

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2341
(Senators Espegard, G. Lee)
(Representative Grande)

AN ACT to create and enact sections 50-22-06 and 50-22-07 of the North Dakota Century Code, relating to charitable solicitations; to amend and reenact sections 50-22-01, 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.3, and 50-22-05 of the North Dakota Century Code, relating to charitable solicitations; and to repeal section 50-22-04.2 of the North Dakota Century Code, relating to charitable solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Accounting year" means the twelve-month period on which a charitable organization keeps its financial records.
4. 2. a. "Charitable organization" means ~~any entity that:~~
 - (1) ~~is deemed by the internal revenue service to be a tax exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]; or~~
 - (2) ~~holds itself out to the public to be established for any charitable purpose; or~~
 - (3) ~~in any manner employs a charitable appeal as the basis for any solicitation~~ a person that engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office, or similar affiliate or a person soliciting contributions within the state for a parent charitable organization.
- b. The term "charitable organization" does not include:
 - (1) An organization ~~soliciting that solicits~~ funds for an institution of higher learning.
 - (2) An organization ~~using that uses~~ only volunteer unpaid fundraisers and ~~soliciting that solicits~~ funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions inure to the benefit of any individual.
 - (3) A private or public elementary or secondary school.
 - (4) A charitable organization or person ~~soliciting that solicits~~ contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.
 - (5) ~~A duly constituted religious organization or any group affiliated with and forming an integral part of that organization no part of the net income of which inures to the direct benefit of any individual and which has received a declaration of~~

~~current tax exempt status from the government of the United States; provided, that no such affiliated group may be required to obtain the declaration if the parent or principal organization has obtained the declaration. A religious society or organization that is exempt from filing a federal annual information return pursuant to Internal Revenue Code section 6033(a)(2)(A)(i) and (iii) [26 U.S.C. 6033(a)(2)(A)(i) and (iii)] and Internal Revenue Code section 6033(a)(2)(C)(i) [26 U.S.C. 6033(a)(2)(C)(i)].~~

- (6) Any candidate for national, state, or local elective office or political party or other committee required to file information with the federal election commission, a state election commission, or an equivalent office or agency.
3. "Charitable purpose" means a charitable, benevolent, philanthropic, religious, social service, welfare, educational, cultural, artistic, or public interest purpose, either actual or purported.
- 2- 4. "Contribution" means cash or the promise, grant, or pledge of any money, credit, assistance, or property of any kind or value, including the promise to pay, provided in response to a solicitation. "Contribution" includes, in the case of a charitable organization offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization and the price at which the charitable organization or a person acting on behalf of that organization resells those goods or services to the public. "Contribution" does not include bona fide fees, dues, or assessments paid by members of an organization, provided that:
 - a. Membership is not conferred in exchange for a contribution in response to a solicitation; or
 - b. Membership provides no benefit in addition to the right to vote or otherwise participate in the organization and the right to receive literature.
- 3- 5. "Person" means any individual, organization, association, partnership, corporation, or limited liability company.
4. ~~"Professional fundraiser" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fundraiser.~~
- 5- 6. "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through the person's agents, servants, or employees or through agents, servants, or employees specially employed by, or for, a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fundraiser within the meaning of this chapter fundraiser" means a person who, for financial compensation or profit, performs for a charitable organization a service in connection with which contributions are, or will be, solicited in this state by the compensated person or by a compensated person the person employs, procures, or engages to solicit; or a person who for compensation or profit plans, manages, advises, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the state may not be deemed to be a professional solicitor fundraiser.

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

6. ~~7.~~ "Solicitation" means and "solicit" mean the request to the public or member of the public for a contribution on the representation that the contribution will be used in whole or in part for a charitable purpose, including:
- a. An oral request made in person or by telephone, radio, television, electronic communication including the internet, or other advertising or communication media;
 - b. A written or other recorded or published request, that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated through any medium available to the public and described in subdivision a;
 - c. A sale of or attempt to sell any good or service in which the good or service is priced above fair market value or when it is otherwise represented that some portion of the purchase price will be used for a charitable purpose; or
 - d. An announcement inviting the public to attend an assembly, event, exhibition, performance, or social gathering of any kind where admission is conditioned on the receipt of a contribution or at which function contributions will be otherwise solicited.

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

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

50-22-02. ~~License to solicit – Term – Revocation~~ Registration of charitable organization.

