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SENATE BILL 259

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Katy M. Duhigg

AN ACT

RELATING TO CHARITIES; AMENDING THE CHARITABLE SOLICITATIONS
ACT TO STRENGTHEN REQUIREMENTS FOR PROFESSIONAL FUNDRAISERS AND
THIRD-PARTY SOLICITORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 57-22-2 NMSA 1978 (being Laws 1983,
Chapter 140, Section 2, as amended) is amended to read:

"57-22-2. PURPOSE.--The purpose of the Charitable
Solicitations Act is to authorize the attorney general to
monitor, supervise and enforce the charitable purposes of
charitable organizations and regulate professional fundraisers
and third-party solicitors operating in this state."

SECTION 2. Section 57-22-3 NMSA 1978 (being Laws 1983,
Chapter 140, Section 3, as amended) is amended to read:

"57-22-3. DEFINITIONS.--As used in the Charitable

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1 Solicitations Act:

2 A. "charitable organization" means [~~any~~] an entity
3 that has been granted exemption from the federal income tax by
4 the United States commissioner of internal revenue as an
5 organization described in Section 501(c)(3) of the Internal
6 Revenue Code of 1986, as amended, or identifies itself to the
7 public as having a charitable purpose;

8 B. "charitable purpose" means a benevolent, social
9 welfare, scientific, educational, environmental, philanthropic,
10 humane, patriotic, public health, civic or other eleemosynary
11 objective or an activity conducted in support of or in the name
12 of law enforcement officers, firefighters or other persons who
13 protect public safety;

14 C. "contribution" means the promise, grant or
15 pledge of [~~any~~] money, credit or property of any kind or value
16 provided to a charitable organization in response to a
17 solicitation, but does not include program service revenue or
18 bona fide membership fees, dues or assessments; provided that
19 bona fide membership fees, dues or assessments do not include
20 contributions made in exchange for membership in a charitable
21 organization unless membership confers rights and benefits in
22 addition to receiving literature of the charitable
23 organization;

24 D. "educational institution" means:

25 (1) an entity organized and operated primarily

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1 as a school, college or other instructional institution with a
2 defined curriculum, student body and faculty, conducting
3 classes on a regular basis; and

4 (2) auxiliary entities, including parent-
5 teacher organizations, booster and support clubs that support,
6 encourage or promote a school, college or other instructional
7 institution and its defined curriculum, student body, faculty,
8 facilities or activities;

9 E. "professional fundraiser" means a person that
10 solicits or employs or directs others to solicit contributions
11 from the public on behalf of a charitable organization in
12 exchange for compensation and has custody or control of the
13 contributions; provided that "professional fundraiser" does not
14 include a director, officer, bona fide employee or salaried
15 officer, volunteer, attorney, accountant or investment
16 counselor of a charitable organization;

17 F. "professional fundraising counsel" means a
18 person that provides services or employs or directs others to
19 provide services for compensation to a charitable organization
20 in the solicitation of contributions, including managing or
21 preparing materials to be used in conjunction with ~~[any]~~ a
22 solicitation; provided that the person does not:

23 (1) directly solicit contributions; or

24 (2) receive, have access to or control any
25 contribution received in response to the solicitation; provided

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1 further that "professional fundraising counsel" does not
2 include a director, officer, bona fide employee or salaried
3 officer, volunteer, attorney, accountant or investment
4 counselor of a charitable organization;

5 G. "religious organization" means a church,
6 organization or group organized for the purpose of divine
7 worship or religious teaching or other specific religious
8 activity or any other organization that is formed in
9 association with or to primarily encourage, support or promote
10 the work, worship, fellowship or teaching of the church,
11 organization or group; [~~and~~]

12 H. "solicit" or "solicitation" means [~~any~~] the
13 donation of nonperishable goods or a communication requesting a
14 contribution or offering an opportunity to participate in a
15 game of chance, raffle or similar event with the representation
16 that the contribution or participation will support a
17 charitable purpose, and includes:

18 (1) [~~any~~] a verbal request made in person or
19 by telephone, radio, television, electronic communication or
20 other media;

21 (2) [~~any~~] a written or published request
22 mailed, sent, delivered, circulated, distributed, posted in a
23 public place, advertised or communicated through any medium to
24 the public;

25 (3) [~~any~~] a sale or attempt to sell a good or

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1 service; and

2 (4) [~~any~~] an invitation to attend an assembly,
3 event, exhibition, performance or social gathering of any kind.

