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BILL ANALYSIS

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House Bill 4259 (Substitute S-1 as reported)
Sponsor: Representative Gerald Law
House Committee: Regulatory Reform
Senate Committee: Gaming and Casino Oversight

Date Completed: 12-15-99

RATIONALE

The Charitable Organizations and Solicitations Act regulates the activities of charitable organizations and professional fund-raisers. The Act includes requirements that charitable organizations and professional fund-raisers obtain a license from the Attorney General before soliciting funds from the public; and prescribes the enforcement and investigative powers and responsibilities of the Attorney General regarding charitable organizations and professional fund-raisers. The Act, which took effect in 1975, has remained nearly unchanged in 24 years, having been amended only once. It has been pointed out, however, that the frequency and methods of soliciting contributions from the public have changed greatly. Over the years, the number of charitable organizations has increased substantially; more and more charitable organizations use professional fund-raisers to solicit money; and the use of telemarketers for fund-raising has exploded. Also, many predict that it is only a matter of time before the solicitation of funds over the Internet is routine. Reportedly, both the Attorney General's office and some charitable organizations have expressed concerns that the current Act is inadequate to deal with unethical or illegal fund-raisers and organizations, and have suggested that the public should have greater access to information regarding the funds raised, and spent, by charitable organizations. Some people believe the Act should be revised to address these and other matters.

CONTENT

The bill would amend the Charitable Organizations and Solicitations Act to create a registration system for charitable organizations, professional fund-raisers, and vendors; revise the list of organizations exempted from the Act; provide that the requirements of the Act would not apply to a charitable organization that did not receive contributions over \$25,000 per year (rather than the current threshold of \$8,000); establish registration and renewal fees; create

the "Charitable Organizations and Solicitations Fund"; require the Attorney General to spend money from the Fund, upon appropriation, only for expenditures directly related to gathering and providing the public with information regarding organizations or individuals subject to the Act; require the Attorney General to prepare a report for the Legislature regarding a plan to educate the public regarding charitable organizations and professional fund-raisers operating in or soliciting contributions in Michigan; require charitable organizations and professional fund-raisers to keep records of all money or other property collected from State residents and the disbursement of the money or property; increase fines for misdemeanor violations; and establish a civil penalty for prohibited activities.

In addition, the bill would define "charitable organization" as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code or a person whose purpose, structure, or activities were described under that section. (Section 501(c)(3) exempts from Federal income tax certain entities organized and operated exclusively for religious, charitable, scientific, public safety, literary, or educational purposes.) 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; a religious organization incorporated or established for religious purposes; a candidate, candidate committee, or committee as defined under the Michigan Campaign Finance Act; an authorized committee, political committee, or principal campaign committee as defined in the Federal Election Campaign Act of 1971; or a political party as described in the Michigan Election Law. (Currently, "charitable organization" means a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization that solicits or obtains contributions solicited from the public for charitable purposes. The term does not

include a religious organization, a candidate or committee as defined in the Election Law, or a political party.)

“Professional fund-raiser” would mean a person, including a subcontractor, who for compensation conducted, managed, or carried on a drive or campaign to solicit contributions for or on behalf of a charitable organization, religious organization, or any other person (except a committee excluded from the definition of “charitable organization”); or who engaged in or 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 to a charitable organization was restricted to providing advice, research, or writing would not be considered to be a professional fund-raiser. (Currently, “professional fund-raiser” means a person who for compensation or other consideration plans, conducts, manages, or carries on a drive or campaign of soliciting contributions for a charitable organization, religious organization, or any other person, or who engages in or holds himself or herself out as engaged in the business of soliciting contributions for these purposes. The term does not include a bona fide officer or employee of a charitable organization unless his or her compensation is based on funds raised.)

“Vendor” would mean a person other than a charitable organization who conducted charitable sales promotions or solicitation campaigns through vending machines, honor boxes, novelty machines, or similar devices that were represented as benefitting a charitable organization or purpose through a portion of the proceeds, a fixed dollar amount, or any other manner.