1. A charitable organization may not solicit contributions from persons in this state by any means ~~without first having obtained a license from the secretary of state. The application for a license must contain the information concerning the solicitation as required by this chapter. This information must be filed with the secretary of state and must be available as a matter of public record. The application form containing the information must be sworn to and must include the following:~~
1. ~~The name of the charitable organization for which the solicitation is to be conducted.~~
2. ~~The organization's address.~~
3. ~~The purpose or purposes for which the contributions solicited are to be used.~~
4. ~~The individual or officer who will have custody of the contributions.~~
5. ~~The individual or officer responsible for the distribution of contributions received.~~
6. ~~The period of time during which solicitation is to be conducted.~~
7. ~~A description of the methods of solicitation in such detail as may be determined by the secretary of state.~~
8. ~~Whether the solicitation is to be conducted by voluntary unpaid or paid solicitors, or both, and if in whole or part by paid solicitors, the name and address of each professional fundraiser supplying the solicitors, the basis of payment, and the nature of the agreement.~~
9. ~~Any additional information deemed necessary by the secretary of state.~~

~~The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant. If the investigation indicates the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license to the applicant, giving the applicant the right to solicit within the state until September first of that year except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year. If the secretary of state finds the applicant is not qualified to be issued a license, the secretary of state shall deny the application, forthwith notify the applicant of the denial, but retain the license fee. If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety day time period shall submit a new application and license fee. All fees collected under this chapter must be credited to the state general fund. The fee for an initial license is twenty five dollars. A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, and is subject to revocation by the secretary of state at any time for just cause.~~

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

- a. Legally established name.
 - b. Name or names under which it solicits contributions.
 - c. Form of organization.
 - d. Date and place of organization.
 - e. Business telephone number.
 - f. Street and mailing address of principal office in this state, if any.
 - g. Name and address of the person having custody of books and records within this state.
 - h. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
 - i. Federal and state tax-exempt status.
 - j. Denial at any time by any governmental agency or court of the right to solicit contributions.
 - k. Date on which accounting year of the charitable organization ends.
 - l. General purposes for which organized.
 - m. General purposes for which contributions to be solicited will be used.
 - n. Methods by which solicitation will be made.
 - o. Board, group, or individual having final discretion or authority as to the distribution and use of contributions received.
 - p. Amount of total contributions received during the accounting year last ended.
2. The registration statement filed by a charitable organization must include a registration fee of twenty-five dollars and a financial statement of the organization's operation for its most

recent twelve-month period immediately preceding the filing of the first registration statement. The registration continues unless revoked by a court of competent jurisdiction, by the secretary of state, or as provided in this chapter. If a charitable organization fails to file a registration statement or other information required to be filed by the secretary of state under this chapter, or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last-known address, may deny or suspend the application for registration. An adjudicative proceeding under this chapter must be conducted in accordance with chapter 28-32 unless otherwise provided in this chapter. A notice required under this chapter or chapter 28-32 may be made by certified mail. In the event of revocation, the secretary of state still shall retain the registration fee.

3. An officer of the charitable organization must execute the registration statement and must acknowledge that the registration statement has been executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement. The executing officer also must certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume, responsibility for determining matters of policy and have supervised, and will continue to supervise, the finances of the charitable organization.
4. If a chapter, branch, area office, or similar affiliate of a charitable organization is supervised and controlled by a parent organization located within or outside the state, the affiliate may file a registration statement on behalf of the parent organization in addition to or as part of its own registration statement or the parent organization may file a registration statement on behalf of the affiliate in addition to or as part of its own registration statement.

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

50-22-02.1. Registration of professional fundraiser ~~and solicitor~~ - Bond required. ~~The secretary of state or the secretary's designee shall examine each initial application of charitable organizations for the right to solicit funds.~~

1. A person may not act as a professional fundraiser ~~or solicitor~~ subject to this chapter unless that person has registered with the secretary of state. The ~~application for~~ registration statement must be in writing, under oath, in the form prescribed by the secretary of state and must be accompanied by ~~an annual~~ a fee of one hundred dollars. ~~This~~ The registration information must be available to the public as a matter of public record. ~~Each registration expires on September first unless, prior to September first, the public fundraiser registers by filing a new registration statement, accompanied by a fee of one hundred dollars. The forms containing the information must be sworn to verified under oath and must include the following:~~
 1. a. The name of the professional fundraiser ~~or solicitor~~.
 2. b. The street and mailing address and telephone number of the professional fundraiser ~~or solicitor~~.
 3. c. The type of fundraising to be conducted in this state.
 4. d. The name of the auditor ~~in charge of~~, accountant, employee, agent or other person who maintains or possesses the ~~organization's~~ professional fundraiser's records.
 5. e. A list of all officers, agents, or employees to work under the applicant's direction.
 6. f. A list of all licensed charitable organizations with which the applicant has contracts within this state.

~~If the solicitation is to be made in whole or in part by a professional fundraiser or solicitor, the secretary of state shall approve registration if the arrangement for payment conforms to the requirements of this chapter and all relevant rules. The registration of a professional fundraiser grants the right to solicit funds within the state for charitable organizations until September first of that year. Any applicant who is denied registration may, within fifteen days from the date of notification of denial, request in writing a hearing before the secretary of state. The hearing must be held within fifteen days from the date of the request.~~

~~No person may act as a professional fundraiser or solicitor for a charitable organization subject to this chapter unless that person first has registered with the secretary of state. An application for registration must be in writing, under oath or affirmation in the form prescribed by the secretary of state, and must contain any information the secretary of state may require. The application for registration by a professional fundraiser or solicitor must be accompanied by an annual fee in the sum of one hundred dollars. A partnership, corporation, or limited liability company that is a professional fundraiser or solicitor may register for and pay a single fee on behalf of all its members, officers, agents, and employees. However, the names and addresses of all officers, agents, and employees employed to work under the direction of a professional solicitor or fundraiser must be listed in the application.~~

