

**SENATE BILL NO. 2341**

Introduced by

Senators Espeguard, G. Lee

Representative Grande

1 A BILL for an Act to create and enact sections 50-22-06 and 50-22-07 of the North Dakota  
2 Century Code, relating to charitable solicitations; to amend and reenact sections 50-22-01,  
3 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.3, and 50-22-05 of the North Dakota Century Code,  
4 relating to charitable solicitations; and to repeal section 50-22-04.2 of the North Dakota Century  
5 Code, relating to charitable solicitations.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 50-22-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **50-22-01. Definitions.** As used in this chapter, unless the context otherwise requires:

10 1. "Accounting year" means the twelve-month period on which a charitable  
11 organization keeps its financial records.

12 ~~4. 2.~~ a. "Charitable organization" means ~~any entity that:~~

13 (1) ~~Is deemed by the internal revenue service to be a tax exempt~~  
14 ~~organization under section 501(c)(3) of the Internal Revenue Code~~  
15 ~~[26 U.S.C. 501(c)(3)]; or~~

16 (2) ~~Holds itself out to the public to be established for any charitable~~  
17 ~~purpose; or~~

18 (3) ~~In any manner employs a charitable appeal as the basis for any~~  
19 ~~solicitation~~ a person that engages in or purports to engage in  
20 solicitation for a charitable purpose and includes a chapter, branch,  
21 area office, or similar affiliate or a person soliciting contributions within  
22 the state for a parent charitable organization.

23 b. The term "charitable organization" does not include:

- 1                   (1) An organization ~~soliciting~~ that solicits funds for an institution of higher  
2                   learning.
- 3                   (2) An organization ~~using~~ that uses only volunteer unpaid fundraisers and  
4                   ~~soliciting~~ that solicits funds for a political subdivision or other  
5                   government entity or for a civic or community project in which the  
6                   contributions received are used solely for the project and none of the  
7                   contributions inure to the benefit of any individual.
- 8                   (3) A private or public elementary or secondary school.
- 9                   (4) A charitable organization or person ~~soliciting~~ that solicits contributions  
10                  for any person specified by name at the time of the solicitation if all the  
11                  contributions received are transferred within a reasonable time after  
12                  receipt to the person named or that person's parent, guardian, or  
13                  conservator with no restriction on their expenditure and with no  
14                  deduction.
- 15                  (5) ~~A duly constituted religious organization or any group affiliated with and~~  
16                  ~~forming an integral part of that organization no part of the net income of~~  
17                  ~~which inures to the direct benefit of any individual and which has~~  
18                  ~~received a declaration of current tax exempt status from the~~  
19                  ~~government of the United States; provided, that no such affiliated group~~  
20                  ~~may be required to obtain the declaration if the parent or principal~~  
21                  ~~organization has obtained the declaration. A religious society or~~  
22                  organization that is exempt from filing a federal annual information  
23                  return pursuant to Internal Revenue Code section 6033(a)(2)(A)(i) and  
24                  (iii) [26 U.S.C. 6033(a)(2)(A)(k) and (iii)] and Internal Revenue Code  
25                  section 6033(a)(2)(C)(i) [26 U.S.C. 6033(a)(2)(c)(i)].
- 26                  (6) Any candidate for national, state, or local elective office or political party  
27                  or other committee required to file information with the federal election  
28                  commission, a state election commission, or an equivalent office or  
29                  agency.