Charitable Organization

Registration. Currently, a charitable organization that is not an exempt organization must file with the Attorney General for a license. The bill instead would require a charitable organization to register with the Attorney General. The bill would retain the current information necessary for a license application and require a charitable organization to provide the following additional information to the Attorney General for registration:

- Whether an officer, director, or employee of the charitable organization owned a 10% or more interest in a professional fund-raiser, or was an agent or contractor for a professional fund-raiser, during a period of time when the professional fund-raiser was under contract with the charitable organization to solicit funds.
- Financial information necessary for the

Attorney General to prepare reports for the Legislature or the public if the information were not included in the organization’s Internal Revenue Service (IRS) form.

- The organization’s Federal tax-exempt status and a copy of its IRS determination letter.
- A copy of the organization’s IRS form including all schedules, attachments, and exhibits.
- Financial statements reviewed or audited by a certified public accountant.

Renewal. Under the bill, a registered charitable organization would have to report on its previous fiscal year and renew its registration within six months after the close of its fiscal year. A charitable organization’s registration would expire if the renewal registration and report were not received within 18 months after the end of the fiscal year reported on the organization’s most recently filed registration form, unless the Attorney General had extended the registration.

Professional Fund-Raiser

Registration. Currently, a person must not act as a professional fund-raiser before applying for a license with the Attorney General. Under the bill, a professional fund-raiser would not be allowed to solicit or receive donations for a charitable organization or religious organization before registering with the Attorney General. A professional fund-raiser would have to provide the following information on the registration form:

- All names used by the professional fund-raiser.
- The address and telephone number of the principal office, each office in the State, resident agent, anyone with direct responsibility for solicitation activity, and any charitable organization for which the professional fund-raiser had agreed to solicit funds or provide services.
- Where and when it was legally established and the form of its organization.
- Whether the professional fund-raiser or any of its officers, directors, or principals were or had ever been enjoined, fined, convicted, or subject to any other sanction or penalty as a result of soliciting contributions in any state or country.
- A description of the methods by which the professional fund-raiser would solicit funds.
- A copy of any agreement between the professional fund-raiser and a charitable organization.
- A copy of any subcontract between the professional fund-raiser and a person who would act as a professional fund-raiser on

behalf of a charitable organization, religious organization, or any person soliciting for a charitable purpose.

- Whether an officer, director, or employee of the charitable organization owned a 10% or more interest in the professional fund-raiser, or was an agent or contractor for the professional fund-raiser during a period of time when the professional fund-raiser was under contract with the charitable organization to solicit funds, and whether that information had been fully disclosed to the organization's governing body.

Bond. Currently, a professional fund-raiser is required to post a \$10,000 bond. Under the bill, the registration for a professional fund-raiser would have to be accompanied by a \$25,000 bond, of which the professional fund-raiser would be the principal obligor. In lieu of a bond, the Attorney General could accept an irrevocable letter of credit, which would have to expire at least one year after the professional fund-raiser's registration expired.

Financial Report. Within 90 days after a solicitation campaign was completed, or on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional fund-raiser that solicited contributions in conjunction with a charitable organization would have to file with the Attorney General a financial report for the campaign, including gross revenue and an itemization of all expenses incurred on behalf of the charitable organization.

Vendor

Registration. Before conducting a charitable sales promotion or solicitation campaign, a vendor would have to register with the Attorney General. The registration would have to include the name of the vendor and any other corporate, business or trade names used; the address and telephone number of the principal office; where and when the vendor was legally established and the form of its organization; a description of the methods by which the vendor intended to conduct sales or solicitation campaigns in Michigan; the name, address, and telephone number of each charitable organization with which the vendor had contracted; and a complete copy of any agreement between the vendor and a charitable organization.

Regulation. A vendor would have to report to the Attorney General the total dollar sales of each campaign conducted in this State and the amount paid to each charitable organization, with its renewal registration or within 30 days after concluding a sales campaign in Michigan if no further campaign were intended.

A vendor would be required to display prominently the following information on each vending machine, honor box, novelty machine, or similar device through which the vendor conducted a charitable sales promotion: the name of the vendor and the fact that the vendor owned the machine, box, or device; 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.

Exemptions

Currently, the Act's licensing and financial statement requirements do not apply to a person who does not intend to solicit and receive and does not actually receive contributions exceeding \$8,000 during a 12-month period. The bill provides that the registration and reporting requirements would not apply to a charitable organization that did not receive contributions exceeding \$25,000 during its fiscal year. (The bill specifies that this provision would apply if all of the charitable organization's fund-raising functions were carried on by persons who were not paid for their services.)

