

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 886
SENATE BILL 539

AN ACT TO CREATE THE CHARITABLE SOLICITATION LICENSURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Part 1A of Article 3 of G.S. Chapter 108, as recodified in Chapter 131C by Section 2 of Chapter 275 of the 1981 Session Laws, is rewritten to read as follows:

"CHAPTER 131C.

"Charitable Solicitation Licensure Act.

"§ 131C-1. **Short title.** — This Chapter shall be known and may be cited as the 'Charitable Solicitation Licensure Act'.

"§ 131C-2. **Purpose.** — It is the purpose of this Chapter to protect the general public and public charity in the State of North Carolina and to provide for the establishment and enforcement of basic standards for the soliciting and use of charitable funds in North Carolina.

"§ 131C-3. **Definitions.** — Unless a different meaning is required by the context, the following terms as used in this Chapter have the meanings hereinafter respectively ascribed to them:

- (1) 'Charitable' means for a benevolent purpose, such as environmental, advocacy, health, educational, social welfare, art and humanities or civic purpose.
- (2) 'Charitable sales promotion' means an advertising campaign sponsored by a for-profit entity which offers for sale a tangible item or provides a service upon the representation that all or a portion of the purchase price will be donated to a person established for a charitable purpose.
- (3) 'Commission' means the Social Services Commission.
- (4) 'Contribution' means any promise, gift, bequest, devise or other grant for consideration or otherwise, of any money or property of any kind or value, including the promise to pay, which is wholly or partly induced by a solicitation. The term does not include the fair market value of any merchandise or rights given in return for the contribution. The term does not include the portion of fees, dues and assessments for services or benefits received by the contributor.
- (5) 'Department' means the Department of Human Resources.
- (6) 'Fund-Raising Expenses' means the expenses of all activities that constitute a part of soliciting charitable contributions.
- (7) 'Person' means individual, organization, trust, foundation association, partnership, corporation, society, or any other group or combination acting as a unit.
- (8) 'Professional Fund-Raising Counsel' means any person who for a fee under a written agreement plans, conducts, manages, carries on or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions, but who actually solicits no contributions as a part of such services. Such counsel does not include any person who only conducts a study to determine the feasibility of undertaking the solicitation of contributions. A salaried employee of the person for whom the contributions

- are solicited or of its tax exempt parent organization is not included within the term.
- (9) 'Professional Solicitor' means any person who, for a financial or other consideration, solicits or employs another to solicit contributions. A salaried employee of the person for whom the contributions are solicited or of its tax exempt parent organization and the person for whom the contributions are solicited are not included within the term. An attorney, investment counselor or banker, who advises any person to make a contribution to a person established for a charitable purpose, is not, as the result of such advice, a professional fund-raising counsel or a professional solicitor.
 - (10) 'Secretary' means the Secretary of the Department of Human Resources.
 - (11) 'Solicit' and 'Solicitation' means the request or appeal, directly or indirectly, for any charitable contribution, including without limitation, the following methods of requesting such contribution:
 - a. Any oral or written request;
 - b. Any announcement to the press, over the radio or television or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
 - c. The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication, including any advertisement or listing in a telephone directory, which directly or by implication seeks to obtain public support;
 - d. The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose; or where the name of any person established for a charitable purpose is used or referred to in any such appeal as an inducement or reason for making any such sale; or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose. Solicitation occurs when the request is made and at the place the request is received, whether or not the person making the same actually receives any contribution.
 - (12) 'Total Support and Revenue' means the total of all income received from all sources, including governmental grants.

"§ 131C-4. Licensure required for charitable solicitation. — (a) Any person who solicits charitable contributions shall apply for and obtain an annual license from the Department of Human Resources. A person who is authorized to solicit on behalf of a licensed or exempt person is not required to obtain a license under this section.

(b) A person may solicit charitable contributions after filing the application until the Department notifies him that the application has been denied and he waives or exhausts his administrative remedies under Article 3 of G.S. Chapter 150A.

(c) A person who has been denied a license and has waived or exhausted his administrative remedies under Article 3 of G.S. Chapter 150A shall not solicit charitable contributions until another application has been filed with the Department and a license issued by the Department.

"§ 131C-5. Exemptions. — (a) Any person who solicits charitable contributions for a religious purpose or on behalf of a person established for a religious purpose shall not be required to apply for a license.

(b) Solicitation of charitable contributions by the federal, State or local government, or any agency thereof, shall not be subject to this Article. For purposes of this subsection any volunteer fire department or rescue squad which receives any funds from federal, State, or local government shall be considered an agency thereof.

(c) Any person who receives less than ten thousand dollars (\$10,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser or professional solicitor shall not be required to apply for a license.

(d) Any educational institution, the curriculum of which in whole or in part, is registered, approved or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body; any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes; and any foundation or department having an established identity with any of the aforementioned educational institutions shall not be required to apply for a license.

(e) Any person established solely to operate a hospital licensed pursuant to Article 13A of Chapter 131 of the General Statutes shall not be required to apply for a license; provided, however, that the governing board of the hospital authorizes the solicitation and receives an accounting of the funds collected and expended.