- 1           3. "Charitable purpose" means a charitable, benevolent, philanthropic, religious,  
2           social service, welfare, educational, cultural, artistic, or public interest purpose,  
3           either actual or purported.
- 4           ~~2.~~ 4. "Contribution" means cash or the promise, grant, or pledge of any money, credit,  
5           assistance, or property of any kind or value, including the promise to pay, provided  
6           in response to a solicitation. "Contribution" includes, in the case of a charitable  
7           organization offering goods and services to the public, the difference between the  
8           direct cost of the goods and services to the charitable organization and the price at  
9           which the charitable organization or a person acting on behalf of that organization  
10           resells those goods or services to the public. "Contribution" does not include  
11           bona fide fees, dues, or assessments paid by members of an organization,  
12           provided that:
- 13           a. Membership is not conferred in exchange for a contribution in response to a  
14           solicitation; or
- 15           b. Membership provides no benefit in addition to the right to vote or otherwise  
16           participate in the organization and the right to receive literature.
- 17           ~~3.~~ 5. "Person" means any individual, organization, association, partnership, corporation,  
18           or limited liability company.
- 19           4. ~~"Professional fundraiser" means any person who for a flat fixed fee under a written~~  
20           ~~agreement plans, conducts, manages, carries on, advises, or acts as a consultant,~~  
21           ~~whether directly or indirectly, in connection with soliciting contributions for, or on~~  
22           ~~behalf of, any charitable organization but who actually solicits no contributions as a~~  
23           ~~part of such services. A bona fide salaried officer or employee of a charitable~~  
24           ~~organization maintaining a permanent establishment within the state shall not be~~  
25           ~~deemed to be a professional fundraiser.~~
- 26           ~~5.~~ 6. "Professional solicitor" means any person who, for a financial or other  
27           consideration, solicits contributions for, or on behalf of, a charitable organization  
28           whether such solicitation is performed personally or through the person's agents,  
29           servants, or employees or through agents, servants, or employees specially  
30           employed by, or for, a charitable organization, who are engaged in the solicitation  
31           of contributions under the direction of such person, or a person who plans,

1 ~~conducts, manages, carries on, advises, or acts as a consultant, whether directly~~  
2 ~~or indirectly, to a charitable organization in connection with the solicitation of~~  
3 ~~contributions but does not qualify as a professional fundraiser within the meaning~~  
4 ~~of this chapter~~ fundraiser" means a person who, for financial compensation or  
5 profit, performs for a charitable organization a service in connection with which  
6 contributions are, or will be, solicited in this state by the compensated person or by  
7 a compensated person the person employs, procures, or engages to solicit; or a  
8 person who for compensation or profit plans, manages, advises, consults, or  
9 prepares material for, or with respect to, the solicitation in this state of contributions  
10 for a charitable organization. A bona fide full-time salaried officer or employee of a  
11 charitable organization maintaining a permanent establishment within the state  
12 may not be deemed to be a professional ~~solicitor~~ fundraiser.

13 An attorney, investment counselor, or banker who advises any person to  
14 make a contribution to a charitable organization may not be deemed, as the result  
15 of that advice, to be a professional fundraiser ~~or a professional solicitor.~~

16 ~~6-~~ 7. "Solicitation" means and "solicit" mean the request to the public or member of the  
17 public for a contribution on the representation that the contribution will be used in  
18 whole or in part for a charitable purpose, including:

- 19 a. An oral request made in person or by telephone, radio, television, electronic  
20 communication including the internet, or other advertising or communication  
21 media;
- 22 b. A written or other recorded or published request, that is mailed, sent,  
23 delivered, circulated, distributed, posted in a public place, or advertised or  
24 communicated through any medium available to the public and described in  
25 subdivision a;
- 26 c. A sale of or attempt to sell any good or service in which the good or service is  
27 priced above fair market value or when it is otherwise represented that some  
28 portion of the purchase price will be used for a charitable purpose; or
- 29 d. An announcement inviting the public to attend an assembly, event, exhibition,  
30 performance, or social gathering of any kind where admission is conditioned

1                   on the receipt of a contribution or at which function contributions will be  
2                   otherwise solicited.

3                   A solicitation is deemed to have occurred regardless of whether the party solicited  
4                   makes a contribution.

