

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1401

(Representatives L. Thoreson, Haas, N. Johnson, Kroeber, Wikenheiser)

AN ACT to amend and reenact sections 50-22-01, 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.2, and 50-22-05 of the North Dakota Century Code, relating to charitable solicitations; to repeal section 50-22-03 of the North Dakota Century Code, relating to charitable solicitation license applications; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-22-01 of the 1997 Supplement to 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. a. "Charitable organization" means any benevolent, philanthropic, patriotic, social, or eleemosynary organization, or one purporting to be this type of organization. The term does not include 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.
- b. The term "charitable organization" does not include:
 - a. (1) An organization soliciting funds for an institution of higher learning.
 - b. (2) An organization using only volunteer unpaid fundraisers and soliciting 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.
 - c. (3) A private or public elementary or secondary school.
 - d. (4) A charitable organization or person soliciting 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.
 - e. (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.
 - (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.

2. "Contribution" means cash or the promise of, grant, or pledge of any money, credit, assistance, or property of any kind or value provided in response to a solicitation. The term includes a promise or grant of money or property for which consideration in the form of a service or good is provided if the promise or grant may have been given as a result of a connection to a charitable organization. "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. "Person" means any individual, organization, ~~group,~~ association, partnership, corporation, or limited liability company, or any combination of them.
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. "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. 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.

~~No~~ 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 ~~such~~ that advice, to be a professional fundraiser or a professional solicitor.
6. "Solicitation" means ~~the asking, seeking, appealing, requesting, directly or indirectly by means of mail, personal contact, written material, radio, television, news media, magazines or other periodicals, or any other means of communication, of money or property of any kind or value or pledges for the same 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 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-02. License to solicit - Term - Revocation. 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 the ~~first day of~~ 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 of the state. 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. ~~The fee for a subsequent license is ten dollars.~~

SECTION 3. AMENDMENT. Section 50-22-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

~~charitable organizations for the right to solicit funds.~~ 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 must be accompanied by an annual fee of one hundred dollars. This information must be available to the public as a matter of public record. The forms containing the information must be sworn to and must include the following:

1. The name of the professional fundraiser or solicitor.
2. The address of the professional fundraiser or solicitor.
3. The type of fundraising to be conducted in this state.
4. The name of the auditor in charge of the organization's records.
5. A list of all officers, agents, or employees to work under the applicant's direction.
6. 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 ~~professional~~ 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 ~~the first day of~~ 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 ~~professional~~ 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 ~~professional~~ 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 ~~professional~~ 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.

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 ~~professional~~ solicitor fails to file any registration application 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 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.

SECTION 4. AMENDMENT. Section 50-22-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-04. Information required to be filed annually. Every charitable organization licensed in this state, whether or not the organization is reapplying for a license to solicit for the upcoming year, shall file an annual report along with a ten dollar fee with the secretary of state on or before ~~the first day of~~ 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. The annual report must be filed on forms provided by the secretary of state containing the following information:

1. ~~The gross amount of the contributions pledged or collected in this state~~ 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 ~~or to be given~~ to the charitable purpose represented.
3. ~~The aggregate amount paid or received and to be paid or received for the expenses of solicitation~~ 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 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 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.

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 50-22-04.2 of the North Dakota Century Code is amended and reenacted as follows:

50-22-04.2. Contract or statement filing. Every contract, written agreement, or written statement of the nature of the arrangement to prevail in the absence of a contract between a professional fundraiser or ~~professional~~ solicitor and a charitable organization must be filed by the professional fundraiser and the charitable organization with the secretary of state within ten days after such contract, written agreement, or written statement is concluded.

SECTION 6. AMENDMENT. Section 50-22-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-05. Enforcement - Penalties. 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. ~~A fundraiser~~ Any person who commences or continues fundraising or soliciting after the ~~fundraiser's~~ person's application is denied or the license or registration under this chapter is revoked ~~or canceled~~ or has lapsed is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the ~~fundraiser~~ person the right to engage in future fundraising activities.

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 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 ~~professional~~ 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 ~~professional~~ 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 licensure or registration under this chapter for a period of up to five years.

SECTION 7. REPEAL. Section 50-22-03 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1401.

House Vote: Yeas 95 Nays 0 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State