4 A contribution is not required for a solicitation to have
5 occurred, and "solicit" or "solicitation" does not include
6 direct grants or allocation of funds received or solicited from
7 [~~any~~] an affiliated fundraising organization by a member agency
8 or unsolicited contributions received from [~~any~~] an individual
9 donor, foundation, trust, governmental agency or other source,
10 unless such contributions are received in conjunction with a
11 solicitation drive; and

12 I. "third-party solicitor" means a person that
13 contracts with a charitable organization to facilitate the sale
14 of nonperishable goods as a fundraising mechanism."

15 SECTION 3. Section 57-22-6.1 NMSA 1978 (being Laws 1999,
16 Chapter 124, Section 12) is amended to read:

17 "57-22-6.1. PROFESSIONAL FUNDRAISERS AND THIRD-PARTY
18 SOLICITORS--REGISTRATION.--

19 A. Professional fundraisers and third-party
20 solicitors shall, before entering into a contract with [~~any~~] a
21 charitable organization, except a religious organization, to
22 solicit for or on its behalf money, nonperishable goods or
23 other things of value:

24 (1) register with the attorney general on a form
25 provided by the attorney general, pay a registration fee of two
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1 hundred dollars (\$200) and submit the names and addresses of
2 all officers, employees, agents and contractors within five
3 business days of their hiring or engagement;

4 (2) file with the attorney general a surety bond
5 [~~pursuant to the Charitable Solicitations Act~~] at the time of
6 registration in the amount of twenty-five thousand dollars
7 (\$25,000); and

8 (3) file with the attorney general a copy of the
9 intended written contract between the professional fundraiser
10 or third-party solicitor and the charitable organization on
11 whose behalf the professional fundraiser or third-party
12 solicitor intends to conduct a solicitation campaign or set up
13 collection receptacles or a charitable store or other means of
14 collecting donated nonperishable goods for a charitable
15 organization.

16 B. The contract between [~~the~~] a professional
17 fundraiser and [~~the~~] a charitable organization shall clearly
18 describe the:

19 (1) compensation and authority of the
20 professional fundraiser;

21 (2) solicitation campaign;

22 (3) location and telephone numbers from where
23 solicitations are intended to be conducted;

24 (4) list of names and addresses of all
25 employees, agents or other persons who are to solicit during

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1 the campaign; and

2 (5) copies of the solicitation literature,
3 including scripts of any written or verbal solicitation.

4 C. The contract between a third-party solicitor and a
5 charitable organization shall clearly describe the:

6 (1) authority and compensation of the third-
7 party solicitor and the share, if any, of money earned on the
8 sale of donated nonperishable goods that does not go to the
9 charitable organization;

10 (2) location of collection receptacles, a
11 charitable store or other means of collecting donated
12 nonperishable goods for a charitable organization and, if a
13 store, the store's telephone number;

14 (3) list of names and addresses of all officers
15 and agents of the third-party solicitor and of all managers and
16 supervisors in stores in New Mexico, by location; and

17 (4) other information the attorney general deems
18 necessary.

19 [~~C.~~] D. The charitable organization on whose behalf
20 the professional fundraiser or third-party solicitor is acting
21 shall certify that the contract and solicitation and other
22 information and materials filed with the attorney general are
23 true and complete.

24 [~~D.~~] E. Within ten business days after receiving a
25 registration pursuant to this section, the attorney general

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1 shall notify the professional fundraiser or third-party
2 solicitor of any deficiencies in the registration, contract or
3 bond; otherwise the filing is deemed approved as filed.

4 ~~[E.]~~ F. A professional fundraiser or third-party
5 solicitor who fails to register with the attorney general may
6 be assessed a late registration fee of five hundred dollars
7 (\$500). In addition to the late fee, a professional fundraiser
8 or third-party solicitor who fails to comply with registration
9 or reporting requirements shall be assessed an administrative
10 penalty of two hundred dollars (\$200) per violation."

11 SECTION 4. Section 57-22-6.3 NMSA 1978 (being Laws 1999,
12 Chapter 124, Section 14) is amended to read:

13 "57-22-6.3. GENERAL PROVISIONS--CHARITABLE
14 ORGANIZATIONS--PROFESSIONAL FUNDRAISERS--THIRD-PARTY
15 SOLICITORS--PROHIBITED PRACTICES.--A charitable organization or
16 a professional fundraiser or third-party solicitor shall not:

17 A. engage in deceptive fundraising or third-party
18 soliciting practices, meaning any false or misleading verbal or
19 written statement, description or representation of any kind
20 knowingly made in connection with a solicitation and that may,
21 tends to or does deceive or mislead [~~any~~] a person and
22 includes:

23 (1) using the name or likeness of [~~any~~] a person
24 in solicitation literature without the express written consent
25 of the person; provided that publication of previous

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1 contributors' names to acknowledge their contributions shall
2 not require their express written consent;

3 (2) using a name, symbol or statement that is so
4 closely related or similar to that used by another charitable
5 organization or governmental agency that the use would tend to
6 confuse or mislead the public; ~~and~~