(f) Any noncommercial radio or television station shall not be required to apply for a license.

"§ 131C-6. Licensure required for professional fund-raising counsel and professional solicitor. — Any person who acts as a professional fund-raising counsel or professional solicitor shall apply for and obtain an annual license from the Department. A person who is authorized to act on behalf of a licensed professional fund-raising counsel or a licensed professional solicitor is not required to obtain a license under this section.

"§ 131C-7. Contents of application for charitable solicitation licensure. — (a) An application for licensure shall be in writing, verified under oath or affirmation and shall contain:

- (1) The name of the person.
- (2) The address of the person.
- (3) The names and addresses of any chapters, branches or affiliates and other persons which will share in the charitable contributions received from persons in this State.
- (4) The place and date the person was legally established, if applicable, and a reference to any determination of its tax-exempt status under the Internal Revenue Code. In the initial application, true copies shall be submitted of any articles of incorporation or Constitution, any bylaws, any tax-exempt status letter from the Internal Revenue Service including any Letter of Determination Status and any Agreements of Affiliation. Subsequent applications shall contain only any change or revocation of these documents.
- (5) The names, addresses and occupations of the officers, directors, trustees, persons who are directly in charge of the fund-raising activities and persons who have custody of the financial records or custody of the contributions and a statement whether any such person has been convicted of a felony.
- (6) A copy of a financial statement in a consolidated report audited by an independent public accountant for the person's immediately preceding fiscal year or, if none, for the present fiscal year or part thereof; provided that if total support and revenue exceeds two hundred fifty thousand dollars (\$250,000) for the fiscal year or part thereof, the report shall be audited by a certified public accountant. Information as to the total support and revenue and all of the fund-raising activities including the balance sheet, kind and amounts of funds raised, costs and expenses incidental thereto, allocation or

disbursement of funds raised, changes in fund balances, notes to the audit and the opinion as to the fairness of the presentation by the accountant shall be included. This report shall conform to the accounting and reporting procedures established by the Commission. The Commission shall adopt rules for simplified reporting by persons whose total support and revenue is one hundred thousand dollars (\$100,000) or less.

- (7) A statement indicating whether the person is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raising counsel or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.
- (8) A statement indicating whether the person solicits contributions from the public directly or have such done on its behalf by others.
- (9) The location of the person's financial records.
- (10) Method by which solicitation is made, including a statement as to whether such solicitation is conducted by voluntary unpaid solicitors, by professional solicitors, or both; and a narrative description of the promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and the location of all telephone solicitation facilities.
- (11) The names and addresses of any professional fund-raising counsel and professional solicitors who are acting or who have agreed to act on behalf of the organization together with a statement setting forth the terms of the arrangements for salaries, bonuses, commissions, or other remuneration with the professional fund-raising counsel and professional solicitors.
- (12) The period of time during which the solicitations are made and, if less than statewide, the area, or areas, in which such solicitation generally takes place.
- (13) The purposes for which contributions to be solicited are used, the total amount of funds proposed to be raised thereby, and the use or disposition made of the charitable contributions received.
- (14) The name or names under which the person solicits contributions.
- (15) A sample copy of the authorization issued to individuals soliciting by means of personal contact in its behalf.
- (16) The name and address of an agent authorized to accept service of process in this State.
- (17) A statement indicating whether an agreement exists which permits another to use its name in a charitable sales promotion and a copy of any accounting of the charitable sales promotion.
- (18) Such other information as may be reasonably required by the Commission for the public interest or for the protection of contributors.

(b) The Department shall be notified in writing of any change in the information contained in the application within 30 days after the change occurs.

"§ 131C-8. Contents of application for professional fund-raising counsel or professional solicitor. — (a) An application for licensure shall be in writing, verified under oath or affirmation and shall contain such information as specified in G.S. 131C-7 as the Commission shall require. In addition, the application shall contain:

- (1) the name and address of all officers, employees and agents;
- (2) the name and address of all persons who own a ten percent (10%) or more interest in the applicant; and
- (3) a description of any other business conducted by the applicant or any person who owns a ten percent (10%) or more interest in the applicant.

(b) The Department shall be notified in writing of any change in the information contained in the application within seven days after the change occurs.

"§ 131C-9. Fees. — (a) An application for licensure under G.S. 131C-4 or G.S. 131C-6 shall be accompanied by a fee not to exceed one hundred dollars (\$100.00) in accordance with a fee schedule established by the Commission.

(b) The fees collected shall be used, in addition to funds appropriated by the General Assembly, for the administration of this Chapter.

"§ 131C-10. Bond. — An applicant under G.S. 131C-6 shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars (\$10,000) with one or more sureties satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The bond shall run to the State for the use of said bond for any penalties and to any person who may have a cause of action against the obligor of the bond for any losses resulting from the obligor's conduct of any and all activities subject to this Chapter or arising out of a violation of this Chapter or any rule of the Commission.

