

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2363

By: Burns

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5
6 AS INTRODUCED

7 An Act relating to charitable organizations; creating
8 disclosure requirements for solicitation materials;
9 amending 18 O.S. 2011, Section 552.3, as last amended
10 by Section 1, Chapter 4, O.S.L. 2013 (18 O.S. Supp.
11 2020, Section 552.3), which relates to registration;
12 modifying required information; amending 18 O.S.
13 2011, Section 552.14a, which relates to violations of
14 the Oklahoma Solicitation of Charitable Contributions
15 Act; adding certain violation; updating references;
16 providing for codification; and providing an
17 effective date.

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20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 552.23 of Title 18, unless there
23 is created a duplication in numbering, reads as follows:

24 A. Every charitable organization and professional fundraiser
that is required to be registered with the Office of the Secretary
of State pursuant to Sections 552.3 and 552.7 of Title 18 of the
Oklahoma Statutes shall disclose all of the following information at
the time of solicitation:

1 1. The legal name of the charitable organization, any trade
2 names that the charitable organization uses, any other name the
3 organization may be identified or known as, and any distinctive
4 names the organization uses for purposes of solicitation of
5 contributions, as the name(s) appears on file with the Office of the
6 Secretary of State, on whose behalf the solicitation is being made;

7 2. Upon request, the program(s) the funds solicited will be
8 used to support;

9 3. Upon request, the approximate percentage of contributions
10 solicited in a fiscal year to remain in Oklahoma; and

11 4. Upon request, the process to obtain for free an copy of the
12 charitable organization's registration and financial information
13 from the Office of the Secretary of State.

14 B. In addition to the information required by subsection A,
15 every written or printed solicitation shall prominently state the
16 following disclosure statement verbatim:

17 "A copy of [insert name of the charitable organization as it
18 appears on file with the Office of the Secretary of State]'s
19 registration with the State of Oklahoma and financial information
20 are available for free from the Oklahoma Office of the Secretary of
21 State. Registration is not an endorsement by the State."

22 The disclosure statement shall be prominently displayed by use
23 of one or more of the following: underlining, a border, or bold
24 type. Where the solicitation consists of more than one piece, the

1 disclosure statement shall be displayed on a prominent part of the
2 solicitation materials. If the solicitation occurs on a website,
3 the disclosure statement must be prominently displayed on any
4 webpage that identifies a mailing address where contributions are to
5 be sent, identifies a telephone number to call to process
6 contributions, or provides for online processing of contributions.

7 SECTION 2. AMENDATORY 18 O.S. 2011, Section 552.3, as
8 amended by Section 1, Chapter 4, O.S.L. 2013 (18 O.S. Supp. 2020,
9 Section 552.3), is amended to read as follows:

10 Section 552.3 A. No charitable organization that is either
11 located within this state or that is soliciting contributions from
12 any person in this state, except those specifically exempt under
13 Section 552.4 of this title, shall solicit contributions until the
14 charitable organization shall have registered with the Office of the
15 Secretary of State and filed information, as required by the
16 Oklahoma Solicitation of Charitable Contributions Act, on forms
17 approved by that office. At the time of registration, each
18 charitable organization, except as otherwise provided in this
19 section, shall pay a fee of Sixty-five Dollars (\$65.00). The first
20 Fifteen Dollars (\$15.00) of the fee shall be deposited to the credit
21 of the General Revenue Fund of the State Treasury. Thirty-four
22 Dollars (\$34.00) of the fee shall be deposited to the credit of the
23 Attorney General Charitable Solicitations Enforcement Revolving Fund
24 and the remaining Sixteen Dollars (\$16.00) shall be deposited to the

1 credit of the Secretary of State Charitable Solicitations Revolving
2 Fund. Provided, a charitable organization whose contributions
3 during the previous registration period did not exceed Ten Thousand
4 Dollars (\$10,000.00) or if this is the charitable organization's
5 first registration period and the anticipated contributions for the
6 current registration period are not expected to exceed Ten Thousand
7 Dollars (\$10,000.00), shall pay a fee of Fifteen Dollars (\$15.00) of
8 which Ten Dollars (\$10.00) shall be deposited to the credit of the
9 Attorney General Charitable Solicitations Enforcement Revolving Fund
10 and the remaining Five Dollars (\$5.00) shall be deposited to the
11 credit of the Secretary of State Charitable Solicitations Revolving
12 Fund. Each charitable organization that is required to register
13 under this act shall register annually with the Secretary of State
14 by the date that the charitable organization files its Form 990 or
15 by the date, plus extensions, that it is required to file its Form
16 990, whichever occurs first. Registration shall not be deemed to
17 constitute an endorsement by the state or by the Secretary of State
18 of any charitable organization or the proposed uses of the funds
19 solicited. The information so filed shall be available to the
20 general public. The charitable organization shall provide the
21 following information on the required forms:

22 1. The legal name of the charitable organization, any trade
23 names that the charitable organization uses, any other name the
24 organization may be identified or known as, and any distinctive

- 1 names the organization uses for purposes of solicitation of
2 contributions;
- 3 2. The mailing address of the charitable organization;
- 4 3. The name and mailing address of:
- 5 a. each officer, director, trustee, and/or equivalent, and
6 b. each salaried executive employee of the charitable
7 organization;
- 8 4. The name and mailing address of:
- 9 a. each professional fundraiser or professional solicitor
10 that will have custody of the contributions, and
11 b. each person associated with a professional fundraiser,
12 professional solicitor or charitable organization that
13 is directly responsible for the payment and
14 distribution of funds collected;
- 15 5. The name and mailing address of each professional
16 fundraising counsel utilized by the charitable organization;
- 17 6. For charitable organizations that register for the first
18 time, a statement of whether or not the charitable organization
19 believes contributions for the first year of registration will
20 exceed Ten Thousand Dollars (\$10,000.00);
- 21 7. The purposes for which the contributions solicited are to be
22 used;
- 23 8. The approximate percentage of contributions solicited in a
24 fiscal year to remain in Oklahoma;

1 ~~8.~~ 9. For the initial registration of a newly formed charitable
2 organization, a copy of a letter from the Internal Revenue Service,
3 or other evidence, showing that such organization is exempt from
4 federal income taxation; or, for a charitable organization that has
5 not applied for federal income tax exemption with the Internal
6 Revenue Service or is not required to apply for federal income tax
7 exemption, evidence showing that said charitable organization is
8 organized in any state or jurisdiction as a not-for-profit entity;

9 ~~9.~~ 10. An identification of the period of time or periods
10 during which solicitations are to be conducted, which may be
11 specific periods, estimated or projected time frames, or continuous,
12 and which may involve different periods for different types of
13 solicitations by the same charitable organization;

14 ~~10.~~ 11. An identification of the specific method or methods of
15 solicitation utilized by the charitable organization and its agents;

16 ~~11.~~ 12. Whether the solicitation is to be conducted by the
17 following for or on behalf of the charitable organization:
18 professional fundraisers, employees or volunteers of the charitable
19 organization, and/or others; and

20 ~~12.~~ 13. If the solicitation is to be conducted in whole or in
21 part by professional fundraisers, the names and addresses of each
22 professional fundraiser involved in the solicitation; the basis of
23 payment or other consideration payable to each professional
24 fundraiser and the nature of the arrangements between the charitable

1 organization and each professional fundraiser, the specific amount,
2 formula or percentage of compensation, or property of any kind or
3 value to be paid or provided to each professional fundraiser; and if
4 payment is based on a percentage, the amount of compensation as a
5 percentage of the total contributions received, and the net amount
6 of the total contributions received (total contributions received,
7 less expenses of solicitation other than amounts payable to any
8 professional fundraiser).

9 B. In addition to the required information in subsection A of
10 this section, every charitable organization subject to the
11 provisions of the Oklahoma Solicitation of Charitable Contributions
12 Act that has solicited contributions during the previous fiscal year
13 shall provide the following information:

14 1. The gross amount of the contributions, gifts, grants and
15 other similar amounts received by the charitable organization;

16 2. The total Program Service Expenses of the charitable
17 organization;

18 3. The total Management and General Expenses of the charitable
19 organization;

20 4. The total Fundraising Expenses of the charitable
21 organization;

22 5. The actual percentage of contributions solicited that
23 remained in Oklahoma; and
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1 ~~5.~~ 6. The aggregate amount paid, or payable, to professional
2 fundraisers and professional fundraising counsel.

3 C. Any registration form required to be filed under this
4 section shall be executed by signature, without more, of the person
5 or persons signing the form, in which case the signature or
6 signatures shall constitute the affirmation of the signatory, under
7 penalty of perjury, that the signature is that person's act and deed
8 or the act and deed of the organization, and that the facts stated
9 therein are true.