7 (3) misrepresenting, confusing or misleading
8 ~~any~~ a person to reasonably believe incorrectly that the
9 contributions being solicited are or will be used for purposes,
10 persons or programs in the state; ~~or~~

11 (4) misleading a person regarding sponsorship,
12 endorsement or approval of the solicitation;

13 (5) representing that a charitable organization
14 will receive a greater percentage of revenue than outlined in
15 the professional fundraiser's or third-party solicitor's
16 contract; and

17 (6) failing to disclose the market value of
18 donated nonperishable goods to the charitable organization; or

19 B. collect or attempt to collect a contribution in
20 person or by courier ~~unless~~ if:

21 (1) the solicitation and collection ~~[or attempt~~
22 ~~to collect occur contemporaneously]~~ occurs simultaneously; or

23 (2) the solicitation ~~[includes]~~ involves the
24 sale of goods or items and the collection ~~[or attempt to~~
25 ~~collect occurs contemporaneously]~~ occurs simultaneously with

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1 the delivery of the goods or items agreed to be purchased by
2 the contributor."

3 SECTION 5. Section 57-22-6.4 NMSA 1978 (being Laws 1999,
4 Chapter 124, Section 15) is amended to read:

5 "57-22-6.4. PROFESSIONAL FUNDRAISER--THIRD-PARTY
6 SOLICITOR--RECORDS AND REPORTS.--

7 A. At least every six months, the professional
8 fundraiser shall account in writing to the charitable
9 organization for all contributions received and all expenses
10 incurred under their contract. The charitable organization
11 shall maintain a copy of the accounting of contributions and
12 expenses for three years and make it available to the attorney
13 general upon request. The professional fundraiser shall
14 maintain a record of written commitments from recipients of
15 donated tickets and provide those records to the attorney
16 general upon request.

17 B. All contributions of money received by the
18 professional fundraiser shall be deposited in an account at a
19 federally insured financial institution within two days after
20 receipt. The account shall be established and maintained in
21 the name of the charitable organization. Disbursements from
22 the account shall be made upon warrants signed by an authorized
23 representative of the charitable organization and may also be
24 signed by the professional fundraiser.

25 C. The professional fundraiser shall include the

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1 following information in its accounting required by Subsection
2 A of this section to the charitable organization:

3 (1) the name and address of each person
4 contributing to the charitable organization and the date and
5 amount of the contribution. This information shall not be
6 publicly disclosed and shall be used only for law enforcement
7 purposes;

8 (2) the name and residence address of each
9 employee, agent or other person involved in the solicitation;

10 (3) the script or other instructional
11 information provided by the charitable organization or
12 professional fundraiser to employees, agents or other persons
13 conducting solicitations;

14 (4) a description of the location and telephone
15 numbers from which the solicitation campaign will be conducted
16 if conducted by telephone;

17 (5) an audio recording of each telephone
18 solicitation conducted by the professional fundraiser;

19 [~~4~~] (6) a record of expenses incurred by the
20 professional fundraiser that the charitable organization paid;
21 [~~and~~]

22 [~~5~~] (7) the name and address of each financial
23 institution and the account number of each account in which the
24 professional fundraiser deposited contributions received from
25 the solicitation;

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1 (8) the gross revenue received and an itemized
2 list of expenses incurred; and

3 (9) a sworn statement certifying that the
4 solicitation campaign records are true and correct.

5 D. The professional fundraiser and the employees of
6 the professional fundraiser shall disclose the following in
7 solicitations:

- 8 (1) the name of the charitable organization; and
9 (2) the fact that the solicitation is made by or
10 through a professional fundraiser.

11 E. No later than ninety days after the completion of
12 a solicitation campaign, the professional fundraiser shall
13 provide a detailed financial report, including gross revenue
14 and expenses, to the charitable organization and file a copy
15 with the attorney general.

16 F. On a schedule provided in the contract with a
17 charitable organization, the third-party solicitor shall
18 account in writing to the charitable organization for the
19 market value of the total weight of goods donated within the
20 reporting period and a detailed financial report, including
21 gross revenue and expenses for the period. The third-party
22 solicitor shall file a copy of the report with the attorney
23 general.

24 ~~[E.]~~ G. Every professional fundraiser, third-party
25 solicitor and charitable organization shall have either a

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1 registered agent in the state or shall file a consent to
2 service of process with the attorney general. The consent to
3 service shall be in the form prescribed by the attorney general
4 and shall be irrevocable."

