

## Charitable Solicitation Statute Revised

Last summer, the *Tampa Bay Times* ran a series of investigative articles about [America's Worst Charities](#), charities that annually receive more than \$1 billion dollars in contributions from unsuspecting contributors.

In response to the series, Department of Agriculture and Consumer Services Commissioner Adam Putnam crafted comprehensive legislation to protect Floridians against these nefarious organizations by tightening up charity fundraising regulations. Among other things, [CS/CS/HB 629](#):

### Generally:

- bans organizations that have violated certain laws in other states from soliciting funds in Florida;
- prohibits felons from soliciting funds for charity;
- requires professional solicitors who operate like telemarketers to provide fingerprints for background checks, submit scripts used to conduct solicitations and report the percentage of contributions collected that will be provided to the charity;
- requires charities that receive more than \$500,000 in a year to submit an independently reviewed financial statement, and those that receive more than \$1 million in a year to provide an independently audited financial statement. An IRS Form 990 may be submitted instead of the financial statement;
- requires a charity that receives more than \$1 million, but spends less than 25 percent on its cause, to provide even more detailed financial reports, including salaries, travel expenses, fundraising expenses and details of business transactions between staff and immediate family members;
- provides a charity an opportunity to detail any extenuating circumstances as to why it spent less than 25 percent on program services, e.g. reserving money for a capital project;
- increases fines for fraudulent or deceptive acts in violation of the law; and
- allows the department to remove a charity's sales tax exemption as a penalty for violations.

The legislation will also create an interactive online database where consumers can access the information charities will be required to report. Information made available online would include: leadership, location, contact information, financial reports and actions taken by the Florida Department of Agriculture and Consumer Services for violations.

### Specifically:

#### ***Charitable Organizations and Sponsors***

The bill:

- provides that a charity's registration will expire with no further action required by the Department of Agriculture and consumer Services (DACS) if the charity fails to timely file its renewal statement;
- requires that any changes to the information in a charity's registration statement related to the charity's activity in other states, including criminal, administrative, or other actions against the charity, must be reported to DACS within 10 days of the change occurring;



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- provides for automatic suspension of a registration if a charity fails to disclose any information related to criminal, administrative, or other actions against the charity;
- requires that consolidated financial statements filed by charities with affiliates must reflect the activities of each affiliate, including all contributions received by each entity, all payments made to each entity, and all administrative fees assessed to each entity;
- authorizes DACS to deny or revoke a charity's registration if the charity or any of its officers, directors, or trustees has agreed with another state to cease soliciting contributions within that state or has been ordered by any court or agency to cease contributions in any state; and
- requires a charity to immediately notify DACS in writing when it ceases solicitation activities or participation in charitable sales promotions in Florida.

## ***Fundraising Restrictions for Individuals with Criminal Records***

The bill:

- clarifies that in addition to the charity, no officer, director, trustee, or employee of the charity solicit contributions on behalf of the charity if he or she has a criminal history (i.e.. within the last 10 years, been convicted of or pled guilty to any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation); and
- requires the board of directors, or a board committee, of a charity required to register with DACS to adopt a policy regarding conflict of interest transactions.

## ***Financial Statements***

The bill:

- changes the name of the financial reporting document required to be filed by organizations required to be registered with DACS from "financial report" to "financial statement";
- adds new information that must be included in the required financial statement (i.e., a statement of functional expenses that must include program service costs, management and general costs, and fundraising costs);
- requires charities that receive
  - less than \$500,000 in contributions to submit a compilation or review of their financial statement,
  - between \$500,000 and \$1 million in contributions to submit a reviewed or audited financial statement,
  - more than \$1 million in contributions to submit an audited financial statement;
  - in lieu of the above required financial statements, charities may submit an Internal Revenue Service Form 990 prepared by a certified public accountant or other financial professional who prepares such forms in the ordinary course of business;
- authorizes charities to redact information that is not subject to public inspection pursuant 26 U.S. Code 6104(d)(3), to protect names of charitable donors;



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- requires a charity with more than \$1 million in total revenue and that spend less than 25 percent of its total annual functional expenses on program service costs to file a supplemental financial disclosure;
- requires charities that solicit donations related to a specific disaster or crisis and receive at least \$50,000 in donations in response to such solicitations to file quarterly disaster relief statements with DACS; and
  - exempts from the quarterly reporting requirement a charitable organization or sponsor that has been registered with the department for at least 4 consecutive years immediately before soliciting contributions for a charitable purpose related to a specific disaster or crisis;
- requires DACS to provide a list on its website of disasters and crises that are subject to the quarterly disaster relief statement within 10 days of the disaster or crisis occurring.

## ***Notice Statements***

- Currently, s. 496.411(3), F.S., requires every charity that is required to register under s. 496.405, F.S., to conspicuously display the following statement in capital letters on every printed solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state." The statement must also include a toll-free number and website for DACS.
  - The bill provides that if the solicitation occurs on a website, the statement must be conspicuously displayed on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.
  - The bills require charities that are exempt from registration under s. 496.406(1)(d), F.S., to also provide a notice statement.

## ***Professional Fundraising Consultants and Professional Solicitors***

The bill contains numerous provisions tightening regulations on Professional Fundraising Consultants and Professional Solicitors.

## ***Collection Receptacles Used for Donations***

The bill:

- requires collection receptacles operated by charities to display a permanent sign printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color of the collection receptacle: that provides the name, address, telephone number, and registration number of the charity; and
- requires collection receptacles operated by organizations not required to register to solicit, to display a permanent sign on the receptacle that provides the organization's name, address, and



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telephone number, and that includes the statement: "This is not a charity. Donations made here support a for-profit business and are not tax deductible."

## ***Civil and Criminal Penalties***

The bill:

- prohibits a person from submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney regardless of whether the person knows he or she is submitting false, misleading, or inaccurate information;
- authorize DACS to impose fines up to \$10,000 on any organization that violates the DACS registration statute; and
- require DACS to immediately suspend the registration or the processing of a registration of any organization if DACS receives written notification and verification by law enforcement, a court, a state attorney, or the FDLE, that the registrant, applicant, or any officer or director of the registrant or applicant is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor.
- authorizes DACS to disqualify a charity from receiving a sales tax exemption certificate from DOR if the charity violates charitable solicitation laws.

For additional information, please contact  
the United Way of Florida at: (850) 488-8276.

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