10 D. If a charitable organization that is registered with the
11 Secretary of State to solicit contributions in this state changes
12 its name or the mailing address of its principal office, or plans to
13 engage in the solicitation of contributions using a name that is not
14 listed on its registration form, then it shall, prior to soliciting
15 any funds in this state using any such name, file with the Secretary
16 of State a statement executed by an authorized officer of the
17 organization setting forth any new name and mailing address along
18 with a fee of Twenty-five Dollars (\$25.00). Such fee shall be
19 deposited to the credit of the General Revenue Fund of the State
20 Treasury.

21 E. Any fraternal or membership organization not based in
22 Oklahoma which solicits contributions from any person of this state
23 by telephone, or contracts with professional fundraisers to solicit
24 such contributions, shall be required to have at least one member or

1 employee of the fraternal or membership organization residing within
2 the county where the call is received.

3 SECTION 3. AMENDATORY 18 O.S. 2011, Section 552.14a, is
4 amended to read as follows:

5 Section 552.14a A. Applicable to charitable organizations,
6 professional fundraisers and professional solicitors, the following
7 shall constitute violations of this act:

8 1. Knowingly making any false material statement or
9 representation on a registration application;

10 2. Using the name of a person when soliciting contributions or
11 in an advertisement, brochure, stationery or correspondence, without
12 the consent or approval of such person, other than an officer,
13 director or trustee of the charitable organization by or for which
14 contributions are solicited. This paragraph shall not apply to the
15 use of the name of a person that has contributed to or sponsored an
16 event or program of the charitable organization in a report,
17 brochure, program or listing of donors, contributors, sponsors, or
18 supporters issued or published by a charitable organization. This
19 paragraph shall not apply to the use of a public figure's name
20 and/or likeness truthfully and in good faith, so long as such use
21 does not imply a false endorsement;

22 3. Knowingly using, in connection with solicitation of
23 contributions for the purpose of deceiving the public, a name
24 similar to other charitable organizations, professional fundraiser,

1 professional solicitor or government agency or political
2 subdivision;

3 4. Failing to register as required pursuant to ~~Sections~~ Section
4 552.3, 552.7 or 552.9, as applicable, of ~~Title 18 of the Oklahoma~~
5 ~~Statutes~~ this title unless otherwise exempted by this act;

6 5. Employing in any solicitation or collection of contributions
7 for a charitable organization any device, scheme or artifice to
8 defraud or for obtaining money or property by means of any false
9 pretense, representation or promise; and

10 6. Failing or refusing to supply requested information as
11 required by Section 552.9 of ~~Title 18 of the Oklahoma Statutes~~ this
12 title; and

13 7. Failing or refusing to supply information as required by
14 Section 1 of this act.

15 B. The Attorney General or a district attorney may bring an
16 action:

17 1. To obtain a declaratory judgment that an act or practice
18 violates this act;

19 2. To enjoin, or to obtain a restraining order against a person
20 who has violated or is violating this act;

21 3. To recover actual damages, restitution, disgorgement and
22 penalties attributed to a violation of this act;

23 4. To recover reasonable expenses and investigation fees
24 attributable to a violation of this act;

1 5. To prosecute any civil or criminal actions as provided by
2 this act, as applicable; and

3 6. To revoke the registration of a charitable organization,
4 professional fundraiser, or professional solicitor for any violation
5 of this act.

6 C. In lieu of instigating or continuing an action or
7 proceeding, the Attorney General or a district attorney may accept a
8 consent judgment with respect to any act or practice declared to be
9 a violation of this act. Such a consent judgment shall provide for
10 the discontinuance by the person entering the same of any act or
11 practice declared to be a violation of this act, and it may include
12 a stipulation for the payment by such person of reasonable expenses,
13 attorney fees, investigation costs and penalties incurred by the
14 Attorney General or a district attorney. The consent judgment also
15 may include a stipulation for restitution to be made by such person
16 to contributors of money, property or other things received from
17 contributors in connection with a violation of this act and also may
18 include a stipulation for specific performance. Any consent
19 judgment entered into pursuant to this section shall not be deemed
20 to admit the violation, unless it does so by its terms. Before any
21 consent judgment entered into pursuant to this section shall be
22 effective, it must be approved by the district court and an entry
23 made in the manner required for making an entry of judgment. After
24 such approval is received, any breach of the conditions of such

1 consent judgment shall be treated as a violation of a court order,
2 and shall be subject to all the penalties provided by law therefor.