2. The professional fundraiser shall also include, as part of the registration statement, a bond in which the professional fundraiser is the principal obligor. The bond must be in the sum of twenty thousand dollars, with one or more responsible sureties whose liability in the aggregate as the sureties will at least equal that sum. In order to maintain the registration, the bond must be in effect for the full term of the registration. The bond, which may be in the form of a rider to a larger blanket liability bond, must run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities subject to this chapter.
3. The professional fundraiser shall also include, as part of the registration statement, a copy of the contract between any charitable organization and the professional fundraiser. The contract must:
 - a. Be in writing;
 - b. Contain information that will enable the secretary of state to identify the services the professional fundraiser is to provide, including whether the professional fundraiser will at any time have custody of contributions; and
 - c. Be submitted within ten days of the date of execution.
4. A parent organization filing on behalf of one or more chapters, branches, or affiliates and a federated fundraising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and the chapters, branches, affiliates, or member agencies included in the registration statement. If any ~~charitable organization, professional fundraiser, or solicitor~~ fails to file any registration ~~application~~ statement or other information required to be filed by the secretary of state under this chapter or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last-known address, may deny or suspend the application for registration ~~if the information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of such notice.~~ All civil. Any adjudicative proceedings under this chapter must be conducted in accordance with chapter 28-32 unless otherwise specifically herein provided. Any notice required under this chapter or chapter 28-32 may be made by certified mail.
5. A professional fundraiser may not solicit on behalf of a charitable organization that is not registered.

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

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

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

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

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

2. ~~The annual report must be filed on forms provided prescribed by the secretary of state containing the following information:~~
1. ~~Specific and itemized support and revenue statements disclosing direct public support in this state from solicitation, indirect public support, government grants, program service revenue, and any other revenue.~~
2. ~~The amount thereof given to the charitable purpose represented.~~
3. ~~Specific and itemized expense statements disclosing program services, public information expenditures, payments to affiliates, management costs, and salaries paid in this state.~~
4. ~~The aggregate amount paid to or received and to be paid to or received by professional fundraisers and solicitors.~~

~~In addition, the~~ and must include a financial statement covering the immediately preceding twelve-month period of operation. An officer of the charitable organization shall execute the financial statement which must include a balance sheet, statement of income and expense, and statement of functional expenses. The financial statement must be filed on or attached to forms furnished by the secretary of state and must be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of the allocations:

- a. Total receipts and total income from all sources;
- b. Cost of management and general;
- c. Program services;
- d. Cost of fundraising;
- e. Cost of public education;
- f. Funds or properties transferred out of state with explanation as to recipient and purpose;
- g. Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;

- h. Names of professional fundraisers used during the accounting year and the financial compensation and profit resulting to each professional fundraiser; and
 - i. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
- 3. Unless otherwise required by this section, the financial statement need not be certified.
- 4. The annual report must include a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the internal revenue service for the period covered by the annual report, except any schedules of contributors to the organization.
- 5. The secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall ~~may~~ assist the secretary of state in carrying out this chapter ~~and, for this purpose, has all powers granted by this chapter to the secretary of state.~~ Every charitable organization subject to this chapter shall keep a full and true record in the form that will enable the charitable organization to accurately provide the information required by this chapter. The registration of a charitable organization is ineffective immediately upon its failure to file an annual report, including the payment of all required fees. Any such organization, if in default under this chapter, may not file a new registration statement until it files the required annual report with the secretary of state.

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

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

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

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

50-22-05. Enforcement - Penalties - Remedies. Any person conducting a solicitation in violation of this chapter, or failing to properly complete and file any report required under this chapter, is guilty of a class A misdemeanor. ~~Any person who commences or continues fundraising or soliciting after the person's application is denied or the license or registration under this chapter is revoked or has lapsed is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the person the right to engage in future fundraising activities. Any person conducting a solicitation after the person's registration is revoked is guilty of a class C felony. The criminal penalties in this section are in addition to all other causes of action, remedies, and penalties available to the state.~~

Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the ~~fundraiser,~~ charitable organization, or professional ~~solicitor~~ fundraiser is operating in violation of this chapter, the attorney general or state's attorney may bring an action in the name of the state against the charitable organization and its officers, the professional fundraiser ~~or solicitor,~~ or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fundraiser ~~or solicitor~~ or other person from continuing the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for any other

relief the court determines appropriate, including the imposition of civil penalties in the amount of up to five thousand dollars per violation of this chapter and the denial of ~~license or~~ registration under this chapter for a period of up to five years. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

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

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

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

50-22-07. Rules. The secretary of state may adopt rules the secretary of state deems necessary and appropriate to fully implement the provisions of this chapter in accordance with chapter 28-32, but which need not comply with section 28-32-07.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2341.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 55 Nays 37 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State