The bill also would create or retain exemptions for the following organizations:

- A private foundation as defined in Section 509(a) of the Internal Revenue Code that did not receive contributions from more than 25 persons in a fiscal year.
- A booster group or a parent-teacher organization that was recognized by the public school, nonpublic school, or school district that it was organized to support.
- A public school, nonpublic school, preschool, or institution of higher education.
- An organization that does not invite the public to become a member and confines solicitation activities to drives among its members.
- A veterans' organization chartered by Congress.
- An organization receiving funds from a registered charitable organization if the organization made available to the public a financial statement of its activities.
- A person registered under the Public Safety Solicitations Act.

The bill would delete the current provisions that exempt a licensed hospital, hospital-based foundation, and hospital auxiliary; a nonprofit organization whose principal purpose is not charitable, or whose stock is wholly owned by a religious or fraternal society that owns and operates facilities for the aged and chronically ill; and charitable organizations licensed by the Department of Social Services that serve children and families.

Fees

Registration Fees. Under the bill, a charitable organization would have to pay the following registration or renewal fee:

- No fee if the gross receipts were less than \$25,000.
- \$20 if the gross receipts were more than \$25,000 but less than \$100,000.
- \$50 if the gross receipts were at least \$100,000 but less than \$500,000.
- \$100 if the gross receipts were at least \$500,000 but less than \$1,000,000.
- \$200 if the gross receipts were \$1,000,000 or more.

A parent charitable organization that was the parent of one or more subsidiary charitable organizations required to be registered under the Act that did not meet the combined registration requirements set forth in the bill could pay one registration fee of \$300 for itself and all of its subsidiary charitable organizations. ("Parent charitable organization" would mean an organization that met the requirements for consolidating financial statements under generally accepted accounting principles.)

A professional fund-raiser would have to pay a \$200 registration or renewal fee and a vendor would have to pay a \$50 fee with its registration.

A charitable organization, professional fund-raiser, or vendor's registration would be effective immediately upon receipt by the Attorney General of the information and fees required under the Act.

Late Fees. A person required to register would be subject to a late fee of \$1 per day up to \$100, if a charitable organization, professional fund-raiser, or vendor failed to file a report as required under the bill, or if it failed to cure a defect in its registration or annual report within 30 days after notice by the Attorney General that a correction or additional information was required.

Charitable Organizations and Solicitations Fund

The Charitable Organizations and Solicitations Fund would be created within the State Treasury. The State Treasurer could receive money or other assets for deposit into the Fund from registration and late registration fees, fines and penalties, and any other source. The State Treasurer would have to direct the investment of the Fund and credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund.

The Department of Attorney General would have to

spend money from the Fund, upon appropriation, only for expenditures directly related to gathering and providing the public with information regarding persons subject to the Act. The information would have to be disseminated to the public under a plan developed pursuant to the bill.

Penalties

Currently, a violation of the Act is a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for up to six months. The bill would increase the fine to \$5,000. Further, the bill specifies practices that would be prohibited. Violations of these provisions could result in the placement of restrictions or conditions on a registration; the denial, suspension, or revocation of a registration; a civil fine of up to \$10,000 to be paid to the Attorney General; or a requirement to take some type of affirmative action, such as payment of restitution. The bill also specifies that a person could exercise any right or remedy created under the Michigan Consumer Protection Act. In addition, the bill would allow a county prosecutor to investigate and prosecute a person subject to the Act in the same manner as the Attorney General.

Other Provisions

Under the bill, before making an oral request for a contribution and at the same time as making a written request, the charitable organization, professional fund-raiser, or vendor soliciting the contribution would have to disclose the name and location by city and

state of each charitable organization on behalf of which the solicitation was made. If a solicitation were made by direct personal contact, the information also would have to be disclosed prominently on any written document exhibited to the person solicited. If a solicitation were made by radio, television, letter, telephone, or any other means not involving personal contact, the information would have to be disclosed prominently in the solicitation. In addition, a professional fund-raiser that orally solicited a contribution also would have to disclose the professional fund-raiser's name and state that the solicitation was being made by a professional fund-raiser. This information would have to be provided in the manner described above.

