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REVISE CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT

House Bill 5568 (Substitute H-1) First Analysis (3-25-98)

Sponsor: Rep. Gerald Law
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Reportedly, the world of charitable fund-raising has changed dramatically in recent years. Telemarketers have replaced many door-to-door solicitations, out-of-town and even out-of-state fund-raising agencies compete with locally operated fund-raising campaigns, and professional fund-raisers are increasingly spearheading campaigns. According to many, the Charitable Organizations and Solicitation Act has not kept up with these changes and is woefully out of date. For example, numerous loopholes exist in the act which make it difficult to crack down on fraudulent nonprofit groups or groups that give misleading information as to whether contributions to them would be tax-deductible. Other problems have surfaced due to differences in the reporting procedures and criteria required by the Internal Revenue Service and the state Office of the Attorney General. In addition to frustrations experienced by nonprofits trying to comply with the law, and the attorney general's office in enforcing the law, consumers do not have quick or easy access to information on nonprofit groups soliciting contributions. Therefore, it can be a tedious or confusing process for consumers to determine if a charity is indeed legitimate, who is conducting the fund-raising for the charity, how much of the proceeds are going to the charity and how much to the fund-raiser, whether contributions are staying in the local community or going to an out-of-town or out-of-state agency, and so on. At the initiative of the Office of Attorney General, legislation has been proposed to revise the act.

THE CONTENT OF THE BILL:

The bill would revise the Charitable Organizations and Solicitations Act. Among many changes, the bill would rescind licensing provisions and instead create a system of registration for charitable organizations and those professionals who raise funds for charitable organizations, add new definitions, create the Charitable Organizations and Solicitations Fund,

increase fines for misdemeanor violations, and establish a civil penalty for prohibited activities. Under the revision, a "charitable organization" would be defined as 1) an organization with tax exempt status under section 501 (3) (c) of the Internal Revenue Code and 2) a person whose purpose, structure, or activities are described under that section of the IRS code. A charitable organization would not include a federal, state, or local unit of government; a subdivision, agency, or instrumentality of federal, state, or local government; or a religious organization incorporated or established for religious purposes, nor would it include a candidate, candidate committee, or committee as defined under the Michigan Campaign Finance Act (MCL 169.203); an authorized committee, political committee, or principal campaign committee as defined in the federal Election Campaign Act of 1971 (2 U.S.C. 431); or a political party as described in the Michigan Election Law (MCL 168.560a). Substantive changes to the act would include the following:

Registration. Currently, charitable organizations and professional fund-raisers are licensed. The bill would instead create a registration system for charitable organizations, professional fund-raisers, and vendors. A "professional fund-raiser" would be a person, including a subcontractor, who conducted, managed, or carried on a drive or campaign for compensation to solicit contributions for or on behalf of a charitable organization, religious organization, or any other person, or who held himself or herself out as independently engaged in the business of soliciting contributions for charitable purposes. A bona fide officer or employee of a charitable organization or a person whose service was restricted to providing advice, research, or writing would not be considered to be a professional fund-raiser. "Vendor" would be a person other than a charitable organization who conducted charitable sales promotions through vending machines, honor boxes, novelty machines, or similar

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devices that were represented as benefitting a charitable organization or purpose.

The registrations for fund-raisers and vendors would have to be renewed annually, and a registration for an organization would have to be renewed within six months of the close of its fiscal year. Registration and renewal fees would be \$200 for a professional fund-raiser and \$50 for a vendor, and charitable organizations would be charged on a sliding scale based on the revenue raised for the previous year (fees would range from \$20 to \$100). A person who was not a charitable organization or a volunteer supervised by a charitable organization but who solicited contributions, conducted a fund-raising event, or conducted a sales promotion for a charitable purpose would be subject to the act's provisions, but would not be subject to the registration and reporting requirements of the bill. In addition, professional fund-raisers currently are required to post a \$10,000 bond. Under the bill, the bond amount would be raised to \$25,000. Further, the bill would revise the information and documentation that would have to be submitted with registration applications for charitable organizations, professional fund-raisers, and vendors.

