons who are unpaid for such
27 services. ~~However,~~ If the gross contributions received by such charitable
28 organization during any such tax period is in excess of \$10,000, such
29 organization, within 30 days after the end of such tax period, shall register
30 with the ~~secretary of state~~ *attorney general* as provided in K.S.A. 17-1763,
31 and amendments thereto;

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

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

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

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

6 (i) any girls' club—~~which~~ *that* is affiliated with the girls' club of
7 America, a corporation chartered by congress, if such an affiliate properly
8 files the reports required by the girls' club of America and that the girls'
9 club of America files with the government of the United States the reports
10 required by such federal charter;

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

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

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

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

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

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

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

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

40 (r) any community foundation or community trust to which
41 deductible contributions can be made by individuals, corporations, public
42 charities and private foundations, as well as other charitable organizations
43 and governmental agencies for the overall purposes of the foundation or to

1 particular charitable and endowment funds established under agreement
2 with the foundation or trust for the charitable benefit of the people of a
3 specific geographic area and ~~which that~~ is a nonprofit organization exempt
4 from federal income taxation pursuant to section 501(a) of the internal
5 revenue code of 1986, as in effect on the effective date of this act, by
6 reason of qualification under section 501(c)(3) of the internal revenue code
7 of 1986, as in effect on the effective date of this act, and ~~which that~~ is
8 deemed a publicly supported organization and not a private foundation
9 within the meaning of section 509(a)(1) of the internal revenue code of
10 1986, as in effect on the effective date of this act;

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

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

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

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

19 Sec. 5. K.S.A. 17-1763 is hereby amended to read as follows: 17-
20 1763. (a) Except for charitable organizations exempt under K.S.A. 17-
21 1762, and amendments thereto, no charitable organization shall solicit
22 funds in this state, nor employ a professional fund raiser to solicit funds in
23 this state, for any charitable purpose, unless such organization has filed
24 ~~with the office of the secretary of state of the state of Kansas~~; a registered
25 statement *with the attorney general* prior to solicitation.

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

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

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

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

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

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

43 (6) the names and mailing addresses and street addresses of the

- 1 officers, directors, trustees and principal salaried employees of the
2 organization;
- 3 (7) the name and mailing address and street address of the person
4 having custody of such organization's financial records;
- 5 (8) the names of the individuals or officers of the organization who
6 will have responsibility for the custody of the contributions;
- 7 (9) the names of the individuals or officers of the organization who
8 will have responsibility for the distribution of the contributions;
- 9 (10) the names of the individuals or officers of the organization who
10 will have responsibility for the conduct of solicitation activities;
- 11 (11) the general purposes for which the organization intends to solicit
12 contributions;
- 13 (12) a statement indicating whether the organization intends to solicit
14 contributions directly or have such solicitation done on such organization's
15 behalf by others and naming any professional fund raiser the organization
16 intends to use;
- 17 (13) a statement indicating whether the organization is authorized by
18 any other governmental authority to solicit contributions and whether such
19 organization is or has ever been enjoined by any court from soliciting
20 contributions;
- 21 (14) the cost of ~~fund raising~~ *fundraising* incurred or anticipated to be
22 incurred by the organization, including a statement of such costs as a
23 percentage of contributions received; and
- 24 (15) a copy of the federal income tax return of the charitable
25 organization, if the charitable organization is required to file such;
26 otherwise a financial statement covering complete disclosure of the fiscal
27 activities of the organization during the preceding year. The financial
28 statement shall be submitted on forms approved by the ~~secretary of state~~
29 *attorney general*, signed and sworn by at least two authorized officers of
30 the organization, including the chief fiscal officer. Such financial statement
31 shall include a balance sheet and statement of income and expense, clearly
32 setting forth the following: Gross receipts and gross income from all
33 sources, broken down into total receipts and income from each separate
34 solicitation project or source; cost of administration; cost of solicitation;
35 cost of programs designed to inform or educate the public; funds or
36 properties transferred out of this state, with explanation as to recipient and
37 purpose; and total net amount disbursed or dedicated for each major
38 purpose, charitable or otherwise.
- 39 (c) A charitable organization that received contributions in excess of
40 \$500,000 during the organization's most recently completed fiscal year
41 shall file, in addition to the federal income tax returns or the statement
42 required by subsection (b), an audited financial statement for the charitable
43 organization's most recently completed fiscal year, prepared in accordance

1 with generally accepted accounting principles, and the opinion of an
 2 independent certified public accountant on the financial statement.

