

SENATE BILL NO. 2363

Introduced by

Senators Hogue, Nodland

Representative L. Meier

1 A BILL for an Act to amend and reenact subsection 3 of section 50-22-02, subsection 1 of
2 section 50-22-02.1, and sections 50-22-04 and 50-22-05 of the North Dakota Century Code,
3 relating to registration of charitable organizations and professional fundraisers and to annual
4 reports by charitable organizations; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 50-22-02 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 3. An officer of the charitable organization must execute the registration statement
9 and must ~~acknowledge~~ certify that the registration statement has been executed
10 pursuant to resolution of the board of directors or trustees, or if there be no such
11 board, then by its managing group which has approved the content of the
12 registration statement. The executing officer also must certify that the board of
13 directors or trustees, or if there be no such board, its managing group, have
14 assumed, and will continue to assume, responsibility for determining matters of
15 policy and have supervised, and will continue to supervise, the finances of the
16 charitable organization.

17 **SECTION 2. AMENDMENT.** Subsection 1 of section 50-22-02.1 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. A person may not act as a professional fundraiser subject to this chapter unless
20 that person has registered with the secretary of state. The registration statement
21 must be in writing, ~~under oath~~, in the form prescribed by the secretary of state and
22 must be accompanied by a fee of one hundred dollars. The registration
23 information must be available to the public as a matter of public record. Each
24 registration expires on September first unless, prior to September first, the public

- 1 fundraiser registers by filing a new registration statement, accompanied by a fee of
2 one hundred dollars. The forms containing the information ~~must be verified under~~
3 ~~oath and~~ must include the following:
- 4 a. The name of the professional fundraiser.
 - 5 b. The street and mailing address and telephone number of the professional
6 fundraiser.
 - 7 c. The type of fundraising to be conducted in this state.
 - 8 d. The name of the auditor, accountant, employee, agent, or other person who
9 maintains or possesses the professional fundraiser's records.
 - 10 e. A list of all officers, agents, or employees to work under the applicant's
11 direction.
 - 12 f. A list of all licensed charitable organizations with which the applicant has
13 contracts within this state.

14 **SECTION 3. AMENDMENT.** Section 50-22-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **50-22-04. Information required to be filed annually.**

- 17 1. Every charitable organization that is required to file or that files a registration
18 statement pursuant to section 50-22-02 shall file an annual report along with a ten
19 dollar fee with the secretary of state on or before September first of each year.
20 The report must be postmarked by the United States postal service or other carrier,
21 in a properly addressed, postage prepaid, sealed envelope.

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

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

- 1 2. The annual report must be filed on forms prescribed by the secretary of state and
2 must include a financial statement covering the immediately preceding
3 twelve-month period of operation. An officer of the charitable organization shall
4 execute the financial statement which must include a balance sheet, statement of
5 income and expense, and statement of functional expenses. The financial
6 statement must be filed on or attached to forms furnished by the secretary of state
7 and must be prepared in accordance with generally accepted accounting principles
8 so as to make a full disclosure of the following, including necessary allocations
9 between each item and the basis of the allocations:
- 10 a. Total receipts and total income from all sources;
11 b. Cost of management and general;
12 c. Program services;
13 d. Cost of fundraising;
14 e. Cost of public education;
15 f. Funds or properties transferred out of state with explanation as to recipient
16 and purpose, unless the information is not reasonably available, in which case
17 the charitable organization may, with the approval of the secretary of state,
18 provide a reasonable estimate of the amounts transferred;
19 g. Total net amount disbursed or dedicated within this state, broken down into
20 total amounts disbursed or dedicated for each major purpose, charitable or
21 otherwise, unless the information is not reasonably available, in which case
22 the charitable organization, with the approval of the secretary of state, may
23 provide a reasonable estimate of the required information;
24 h. Names of professional fundraisers used during the accounting year and the
25 financial compensation and profit resulting to each professional fundraiser;
26 and
27 i. Total compensation, including salaries, fees, bonuses, fringe benefits,
28 severance payments, and deferred compensation, paid to employees by the
29 charitable organization and all its affiliated organizations.
- 30 3. Unless otherwise required by this section, the financial statement need not be
31 certified.

- 1 4. ~~The annual report must include~~ Upon request of the secretary of state or attorney
2 general, the charitable organization must promptly provide a copy of all tax or
3 information returns, including all schedules and amendments, submitted by the
4 charitable organization to the internal revenue service for the period covered by the
5 annual report, except any schedules of contributors to the organization.
- 6 5. The secretary of state or attorney general may make a detailed examination of the
7 accounts of any charitable organization conducting a solicitation for funds within
8 this state. ~~Upon request the attorney general may assist the secretary of state in~~
9 ~~carrying out this chapter.~~ Every charitable organization subject to this chapter shall
10 keep a full and true record in the form that will enable the charitable organization to
11 accurately provide the information required by this chapter. The registration of a
12 charitable organization is ineffective immediately upon its failure to file an annual
13 report, including the payment of all required fees. Any such organization, if in
14 default under this chapter, may not file a new registration statement until it files the
15 required annual report with the secretary of state.
- 16 Failure to file the annual report and fee as required will mean the organization may not solicit in
17 this state.

18 **SECTION 4. AMENDMENT.** Section 50-22-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **50-22-05. Enforcement - Penalties - Remedies.** Any person conducting a solicitation
21 in violation of this chapter, or failing to properly complete and promptly file any report, tax
22 return, or other information required under this chapter, is guilty of a class A misdemeanor. Any
23 person conducting a solicitation after the person's registration is revoked is guilty of a class C
24 felony. The criminal penalties in this section are in addition to all other causes of action,
25 remedies, and penalties available to the state.

26 Whenever the attorney general or any state's attorney has reason to believe or is
27 advised by the secretary of state that the charitable organization or professional fundraiser is
28 operating in violation of this chapter, the attorney general or state's attorney may bring an
29 action in the name of the state against the charitable organization and its officers, the
30 professional fundraiser, or any other person who has violated this chapter or who has
31 participated or is about to participate in any solicitation or collection by employing any device,

1 scheme, artifice, false representation or promise, to defraud or obtain money or other property,
2 to enjoin the charitable organization or professional fundraiser or other person from continuing
3 the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance
4 thereof and for any other relief the court determines appropriate, including the imposition of civil
5 penalties in the amount of up to five thousand dollars per violation of this chapter and the denial
6 of registration under this chapter for a period of up to five years. The attorney general, in
7 enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may
8 seek all remedies in this chapter or chapter 51-15. The remedies, duties, prohibitions, and
9 penalties of this chapter are not exclusive and are in addition to all other causes of action,
10 remedies, and penalties in chapter 51-15, or otherwise provided by law.