Exemptions. Currently, organizations raising less than \$8,000 are exempt from the act's licensing and financial reporting requirements (as long as all fund-raising functions are done by volunteers). The bill would raise the threshold to \$25,000 per year. Exemptions would also be extended to the following organizations:

** A booster group or a parent-teacher organization recognized by the public school, nonpublic school, or school district that it is organized to support.

** A public school, nonpublic school, preschool, or institution of higher education.

** An organization that does not recruit the public for membership and only solicits funds from its own membership.

** A private foundation defined by section 509(a) of the Internal Revenue Code that did not receive contributions from more than 25 persons in a fiscal year.

** A federally chartered veteran's organization.

** Organizations receiving funds from a registered charitable organization under certain conditions.

** Organizations registered under the Public Safety Solicitation Act (MCL 14.301 et al.).

Charitable Organizations and Solicitations Fund. The bill would create the Charitable Organizations and Solicitations Fund within the state treasury. Revenues collected from registration fees, late fees, fines and penalties, and any other source would be deposited in the fund for the purpose of administering the act and disseminating information to the public about persons subject to the act. Funds would not lapse to the general fund at the end of a fiscal year.

Penalties. Currently, violations of the act result in a misdemeanor punishable by a fine of up to \$500 and six months in jail. The bill would increase the fine to \$5,000. Further, the bill would specify many practices that would be prohibited. Violations of these provisions could result in restrictions or conditions being placed on a registration, registration suspension or revocation, or a type of affirmative action such as being ordered to make restitution. In addition, the bill would allow the attorney general or a county prosecutor to investigate and bring an action against a person for violations of these provisions or any of the act's requirements that could result in a civil penalty of up to \$10,000 for each violation. The bill would also specify that an individual could bring an action against a registrant under the Michigan Consumer Protection Act (MCL 445.911).

Miscellaneous provisions. A vendor would be required to display his or her name on each vending machine, honor box, novelty machine, or other device by which he or she conducts a charitable sales promotion along with the percentage of sales, if any, that a charitable organization would receive, and the amount that a charitable organization would receive regardless of sales, if any. The bill would also require disclosure of information such as the fund-raiser's name as filed with the attorney general, the fact that a professional fund-raiser is conducting the campaign, and the name and location by city and state of each charitable organization on behalf of which the solicitation is made, before an oral request for contributions could be made, and this information would also have to be disclosed for various non-person-to-person solicitations. Oral pledges or promises to contribute made as a result of telephone or door-to-door solicitations would not be enforceable.

Further, one year after the bill's effective date, the attorney general would have to report to the Senate

and House of Representatives regarding the plan by which the public would be educated about charitable organizations and the solicitation efforts of professional fund-raisers in the state. The report would have to include a description of the information to be disseminated to the public and the plan by which to disseminate it. A section of the act pertaining to financial statement reporting requirements for licensure and renewal and a section that specifies that the act is not to be construed as restricting the powers and duties of the attorney general would be repealed and incorporated into other provisions of the bill.

MCL 400.272 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill represents a three-year effort of the attorney general's office and various nonprofit organizations to update the Charitable Organizations and Solicitations Act. The two major changes would be to change from a licensing framework to a registration framework, and to raise the threshold for exemption of the registration and reporting requirements from \$8,000 to \$25,000 for those organizations relying on volunteers. (An organization employing a professional fund-raiser that raised less than \$25,000 would have to register, but would still be exempt from the bill's reporting requirements.) Other changes that streamline the reporting requirements for organizations include giving the attorney general the authority to create a form for organizations to file that simplifies the reporting process. Basically, groups would file a copy of what had to be filed with the IRS. For groups exempt from IRS reporting, a shortened form created by the attorney general could be used instead of the current requirement that groups submit a federal form 990 regardless of whether they had to file one with the IRS. Further, the bill would require organizations, vendors, and professional fund-raisers to submit more detailed information that should enable the attorney general to better enforce the act and weed out illegitimate charities and fund-raising practices.

For:

Charities perform many valuable services, such as assisting the needy and supporting medical research. In order to raise funds, a variety of fund-raising methods are used, most notably telephone and door-to-door solicitations. Often the information presented to a person is inadequate in enabling someone to judge if

the charity or fund-raiser is legitimate. Also, it may not be clear if contributions would be tax deductible, how much of the contribution would actually go to the charity, or even if the contribution would be used locally or funneled off to an agency out-of-town or out-of-state. In the case of solicitations for national groups, the latter situation may not be of great concern. However, there have been reports of telephone solicitors presenting themselves as representing a local organization, when in actuality it is an organization on the other side of the state or even in another state.