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

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

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

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

21 Sec. 6. K.S.A. 17-1764 is hereby amended to read as follows: 17-
 22 1764. (a) No person shall act as a professional fund raiser for a charitable
 23 organization or for any religious organization as described in ~~subsection~~
 24 ~~(k)~~ of K.S.A. 17-1762(k), and amendments thereto, before such person has
 25 registered with the ~~secretary of state~~ *attorney general* or after the
 26 expiration or cancellation of such registration or any renewal of such
 27 registration.

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

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

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

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

42 Sec. 7. K.S.A. 17-1765 is hereby amended to read as follows: 17-
 43 1765. (a) No person shall act as a professional solicitor in the employ of a

1 professional fund raiser before such person has registered with the
2 ~~secretary of state~~ *attorney general* or after the expiration or cancellation of
3 such registration or any renewal of such registration.

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

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

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

18 Sec. 8. K.S.A. 17-1766 is hereby amended to read as follows: 17-
19 1766. All solicitations by professional solicitors shall contain the following
20 disclosures at the point of solicitation:

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

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

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

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

31 Sec. 9. K.S.A. 17-1769 is hereby amended to read as follows: 17-
32 1769. The following acts and practices are hereby declared unlawful as
33 applied to the planning, conduct or execution of any solicitation or
34 charitable purpose:

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

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

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

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

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

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

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

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

14 (B) using undue pressure in soliciting;

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

20 (e) utilizing a name, symbol or statement so closely related or similar
21 to that used by another charitable organization that the use thereof would
22 tend to confuse or mislead a solicited person, whether or not any person
23 has in fact been misled;

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

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

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

32 (i) using donations for other than charitable purposes;

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

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

41 Sec. 10. K.S.A. 17-1771 is hereby amended to read as follows: 17-
42 1771. Registration under ~~this~~ *the charitable organizations and*
43 *solicitations* act shall not be deemed to constitute an endorsement by the

1 state of Kansas of any registering charitable organization, professional
2 fund raiser or professional solicitor. It shall be unlawful for any charitable
3 organization, professional fund raiser or professional solicitor to represent,
4 directly or indirectly, by advertising or any other manner, that such
5 charitable organization, professional fund raiser or professional solicitor
6 has registered or otherwise complied with the provisions of ~~this~~ *the*
7 *charitable organizations and solicitations act*, for the purpose of
8 solicitation and collection of funds for charitable purposes. The ~~secretary~~
9 ~~of state~~ *attorney general* shall cancel the registration of any organization,
10 professional fund raiser or professional solicitor that violates the
11 provisions of this section.

12 Sec. 11. K.S.A. 17-1772 is hereby amended to read as follows: 17-
13 1772. (a) The ~~secretary of state~~ *attorney general* may enter into reciprocal
14 agreements *relating to the charitable organizations and solicitations act*
15 with a like authority of any other state or states for the purpose of
16 exchanging information made available to the ~~secretary of state~~ *attorney*
17 *general* or to such other like authority.

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

23 Sec. 12. K.S.A. 46-236 is hereby amended to read as follows: 46-236.

24 (a) No state officer or employee, candidate for state office or state officer
25 elect shall solicit any economic opportunity, gift, loan, gratuity, special
26 discount, favor, hospitality, or service from any person known to have a
27 special interest, under circumstances where such officer, employee,
28 candidate or state officer elect knows or should know that a major purpose
29 of the donor in granting the same could be to influence the performance of
30 the official duties or prospective official duties of such officer, employee,
31 candidate or state officer elect.

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

1 1986, as amended; (4) any solicitation for the benefit of any national
2 nonprofit, nonpartisan organization established for the purpose of serving,
3 informing, educating and strengthening state legislatures in all states of the
4 nation; or (5) any solicitation for the benefit of any national, nonprofit
5 organization established for the purpose of serving, informing and
6 educating elected executive branch officials in all states of the nation.

7 Sec. 13. K.S.A. 17-1759, 17-1763, 17-1764, 17-1765, 17-1766, 17-
8 1769, 17-1771, 17-1772 and 46-236 and K.S.A. 2020 Supp. 17-1762 are
9 hereby repealed.

10 Sec. 14. This act shall take effect and be in force from and after its
11 publication in the statute book.