5                   **SECTION 2. AMENDMENT.** Section 50-22-02 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7                   **50-22-02. ~~License to solicit—Term—Revocation~~ Registration of charitable**  
8 **organization.**

9                   1. A charitable organization may not solicit contributions from persons in this state by  
10                   any means ~~without first having obtained a license from the secretary of state. The~~  
11                   ~~application for a license must contain the information concerning the solicitation as~~  
12                   ~~required by this chapter. This information must be filed with the secretary of state~~  
13                   ~~and must be available as a matter of public record. The application form~~  
14                   ~~containing the information must be sworn to and must include the following:~~

- 15                   4. ~~The name of the charitable organization for which the solicitation is to be~~  
16                   ~~conducted.~~
- 17                   2. ~~The organization's address.~~
- 18                   3. ~~The purpose or purposes for which the contributions solicited are to be used.~~
- 19                   4. ~~The individual or officer who will have custody of the contributions.~~
- 20                   5. ~~The individual or officer responsible for the distribution of contributions received.~~
- 21                   6. ~~The period of time during which solicitation is to be conducted.~~
- 22                   7. ~~A description of the methods of solicitation in such detail as may be determined by~~  
23                   ~~the secretary of state.~~
- 24                   8. ~~Whether the solicitation is to be conducted by voluntary unpaid or paid solicitors, or~~  
25                   ~~both, and if in whole or part by paid solicitors, the name and address of each~~  
26                   ~~professional fundraiser supplying the solicitors, the basis of payment, and the~~  
27                   ~~nature of the agreement.~~
- 28                   9. ~~Any additional information deemed necessary by the secretary of state.~~

29 ~~The secretary of state shall investigate the financial responsibility, experience, character, and~~  
30 ~~general fitness of the applicant. If the investigation indicates the applicant will conduct~~  
31 ~~solicitations in accordance with the law, the secretary of state shall issue a license to the~~

1 ~~applicant, giving the applicant the right to solicit within the state until September first of that year~~  
2 ~~except that an initial license issued to a charitable organization in July or August following the~~  
3 ~~close of the annual reporting period described in section 50-22-04 must be valid until~~  
4 ~~September first of the subsequent year. If the secretary of state finds the applicant is not~~  
5 ~~qualified to be issued a license, the secretary of state shall deny the application, forthwith notify~~  
6 ~~the applicant of the denial, but retain the license fee. If the applicant does not fulfill the~~  
7 ~~requirements for an application within ninety days of the initial date of application, the~~  
8 ~~application is deemed denied and the secretary of state shall file the documentation and retain~~  
9 ~~any fee received. An applicant whose application is denied for failure to complete within the~~  
10 ~~ninety day time period shall submit a new application and license fee. All fees collected under~~  
11 ~~this chapter must be credited to the state general fund. The fee for an initial license is~~  
12 ~~twenty five dollars. A license obtained under this section is valid for no more than fourteen~~  
13 ~~months the first year a license is obtained and one year thereafter, and is subject to revocation~~  
14 ~~by the secretary of state at any time for just cause.~~

15 unless, prior to a solicitation, there is on file with the secretary of state upon forms  
16 prescribed by the secretary of state a registration statement containing the  
17 following information:

- 18 a. Legally established name.
- 19 b. Name or names under which it solicits contributions.
- 20 c. Form of organization.
- 21 d. Date and place of organization.
- 22 e. Business telephone number.
- 23 f. Street and mailing address of principal office in this state, if any.
- 24 g. Name and address of the person having custody of books and records within  
25 this state.
- 26 h. Names and addresses of, and total annual compensation paid to, officers,  
27 directors, trustees, and chief executive officer.
- 28 i. Federal and state tax-exempt status.
- 29 j. Denial at any time by any governmental agency or court of the right to solicit  
30 contributions.
- 31 k. Date on which accounting year of the charitable organization ends.