The bill would address such concerns by requiring more detailed information be given to the attorney general when registering and reporting, and also in certain information being given at the point of a request for a contribution. Boxes set up by vendors in stores and restaurants would have to have clear disclosure of the amounts that are earmarked for the charity. (For example, a vendor may give as little as fifty cents a month per collection box to a charity regardless of the amount collected, or may donate a certain percentage of the proceeds.) The bill would also make clear that a fund-raiser or charity could not enforce collection of an oral pledge or promise for a contribution.

Most important, perhaps, is the bill's requirement that the attorney general devise a plan by which to disseminate information on charities, vendors, and professional fund-raisers to the public. The bill's emphasis on educating the public works within a framework established by a federal Supreme Court case (*Riley v. National Federation of the Blind of North Carolina*, 108 S Ct 2667 [1988]) that holds state statutes to strict standards in regulating charitable solicitations and the types of information states can require to be disclosed directly to consumers. Information that states would be prohibited from requiring charitable solicitors to disclose at the point of contact could still be made available for public access through another format. Though no formal plan has been decided on, such venues as a toll-free telephone line or access through a website on the Internet have been informally discussed. Providing quick and easy access for people to check on the legitimacy of an organization or fund-raiser would act as a deterrent for unethical or illegal groups and would serve to assure those who sincerely wish to contribute to a cause that the charity would in fact benefit from their contributions. Also of importance is the

authority that would be given to local prosecutors to investigate complaints and prosecute a person who violated the act.

Against:

Though many nonprofit organizations support the concept and the spirit of the bill, many strongly believe that the bill should clearly detail the method by which information would be made available to the public, especially since the bill would institute a new fee for registrants that would be used, at least in part, to pay for a program of public access to information. Currently, though organizations and fund-raisers must be licensed, there is no fee. Reportedly, the fee structure under the bill has been supported by various nonprofits because of the intention for the revenue to be used to provide public access to information in order for consumers to make informed choices about whether to contribute to a particular charity or not. Basically, there is a willingness to pay a fee if it helps to weed out the “bad guys” and help consumers identify reputable charities and fund-raisers. However, it has been argued that though the bill allows the attorney general to have one year to present a plan for public dissemination of information, there is no date by which the plan would have to be up and running. Conceivably then, charities and fund-raisers could be paying for at least a year, perhaps more, without seeing what the money is providing. Many feel that the bill should be amended to require the attorney general to institute a toll-free hotline (similar to the requirement in the Public Safety Solicitation Act, MCL 14.301 et al.). At the very least, it has been suggested that the fee portion of the bill be removed until such time as the attorney general is ready to implement a toll-free hotline or website or other mechanism for the public to obtain the information.

Against:

A provision in the bill that allows the attorney general to suspend or revoke the registration of a charity, professional fund-raiser, or vendor for suspected violations may be unconstitutional, especially as it puts the burden on the registrant to prove his or her compliance with the law, rather than the burden being on the attorney general to show noncompliance. Further, the bill’s requirements that certain information be disclosed at the point of contact for oral solicitations may also violate constitutional protections and may be prohibited by the Supreme Court decision in *Riley*, cited above.

Against:

The current law exempts hospitals and hospital foundations from the licensing and reporting requirements of the act, but the bill would remove that exemption. Some people feel that absent any problems connected with hospital fund-raising campaigns, or absent any reasons why hospitals should now be included under the reporting requirements, that the historical exemption for hospitals should be extended under the bill.

POSITIONS:

The Office of the Attorney General supports the bill. (3-23-98)

The Michigan Nonprofit Association supports the concept of the bill, but is concerned that the bill does not clearly detail how the newly created fee structure would be used to disseminate information to the public and so would prefer to see the fees held until a plan is instituted. (3-24-98)

The United Way of Michigan supports the concept of the bill, but would prefer to see the bill detail how fees would be used to increase public access to the information. (3-24-98)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.