5 SECTION 6. A new section of the Charitable Solicitations
6 Act, Section 57-22-6.5 NMSA 1978, is enacted to read:

7 "57-22-6.5. [NEW MATERIAL] COLLECTION RECEPTACLES--
8 INFORMATION REQUIRED.--The operator of a collection receptacle
9 shall display the following information on the receptacle in
10 clear and legible letters at least three inches in height:

11 A. the name, address and telephone number of the
12 charitable organization that will receive goods collected in
13 the receptacle;

14 B. if operated by a professional fundraiser or
15 third-party solicitor, the name, address and telephone number
16 of the professional fundraiser or third-party solicitor; and

17 C. a statement that financial arrangements between
18 the professional fundraiser or third-party solicitor and the
19 charitable organization are on file with the attorney general."

20 SECTION 7. Section 57-22-9.1 NMSA 1978 (being Laws 1999,
21 Chapter 124, Section 16) is amended to read:

22 "57-22-9.1. INVESTIGATIVE DEMAND--CIVIL PENALTY.--

23 A. Whenever the attorney general has reason to
24 believe that ~~[any]~~ a person may be in possession, custody or
25 control of information or documentary material, including an

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1 original or copy of [~~any~~] a book, record, report, memorandum,
2 paper, communication, tabulation, chart, photograph, mechanical
3 transcription or other tangible document or recording, that the
4 attorney general believes to be relevant to the subject matter
5 of an investigation of a probable violation of the Charitable
6 Solicitations Act, the attorney general may, prior to the
7 institution of a civil proceeding, execute in writing and cause
8 to be served upon the person a civil investigative demand. The
9 demand shall require the person to answer interrogatories or to
10 produce documentary material and permit the inspection and
11 copying of the material. The demand of the attorney general
12 shall not be a matter of public record and shall not be
13 published by [~~him~~] the attorney general except by order of the
14 court.

15 B. Each demand shall:

16 (1) state the general subject matter of the
17 investigation;

18 (2) describe with reasonable certainty the
19 information or documentary material to be provided;

20 (3) identify the time period within which the
21 information or documentary material is to be provided, which in
22 no case shall be less than ten days after the date of service
23 of the demand; and

24 (4) state the date on which [~~any~~] documentary
25 material [~~shall be~~] is available for inspection and copying.

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C. No demand shall:

(1) contain ~~[any]~~ a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state;

(2) require the disclosure of ~~[any]~~ documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum by a court of the state; or

(3) require the removal of ~~[any]~~ documentary material from the custody of the person upon which the demand is served except in accordance with the provisions of Subsection E of this section.

D. Service of the demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or, if the person is not a natural person, to the registered or statutory agent for the person to be served;

(2) delivering a duly executed copy of the demand to the principal place of business in New Mexico of the person to be served; or

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at ~~[his]~~ the person's principal place of business in the state or, if the person has no place of business in the state, to ~~[his]~~ the person's principal place of business.

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1 E. Documentary material demanded pursuant to
2 Subsection A of this section shall be produced for inspection
3 and copying during normal business hours at the principal place
4 of business of the person served or may be inspected and copied
5 at such other times and places as may be agreed upon by the
6 person served and the attorney general.

7 F. Documentary material and its contents produced
8 pursuant to a demand or answers to interrogatories shall not be
9 produced for inspection or copying by anyone other than an
10 authorized employee of the attorney general. The district
11 court in the county in which the person resides or has [~~his~~]
12 the person's principal place of business or is about to perform
13 or is performing the practice that is alleged to be unlawful
14 [~~under~~] pursuant to the Charitable Solicitations Act may order
15 documentary material, its contents or answers to
16 interrogatories to be produced for inspection or copying by
17 someone other than an authorized employee of the attorney
18 general.

19 G. At any time before the return date of the
20 demand, a petition to set aside the demand, modify the demand
21 or extend the return date on the demand may be filed in the
22 district court in the county in which the person resides or has
23 [~~his~~] the person's principal place of business or is about to
24 perform or is performing the practice that is alleged to be
25 unlawful [~~under~~] pursuant to the Charitable Solicitations Act,

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1 and the court upon showing of good cause may set aside the
2 demand, modify it or extend the return date on the demand.

3 H. If after service of the demand the person
4 neglects or refuses to comply with the demand, the attorney
5 general may invoke the aid of the court in the enforcement of
6 the demand.

7 I. This section shall not be applicable to criminal
8 prosecutions.

9 J. In an action brought pursuant to the Charitable
10 Solicitations Act, if the court finds that a person has
11 violated a provision of that act or rules promulgated pursuant
12 to that act, the attorney general may recover, on behalf of the
13 state, a maximum civil penalty of five thousand dollars
14 (\$5,000) per violation.

15 K. The attorney general may require a financial
16 audit, conducted by an independent certified public accountant,
17 for any charitable organization, professional fundraiser or
18 third-party solicitor."