

Charity Fundraising Overhaul

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.

[CS/SB 638](#) and [CS/HB 629](#) have implications for many nonprofits across Florida, and will be voted on by the House and Senate in coming weeks.

Generally, the bills:

- ban organizations that have violated certain laws in other states from soliciting funds in Florida;
- prohibit felons from soliciting funds for charity;
- require 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;
- require 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;
- require a charity that receives more than \$1 million, but spends less than 25 percent on its cause, to provide even more information, including board members and family relationships between board members and staff. The charity will also lose its sales tax exemption; and
- increase fines for fraudulent or deceptive acts in violation of the law.

The legislation would 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. With this information, Floridians can make informed decisions when choosing which organizations deserve their support.

Specifically, the bills:

Charitable Organizations and Sponsors

The bills:

- provide 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;



Legislative Link

A legislative update provided by the United Way of Florida

- require 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;
- provide for automatic suspension of a registration if a charity fails to disclose any information related to criminal, administrative, or other actions against the charity;
- require 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;
- authorize 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
- require 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 bills:

- clarify 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
- require 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 bills:

- change 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";
- add 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);
- limit the option for a charity to submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial statement to only those charities that receive less than \$500,000 in annual contributions;
- require different audits or reports based on the amount of annual contributions received by the charity:
 - for charities that receive less than \$500,000 in annual contributions, an audit or review is optional; and



Legislative Link

A legislative update provided by the United Way of Florida

- for charities that receive at least \$500,00 but less than \$1 million in annual contributions, the financial statement must be reviewed or audited by an independent CPA;
- require charities with more than \$1 million in total revenue and that spend less than 25 percent of their total annual functional expenses on program service costs to file a supplemental financial disclosure;
 - authorize DACS to disqualify for at least one year a charity from receiving a sales tax exemption certificate from DOR if it determines, based upon the average of functional expenses and program service costs for the three most recent years, the charity has failed to expend at least 25 percent of its total annual functional expenses on program service costs;
- require charities that solicit donations related to a specific disaster or crisis and receive at least \$100,000 in donations in response to such solicitations to file quarterly disaster relief statements with DACS; and
- require 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.
 - The first quarterly statement must be filed three months after the charity has received at least \$100,000 in donations following commencement of solicitations for the specific disaster or crisis, and the charity must continue to file quarterly statements until the quarter after all donations raised in response to the solicitation are expended.

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 for DACS.
 - The bills require charities that are exempt from registration under s. 496.406(1)(d), F.S., to provide a notice statement. Additionally, the notice statement must be included with all solicitations and confirmations regardless of form. The notice statement must also include a DACS website address where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

Professional Fundraising Consultants and Professional Solicitors

The bills contain numerous provisions tightening regulations on Professional Fundraising Consultants and Professional Solicitors.

Collection Receptacles Used for Donations

The bills:

- require collection receptacles operated by charities to display a permanent sign that provides the name, address, telephone number, and registration number of the charity; and



Legislative Link

A legislative update provided by the United Way of Florida

- require collection receptacles operated by for-profit businesses to display a permanent sign on the receptacle that provides the organization's name, address, and telephone number, and a statement that clarifies the donation receptacle is for a for-profit business.

Civil and Criminal Penalties

The bills:

- prohibit 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 \$5,000 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.

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

GIVE. ADVOCATE. VOLUNTEER.
LIVE UNITED 