"§ 131C-11. Denial and revocation of license. — (a) The Department shall deny a license applied for under G.S. 131C-4 or G.S. 131C-6 or revoke a license after issuance for the following reasons:

- (1) The application is incomplete.
- (2) The application fee has not been paid.
- (3) The application contains one or more false statements.
- (4) The charitable contributions have or are not being applied for the purpose or purposes stated in the application.
- (5) The applicant or licensee has failed to comply with any provisions or this Chapter or any rule adopted pursuant to the Chapter.

(b) The Department shall notify the applicant or licensee of its intent to deny or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to correct the matter or to request an administrative hearing within 10 days of the receipt of the notification. The denial or revocation shall become effective 10 days after receipt of the notification unless the matter is corrected or a request for an administrative hearing is received by the Department before the expiration of the 10 days. If a hearing is requested and the denial or revocation is upheld, the denial or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee.

"§ 131C-12. Rule-making authority. — The Social Services Commission shall have the authority to adopt rules necessary for the implementation of this Chapter and to prevent false and deceptive statements and conduct in the solicitation of charitable contributions.

"§ 131C-13. Fiscal records. — Any person subject to licensure under this Chapter shall maintain accurate fiscal records in accordance with rules adopted by the Commission.

"§ 131C-14. Written contracts; accounting. — (a) Any contract between a professional fund-raising counsel or professional solicitor and a person established for a charitable purpose shall be in writing and shall be filed with the Department within 10 days after the contract is entered into.

(b) A professional solicitor shall file with the Department, within 20 days from the conclusion of any solicitation, an accounting of all funds received, pledged and disbursed. The accounting shall be signed and verified under oath or affirmation by the professional solicitor and an authorized representative of the person established for a charitable purpose.

"§ 131C-15. Reciprocal agreements. — The Department may enter into reciprocal agreements with other states and the federal government in order to fulfill its duties under this Chapter.

"§ 131C-16. Disclosure. — Any person subject to licensure under this Chapter or who is authorized to solicit on behalf of a person licensed under this Chapter shall disclose by printed

notice within 30 days after licensure within each county in the State in which a solicitation is conducted, his percentage of fund raising expenses and purpose of the organization. This disclosure shall be published in the newspaper having the largest audited circulation in each county for three consecutive days each year. And it shall be in a form prescribed by the Social Services Commission.

"§ 131C-17. Prohibited acts. — No person who solicits charitable contributions shall:

- (1) use the fact of licensure as an endorsement by the State;
- (2) use the name 'police', 'law enforcement', 'rescue squad', 'firemen', or 'firefighter' unless a bona fide police, law enforcement, rescue squad or fire department authorized its use in writing;
- (3) misrepresent or mislead anyone to believe that the contribution will be used for a charitable purpose if he has reason to believe such is not the fact;
- (4) misrepresent or mislead anyone to believe that another person sponsors or endorses the solicitation unless such person has consented in writing to the use of his name for such purpose;
- (5) misrepresent or mislead anyone to believe that the contribution is solicited on the behalf of anyone other than the person for whose benefit the contribution is solicited; or
- (6) spend the contributions solicited for purposes other than those stated in the application under G.S. 131C-4 or if not subject to licensure, for purposes other than those stated at the time of the solicitation.

"§ 131C-18. Duty of Secretary of Human Resources to investigate. — The Secretary of Human Resources shall have the power, and it shall be his duty, to investigate, from time to time, the activities of all persons soliciting charitable contributions in this State, which are or may in his opinion be subject to this Chapter, or which have or may have violated G.S. 131C-17. Such investigation shall be with a view of ascertaining whether this Chapter is being or has been violated by any such person, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to grant or deny an application for licensure, to revoke a license, to seek an injunction against any person, or to take any other action pursuant to this Chapter.

"§ 131C-19. Power to compel examination. — In performing the duty required in G.S. 131C-18, the Secretary shall have the power, at all times, to require the officers, agents or employees of any person soliciting charitable contributions in this State and all other persons having knowledge with respect to the matters and activities of such persons, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such persons, or which are in any way connected with the business thereof; and the Secretary is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have the right to apply to any justice or judge of the appellate or superior court divisions, after five days notice of such application, for an order on any such person he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge.

"§ 131C-20. Person examined exempt from prosecution. — No individual examined, as provided in G.S. 131C-19, shall be subject to indictment, criminal prosecution, criminal punishment or criminal penalty by reason of or on account of anything disclosed by him upon examination, and full immunity from criminal prosecution and criminal punishment by reason of or on account of anything so disclosed is hereby extended to all individuals so examined. The immunity herein granted shall not apply to civil actions.

"§ 131C-21. Injunction. — If any person shall violate or threaten to violate any provision of this Chapter, the Secretary of Human Resources may institute an action in the Superior Court of Wake County for injunctive relief against such violation or threatened violation.

"§ 131C-22. **Misdemeanor.** — Any person who willfully violates any provision of this Chapter shall be guilty of a misdemeanor."

Sec. 2. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 3. Effective date. This act shall become effective January 1, 1982.

In the General Assembly read three times and ratified, this the 8th day of July, 1981.