

**REVISE CHARITABLE
ORGANIZATIONS AND
SOLICITATIONS ACT**

House Bill 4259

Sponsor: Rep. Gerald Law

Committee: Gaming and Casino Oversight

Complete to 3-2-99

A SUMMARY OF HOUSE BILL 4259 AS INTRODUCED 2-11-99

The bill would revise the Charitable Organizations and Solicitations Act. Among many changes, the bill would rescind licensing provisions and instead create a system of registration for charitable organizations and those professionals who raise funds for charitable organizations, add new definitions, create the Charitable Organizations and Solicitations Fund, increase fines for misdemeanor violations, and establish a civil penalty for prohibited activities. Under the revision, a "charitable organization" would be defined as 1) an organization with tax exempt status under section 501 (3) (c) of the Internal Revenue Code and 2) a person whose purpose, structure, or activities are described under that section of the IRS code. A charitable organization would not include a federal, state, or local unit of government; a subdivision, agency, or instrumentality of federal, state, or local government; or a religious organization incorporated or established for religious purposes, nor would it include a candidate, candidate committee, or committee as defined under the Michigan Campaign Finance Act (MCL 169.203); an authorized committee, political committee, or principal campaign committee as defined in the federal Election Campaign Act of 1971 (2 U.S.C. 431); or a political party as described in the Michigan Election Law (MCL 168.560a). Substantive changes to the act would include the following:

Registration. Currently, charitable organizations and professional fund-raisers are licensed. The bill would instead create a registration system for charitable organizations, professional fund-raisers, and vendors. A "professional fund-raiser" would be a person, including a subcontractor, who conducted, managed, or carried on a drive or campaign for compensation to solicit contributions for or on behalf of a charitable organization, religious organization, or any other person, or who held himself or herself out as independently engaged in the business of soliciting contributions for charitable purposes. A bona fide officer or employee of a charitable organization or a person whose service was restricted to providing advice, research, or writing would not be considered to be a professional fund-raiser. "Vendor" would be a person other than a charitable organization who conducted charitable sales or solicitation campaigns through vending machines, honor boxes, novelty machines, or similar devices that were represented as benefitting a charitable organization or purpose.

The registrations for fund-raisers and vendors would have to be renewed annually, and a registration for an organization would have to be renewed within six months of the close of its fiscal year. Registration and renewal fees would be \$200 for a professional fund-raiser and \$50 for a vendor, and charitable organizations would be charged on a sliding scale based on the

revenue raised for the previous year (fees would range from \$20 to \$100). Currently, charitable organizations that are directly supervised and controlled by a superior or parent organization that meet certain criteria do not have to be registered under the act. The bill would create a registration fee of \$300 for a parent charitable organization registered under the bill that was the parent charitable organization of one or more subsidiary charitable organizations that do not meet the combined registration requirements under current law. "Parent charitable organization" would mean, for purposes of this provision only, an organization that meets the requirements for consolidating financial statements under generally accepted accounting principles. A person who was not a charitable organization or a volunteer supervised by a charitable organization but who solicited contributions, conducted a fund-raising event, or conducted a sales promotion for a charitable purpose would be subject to the act's provisions, but would not be subject to the registration and reporting requirements of the bill. In addition, professional fund-raisers currently are required to post a \$10,000 bond. Under the bill, the bond amount would be raised to \$25,000. Further, the bill would revise the information and documentation that would have to be submitted with registration applications for charitable organizations, professional fund-raisers, and vendors.

Exemptions. Currently, organizations raising less than \$8,000 are exempt from the act's licensing and financial reporting requirements (as long as all fund-raising functions are done by volunteers). The bill would raise the threshold to \$25,000 per year. Exemptions would also be extended to the following organizations:

** A booster group or a parent-teacher organization recognized by the public school, nonpublic school, or school district that it is organized to support.

** A public school, nonpublic school, preschool, or institution of higher education.

** An organization that does not recruit the public for membership and only solicits funds from its own membership.

** A private foundation defined by section 509(a) of the Internal Revenue Code that did not receive contributions from more than 25 persons in the most recent fiscal year.

** A federally chartered veteran's organization, its authorized service foundation, and a professional fund-raiser raising funds solely for the service foundation.

** Organizations receiving funds from a registered charitable organization under certain conditions.

** Organizations registered under the Public Safety Solicitation Act (MCL 14.301 et al.).

Charitable Organizations and Solicitations Fund. The bill would create the Charitable Organizations and Solicitations Fund within the state treasury. Revenues collected from registration fees, late fees, fines and penalties, and any other source would be deposited in the fund for the purpose of administering the act and disseminating information to the public about persons subject to the act. Funds would not lapse to the general fund at the end of a fiscal year.

Penalties. Currently, violations of the act result in a misdemeanor punishable by a fine of up to \$500 and six months in jail. The bill would increase the fine to \$5,000. Further, the bill would specify many practices that would be prohibited. Violations of these provisions could result in restrictions or conditions being placed on a registration, registration suspension or revocation, or a type of affirmative action such as being ordered to make restitution. In addition, the bill would allow the attorney general or a county prosecutor to investigate and bring an action against a person for violations of these provisions or any of the act's requirements that could result in a civil penalty of up to \$10,000 for each violation. The bill would also specify that an individual could bring an action against a registrant under the Michigan Consumer Protection Act (MCL 445.911).

Miscellaneous provisions. A vendor would be required to display his or her name on each vending machine, honor box, novelty machine, or other device by which he or she conducts a charitable sales promotion along with the percentage of sales, if any, that a charitable organization would receive, and the amount that a charitable organization would receive regardless of sales, if any. The bill would also require disclosure of information such as the fund-raiser's name as filed with the attorney general, the fact that a professional fund-raiser is conducting the campaign, and the name and location by city and state of each charitable organization on behalf of which the solicitation is made, before an oral request for contributions could be made, and this information would also have to be disclosed for various non-person-to-person solicitations. Oral pledges or promises to contribute made as a result of telephone or door-to-door solicitations would not be enforceable.

Further, one year after the bill's effective date, the attorney general would have to report to the Senate and House of Representatives regarding the plan by which the public would be educated about charitable organizations and the solicitation efforts of professional fund-raisers in the state. The report would have to include a description of the information to be disseminated to the public and the plan by which to disseminate it. A section of the act pertaining to financial statement reporting requirements for licensure and renewal and a section that specifies that the act is not to be construed as restricting the powers and duties of the attorney general would be repealed and incorporated into other provisions of the bill.

MCL 400.272 et al.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.