- 1            l. General purposes for which organized.
- 2            m. General purposes for which contributions to be solicited will be used.
- 3            n. Methods by which solicitation will be made.
- 4            o. Copies of contracts between the charitable organization and professional
- 5            fundraisers relating to financial compensation or profit to be derived by the
- 6            professional fundraisers. If a contract is executed after filing of the
- 7            registration statement, a copy of the contract must be filed within seven days
- 8            of the date of execution.
- 9            p. Board, group, or individual having final discretion on authority as to the
- 10           distribution and use of contributions received.
- 11           q. Amount of total contributions received during the accounting year last ended.
- 12           2. The registration statement filed by a charitable organization must include a
- 13           registration fee of twenty-five dollars and a financial statement of the organization's
- 14           operation for its most recent twelve-month period immediately preceding the filing
- 15           of the first registration statement. The registration continues unless revoked by a
- 16           court of competent jurisdiction, by the secretary of state, or as provided in this
- 17           chapter. If a charitable organization fails to file a registration statement or other
- 18           information required to be filed by the secretary of state under this chapter, or
- 19           otherwise violates this chapter, the secretary of state, upon notice by certified mail
- 20           to its last-known address, may deny or suspend the application for registration. An
- 21           adjudicative proceeding under this chapter must be conducted in accordance with
- 22           chapter 28-32 unless otherwise provided in this chapter. A notice required under
- 23           this chapter or chapter 28-32 may be made by certified mail. In the event of
- 24           revocation, the secretary of state still shall retain the registration fee.
- 25           3. An officer of the charitable organization must execute the registration statement
- 26           and must acknowledge that the registration statement has been executed pursuant
- 27           to resolution of the board of directors or trustees, or if there be no such board, then
- 28           by its managing group which has approved the content of the registration
- 29           statement. The executing officer also must certify that the board of directors or
- 30           trustees, or if there be no such board, its managing group, have assumed, and will
- 31           continue to assume, responsibility for determining matters of policy and have

1           supervised, and will continue to supervise, the finances of the charitable  
2           organization.

3           4. If a chapter, branch, area office, or similar affiliate of a charitable organization is  
4           supervised and controlled by a parent organization located within or outside the  
5           state, the affiliate may file a registration statement on behalf of the parent  
6           organization in addition to or as part of its own registration statement or the parent  
7           organization may file a registration statement on behalf of the affiliate in addition to  
8           or as part of its own registration statement.

9           **SECTION 3. AMENDMENT.** Section 50-22-02.1 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11           **50-22-02.1. Registration of professional fundraiser ~~and solicitor~~ - Bond required.**

12          ~~The secretary of state or the secretary's designee shall examine each initial application of~~  
13          ~~charitable organizations for the right to solicit funds.~~

14           1. A person may not act as a professional fundraiser or solicitor subject to this  
15           chapter unless that person has registered with the secretary of state. The  
16           ~~application for~~ registration statement must be in writing, under oath, in the form  
17           prescribed by the secretary of state and must be accompanied by ~~an annual~~ a fee  
18           of one hundred dollars. ~~This~~ The registration information must be available to the  
19           public as a matter of public record. Each registration expires on September first  
20           unless, prior to September first, the public fundraiser reregisters by filing a new  
21           registration statement, accompanied by a fee of one hundred dollars. The forms  
22           containing the information must be ~~sworn to~~ verified under oath and must include  
23           the following:

- 24           4. a. The name of the professional fundraiser ~~or solicitor~~.
- 25           2. b. The street and mailing address and telephone number of the professional  
26           fundraiser ~~or solicitor~~.
- 27           3. c. The type of fundraising to be conducted in this state.
- 28           4. d. The name of the auditor ~~in charge of~~, accountant, employee, agent or other  
29           person who maintains or possesses the organization's professional  
30           fundraiser's records.



- 1           3. The professional fundraiser shall also include, as part of the registration statement,  
2           a copy of the contract between any charitable organization and the professional  
3           fundraiser. The contract must:
- 4           a. Be in writing; and  
5           b. Contain information that will enable the secretary of state to identify the  
6           services the professional fundraiser is to provide, including whether the  
7           professional fundraiser will at any time have custody of contributions.
- 8           4. A parent organization filing on behalf of one or more chapters, branches, or  
9           affiliates and a federated fundraising organization filing on behalf of its member  
10          agencies shall pay a single annual registration fee for itself and the chapters,  
11          branches, affiliates, or member agencies included in the registration statement. If  
12          any ~~charitable organization, professional fundraiser, or solicitor~~ fails to file any  
13          registration ~~application~~ statement or other information required to be filed by the  
14          secretary of state under this chapter or otherwise violates this chapter, the  
15          secretary of state, upon notice by certified mail to its last-known address, may deny  
16          or suspend the application for registration ~~if the information is not filed or if the~~  
17          ~~existing violation is not discontinued within two weeks after the formal notification~~  
18          ~~or receipt of such notice. All civil.~~ Any adjudicative proceedings under this chapter  
19          must be conducted in accordance with chapter 28-32 unless otherwise specifically  
20          herein provided. Any notice required under this chapter or chapter 28-32 may be  
21          made by certified mail.