A charitable organization or person, including a vendor, commercial coventurer (a person who conducted charitable sales promotions, or entered into a licensing arrangement in which a charitable organization allowed the person to use the organization's name for a fee), a professional fund-raiser, or other person who solicited contributions, conducted fund-raising events, or conducted a sales promotion or campaign for a charitable purpose, would have to maintain at the place designated in its registration or, if not a charitable organization at its principal place of business, the original records or true copies of the records pertaining to all money or other property collected from State residents, and the disbursement of the money or property. The records would have to be preserved for at least three years.

Within one year after the bill's effective date, the Attorney General would have to prepare a report to the Senate and House of Representatives providing the means to be implemented to educate the public regarding charitable organizations and professional fund-raisers operating in or soliciting contributions in the State, a description of the information to be disseminated to the public, and a plan to disseminate it free of charge. The Attorney General would have to implement the plan to disseminate information in the report within one year after presenting it to the Senate or House of Representatives, whichever was later.

MCL 400.272 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Charities perform a multitude of valuable services to help both people and animals in times of need or crisis. Individuals, businesses, and other organizations are presented with numerous opportunities each year to contribute to an ever-increasing number of charitable causes, and they respond by donating millions of dollars. The methods of raising funds for charitable organizations have changed dramatically in recent years, and are likely to change more. The increased use of telemarketing to solicit funds, and the probable development, refinement, and increased use of the Internet to raise funds, demand that the State have laws to regulate charitable organizations and professional fund-raisers in an efficient, effective manner in order to protect the public, and ensure that people have adequate information to make intelligent, informed decisions when giving money. Currently, the array of donation options, and the frequency with which they arise, are confusing to the public and offer numerous opportunities for bogus fund-raisers and phantom organizations to attempt to solicit funds for their own profit rather than the worthy causes they espouse. Too often, the information that is presented to a person or that one can find is inadequate to enable a potential donor to judge if a charity is legitimate. By tightening and increasing the reporting requirements of charitable organizations and professional fund-raisers, and increasing the enforcement powers of the Attorney General, the bill would raise the awareness of the public and make it less attractive for unethical individuals to engage in fund-raising. This not only would protect individuals, but also would help legitimate charitable organizations that must fight the bad publicity created when illegitimate charities swindle the public.

Supporting Argument

The Act, which has remained nearly unchanged for over 20 years, needs to be updated so that the regulation of charitable organizations and professional fund-raisers can be improved, for the sake of both the public and the organizations. Toward that end, the bill would make several significant changes. While the bill would require charitable organizations to register with the Attorney General, rather than be licensed, it would require a charitable organization (and professional fund-raisers) to provide greater and more specific information when registering. Further, the bill would increase both the enforcement options of the Attorney General and the penalties that an

organization or person may be subjected to for violating the Act. In addition, the bill would streamline administration of the Act in terms of both enforcement and compliance. The bill would raise from \$8,000 in contributions per year to \$25,000 the point at which an organization must comply with the Act, meaning that small, local organizations would not be regulated by the Attorney General. The proposed reporting requirements for charitable organizations would authorize the Attorney General to create a filing form for organizations that would simplify the reporting process; groups would file a copy of what must be filed with the IRS. Groups exempt from IRS reporting could use a shortened form created by the Attorney General, instead of having to submit a Federal form 990 regardless of whether they must file one with the IRS.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would result in increased revenue to the State from new registration fees, late fees, fines and penalties that under the bill would be deposited in a newly created Charitable Organizations and Solicitations Fund. There is no estimate currently available for projected revenue. Approximately 3,000 charitable organizations currently are licensed under the Act. However, the number of organizations that would come under the structured fee schedule contained in the bill is not available due to the change in threshold (from \$8,000 to \$25,000) and changes in exemptions.

There are approximately 240 licensed professional fund-raisers in Michigan. The new \$200 registration fee would generate up to \$48,000 depending on the number of professional fund-raisers that would register under the bill. No estimate is available on the number of vendors that would register under the bill.

Money in the Fund could be spent only for expenditures directly related to gathering and providing to the public information regarding persons subject to the Act. The bill would clarify the responsibilities of the Attorney General. The Attorney General currently has 6.5 FTEs allocated to the Charitable Trust Section of the Consumer Protection Division. New costs for the Department regarding development of a public information program have not been determined.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.