3 D. In any action brought by the Attorney General or a district
4 attorney, the court may:

5 1. Make such orders or judgments as may be necessary to prevent
6 the use or employment by a person of any practice declared to be a
7 violation of this act;

8 2. Make such orders or judgments as may be necessary to
9 compensate any person for damages sustained;

10 3. Enjoin any person from engaging in solicitation of
11 charitable contributions in this state;

12 4. Revoke the registration of a charitable organization,
13 professional fundraiser or professional solicitor;

14 5. Enter any order that is appropriate in a criminal
15 prosecution of crimes identified in this act or any other state law;
16 and

17 6. Grant other appropriate relief.

18 E. When an action is filed under this act by the Attorney
19 General or a district attorney, no action seeking an injunction or
20 declaratory judgment shall be filed in any other district in this
21 state based upon the same transaction or occurrence, series of
22 transactions or occurrences, or allegations that form the basis of
23 the first action filed.

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1 F. When the Attorney General or a district attorney has reason
2 to believe that a person has engaged in, is engaging in or is about
3 to engage in any practice declared to be in violation of this act
4 and he or she believes it to be in the public interest that an
5 investigation should be made to ascertain whether a person has in
6 fact engaged in, is engaging in or is about to engage in any such
7 practice, he or she may execute in writing and cause to be served
8 upon any such person who is believed to have information,
9 documentary material or physical evidence relevant to the alleged
10 violation an investigative demand requiring such person to furnish,
11 under oath or otherwise, a report in writing setting forth the
12 nonprivileged relevant facts and circumstances of which the person
13 has knowledge, or to appear and testify, or to produce relevant
14 nonprivileged documentary material or physical evidence for
15 examination at such reasonable time and place as may be stated in
16 the investigative demand, concerning the solicitation of charitable
17 contributions.

18 G. To accomplish the objectives and to carry out the duties
19 prescribed by this act, the Attorney General or district attorney,
20 in addition to other powers conferred on him or her by this act or
21 the laws of this state, may issue subpoenas or other process to any
22 person and conduct hearings in aid of any investigation or inquiry,
23 administer oaths and take sworn statements under penalty of perjury,
24 and serve and execute in any county, search warrants; provided, that

1 none of the powers conferred by this act shall be used for the
2 purpose of compelling any natural person to furnish testimony or
3 evidence that might tend to incriminate him or her or subject him
4 or her to a penalty; and provided further, that information obtained
5 pursuant to the powers conferred by this act shall not be made
6 public or disclosed by the Attorney General, district attorney or
7 their employees unless otherwise provided under this act.

8 H. In addition to any other penalties provided under this act,
9 a charitable organization, professional fundraiser, or professional
10 solicitor that is found to be in violation of the Oklahoma
11 Solicitation of Charitable Contributions Act in a civil action or
12 who willfully violates the terms of any injunction or court order
13 issued pursuant to the Oklahoma Solicitation of Charitable
14 Contributions Act shall pay a civil penalty of not more than Ten
15 Thousand Dollars (\$10,000.00) per violation, taking into account the
16 nature and severity of the violation and the benefit provided to the
17 public by the violator, along with the need for protecting
18 contributors and donors. For the purposes of this section, the
19 district court issuing an injunction shall retain jurisdiction, and
20 in such cases, the Attorney General, acting in the name of the
21 state, or a district attorney may petition for recovery of civil
22 penalties.

23 I. In administering and pursuing actions under this act, the
24 Attorney General and a district attorney are authorized to sue for

1 and collect reasonable expenses, attorney fees, and investigation
2 fees as determined by the court. Civil penalties or contempt
3 penalties sued for and recovered by the Attorney General or a
4 district attorney shall be used for the furtherance of their duties
5 and activities under this act.

6 J. In addition to other penalties imposed by this act, any
7 person convicted in a criminal proceeding of committing an act
8 prohibited in paragraph 1, 3 or 5 of subsection A of this section,
9 shall be guilty of a felony and upon conviction thereof shall be
10 subject to a fine not to exceed Ten Thousand Dollars (\$10,000.00) or
11 imprisonment in the custody of the Department of Corrections for not
12 more than five (5) years, or by both such fine and imprisonment.

13 SECTION 4. This act shall become effective November 1, 2021.

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15 58-1-5995 AQH 12/23/20

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