22           **SECTION 4. AMENDMENT.** Section 50-22-04 of the North Dakota Century Code is  
23    amended and reenacted as follows:

24           **50-22-04. Information required to be filed annually.**

- 25           1. ~~Every charitable organization licensed in this state, whether or not the organization~~  
26           ~~is reapplying for a license to solicit for the upcoming year, that is required to file or~~  
27           that files a registration statement pursuant to section 50-22-02 shall file an annual  
28           report along with a ten dollar fee with the secretary of state on or before September  
29           first of each year. The report must be postmarked by the United States postal  
30           service or other carrier, in a properly addressed, postage prepaid, sealed  
31           envelope.

1           The secretary of state may extend the filing date for the annual report of any  
2           charitable organization, if a written application for extension is received before the  
3           filing deadline. A charitable organization with a fiscal year ending within three  
4           months prior to the filing deadline may make a written request for an extension to  
5           apply to reports for subsequent years until the fiscal year is changed.

6           Information submitted must be given as of the close of the business on the  
7           thirty-first day of December next preceding the date herein provided for the filing of  
8           the report, or, in the alternative, the date of the end of the fiscal year next  
9           preceding this report may be used.

10          2. The annual report must be filed on forms ~~provided~~ prescribed by the secretary of  
11          state ~~containing the following information:~~

12          ~~1. Specific and itemized support and revenue statements disclosing direct public~~  
13          ~~support in this state from solicitation, indirect public support, government grants,~~  
14          ~~program service revenue, and any other revenue.~~

15          ~~2. The amount thereof given to the charitable purpose represented.~~

16          ~~3. Specific and itemized expense statements disclosing program services, public~~  
17          ~~information expenditures, payments to affiliates, management costs, and salaries~~  
18          ~~paid in this state.~~

19          ~~4. The aggregate amount paid to or received and to be paid to or received by~~  
20          ~~professional fundraisers and solicitors.~~

21          ~~In addition, the~~ and must include a financial statement covering the immediately  
22          preceding twelve-month period of operation. An officer of the charitable  
23          organization shall execute the financial statement which must include a balance  
24          sheet, statement of income and expense, and statement of functional expenses.

25          The financial statement must be filed on or attached to forms furnished by the  
26          secretary of state and must be prepared in accordance with generally accepted  
27          accounting principles so as to make a full disclosure of the following, including  
28          necessary allocations between each item and the basis of the allocations:

29          a. Total receipts and total income from all sources;

30          b. Cost of management and general;

31          c. Program services;

- 1           d. Cost of fundraising;
- 2           e. Cost of public education;
- 3           f. Funds or properties transferred out of state with explanation as to recipient
- 4             and purpose;
- 5           g. Total net amount disbursed or dedicated within this state, broken down into
- 6             total amounts disbursed or dedicated for each major purpose, charitable or
- 7             otherwise;
- 8           h. Names of professional fundraisers used during the accounting year and the
- 9             financial compensation and profit resulting to each professional fundraiser;
- 10           and
- 11           i. A list of the five highest paid directors, officers, and employees of the
- 12             organization and its related organizations that receive total compensation of
- 13             more than fifty thousand dollars, together with the total compensation paid to
- 14             each. Total compensation includes salaries, fees, bonuses, fringe benefits,
- 15             severance payments, and deferred compensation paid by the charitable
- 16             organization and all related organizations.
- 17           3. Unless otherwise required by this section, the financial statement need not be
- 18             certified.
- 19           4. The annual report must include a copy of all tax or information returns, including all
- 20             schedules and amendments, submitted by the charitable organization to the
- 21             internal revenue service for the period covered by the annual report, except any
- 22             schedules of contributors to the organization.
- 23           5. The secretary of state may make a detailed examination of the accounts of any
- 24             charitable organization conducting a solicitation for funds within this state. Upon
- 25             request the attorney general ~~shall~~ may assist the secretary of state in carrying out
- 26             this chapter ~~and, for this purpose, has all powers granted by this chapter to the~~
- 27             ~~secretary of state.~~ Every charitable organization subject to this chapter shall keep
- 28             a full and true record in the form that will enable the charitable organization to
- 29             accurately provide the information required by this chapter. The registration of a
- 30             charitable organization is ineffective immediately upon its failure to file an annual
- 31             report, including the payment of all required fees. Any such organization, if in

