

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2363
(Senators Hogue, Nodland)
(Representative L. Meier)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

3. An officer of the charitable organization must execute the registration statement and must ~~acknowledge~~ certify 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.

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

1. A person may not act as a professional fundraiser subject to this chapter unless that person has registered with the secretary of state. The registration statement must be in writing, ~~under oath~~, in the form prescribed by the secretary of state and must be accompanied by a fee of one hundred dollars. 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 verified under oath and~~ must include the following:
 - a. The name of the professional fundraiser.
 - b. The street and mailing address and telephone number of the professional fundraiser.
 - c. The type of fundraising to be conducted in this state.
 - d. The name of the auditor, accountant, employee, agent, or other person who maintains or possesses the professional fundraiser's records.
 - e. A list of all officers, agents, or employees to work under the applicant's direction.
 - f. A list of all licensed charitable organizations with which the applicant has contracts within this state.

SECTION 3. 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 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 prescribed by the secretary of state 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, unless the information is not reasonably available, in which case the charitable organization may, with the approval of the secretary of state, provide a reasonable estimate of the amounts transferred;
 - 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, unless the information is not reasonably available, in which case the charitable organization, with the approval of the secretary of state, may provide a reasonable estimate of the required information;
 - 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~~ Upon request of the secretary of state or attorney general, the charitable organization must promptly provide 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 or attorney general 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 may assist the secretary of state in carrying out this chapter.~~ 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 may not solicit in this state.

SECTION 4. 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 promptly file any report, tax return, or other information required under this chapter, is guilty of a class A misdemeanor. 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 charitable organization or professional 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 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 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 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.

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 Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2363.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State