1           default under this chapter, may not file a new registration statement until it files the  
2           required annual report with the secretary of state.

3 Failure to file the annual report and fee as required will mean the organization's registration will  
4 no longer be in effect and the organization may not solicit in this state.

5           **SECTION 5. AMENDMENT.** Section 50-22-04.3 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **50-22-04.3. Fraud - Misrepresentation.** ~~No~~ A charitable organization, professional  
8 fundraiser, ~~or professional solicitor,~~ or any agent or employee of a charitable organization, ~~or~~  
9 professional fundraiser, ~~or professional solicitor~~ may not use any deceptive act or practice,  
10 fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon  
11 in connection with the solicitation of a contribution for or on behalf of a charitable organization.

12           **SECTION 6. AMENDMENT.** Section 50-22-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14           **50-22-05. Enforcement - Penalties - Remedies.** Any person conducting a solicitation  
15 in violation of this chapter, or failing to properly complete and file any report required under this  
16 chapter, is guilty of a class A misdemeanor. ~~Any person who commences or continues~~  
17 ~~fundraising or soliciting after the person's application is denied or the license or registration~~  
18 ~~under this chapter is revoked or has lapsed is guilty of a class C felony. In addition to any~~  
19 ~~criminal penalties, the secretary of state may deny the person the right to engage in future~~  
20 ~~fundraising activities.~~

21           Whenever the attorney general or any state's attorney has reason to believe or is  
22 advised by the secretary of state that the ~~fundraiser,~~ charitable organization, or professional  
23 ~~solicitor~~ fundraiser is operating in violation of this chapter, the attorney general or state's  
24 attorney may bring an action in the name of the state against the charitable organization and its  
25 officers, the professional fundraiser ~~or solicitor,~~ or any other person who has violated this  
26 chapter or who has participated or is about to participate in any solicitation or collection by  
27 employing any device, scheme, artifice, false representation or promise, to defraud or obtain  
28 money or other property, to enjoin the charitable organization or professional fundraiser ~~or~~  
29 ~~solicitor~~ or other person from continuing the violation, solicitation, or collection, or engaging  
30 therein, or doing any acts in furtherance thereof and for any other relief the court determines  
31 appropriate, including the imposition of civil penalties in the amount of up to five thousand

1 dollars per violation of this chapter and the denial of ~~license or~~ registration under this chapter  
2 for a period of up to five years. The attorney general, in enforcing this chapter, has all the  
3 powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or  
4 chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not  
5 exclusive and are in addition to all other causes of action, remedies, and penalties in chapter  
6 51-15, or otherwise provided by law.

7           **SECTION 7.** Section 50-22-06 of the North Dakota Century Code is created and  
8 enacted as follows:

9           **50-22-06. Costs recoverable in court proceeding.** The attorney general is entitled to  
10 an award of reasonable attorney's fees, costs, and expenses of an investigation and action  
11 brought under this chapter.

12           **SECTION 8.** Section 50-22-07 of the North Dakota Century Code is created and  
13 enacted as follows:

14           **50-22-07. Rules.** The secretary of state may adopt rules the secretary of state deems  
15 necessary and appropriate to fully implement the provisions of this chapter.

16           **SECTION 9. REPEAL.** Section 50-22-04.2 of the North Dakota Century Code is  
17 repealed.