

SENATE BILL 1661

By Swann

AN ACT to amend Tennessee Code Annotated, Title 48,
Chapter 101, Part 5, relative to charitable
organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-101-501(1), is amended by
deleting the subdivision and substituting:

(1) "Charitable organization":

(A) Means:

(i) A person that is determined by the internal revenue service to
be a tax-exempt organization pursuant to section 501(c)(3) of the Internal
Revenue Code (26 U.S.C. § 501(c)(3)); or

(ii) A person who is or holds itself out to be a benevolent,
educational, voluntary health, philanthropic, humane, patriotic, religious,
or eleemosynary organization, or for the benefit of law enforcement
personnel, firefighters, veterans, or other persons who protect the public
safety, or a person who solicits or obtains contributions solicited from the
public for charitable purposes. A chapter, branch, area, office, or similar
affiliate or person soliciting contributions within this state for a charitable
organization that has its principal place of business outside this state is
deemed a charitable organization for the purposes of this part; and

(B) Does not include an authorized individual who solicits, by authority of
the organization, solely on behalf of a registered or exempt organization or on
behalf of an organization excluded from the definition of charitable organization;

SECTION 2. Tennessee Code Annotated, Section 48-101-501(4), is amended by deleting the subdivision and substituting:

(4) "Disaster" means a natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the governor, or the president of the United States. "Disaster" is identifiable by the severity of resulting damage, as follows:

(A) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement;

(B) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance; and

(C) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance;

SECTION 3. Tennessee Code Annotated, Section 48-101-501(9), is amended by deleting the subdivision and substituting:

(9) "Secretary of state" or "secretary" means the secretary of state or the secretary of state's authorized representative or designee;

SECTION 4. Tennessee Code Annotated, Section 48-101-501, is amended by designating the existing language as subsection (b) and adding the following new subsection (a):

This part is known and may be cited as the "Charitable Solicitations Act."

SECTION 5. Tennessee Code Annotated, Section 48-101-501(b), is amended by adding the following new subdivisions:

() "Bona fide Indian organization" means an organization that has been in existence for more than twenty (20) years and that carries out programs and provides services to members of a federally recognized Indian tribe;

() "Charitable purpose":

(A) Means:

(i) A purpose described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)); or

(ii) A purpose to achieve:

(a) A benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary objective; or

(b) An objective that benefits law enforcement personnel, firefighters, veterans, or other persons who protect the public safety; and

(B) Is not limited to only those purposes for which contributions are tax deductible under section 170 of the Internal Revenue Code (26 U.S.C. § 170);

() "Bona fide religious institutions" include:

(A) Ecclesiastical or denominational organizations, churches, or established physical places for worship in this state, at which nonprofit religious services and activities are regularly conducted and carried on;

(B) Bona fide religious groups that do not maintain specific places of worship, that are not subject to federal income tax, and are not required to file an IRS Form 990;

(C) Such separate groups or corporations that form an integral part of those institutions that are exempt from federal income tax as exempt

organizations under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), or of a corresponding section of a subsequently enacted federal revenue act, that are not required to file an IRS Form 990, and that are not primarily supported by funds solicited outside of their own membership or congregation; and

(D) Such institutions soliciting contributions for the construction and maintenance of a house of worship or residence of a clergy member;

() "Charitable sales promotion" means an advertising or sale conducted by a person who represents that the purchase or use of goods or services offered by the person will benefit, in whole or in part, a charitable organization or charitable purpose. The provision of advertising services to a charitable organization, either for compensation or as a donation, does not of itself constitute a charitable sales promotion;

() "Division" means the department of state's division of business and charitable organizations;

() "Generally accepted auditing standards" means the auditing standards issued by the American Institute of Certified Public Accountants for the conduct and reporting of financial audits;

() "Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fundraising, and expenditures, or assists or advises one (1) or more chapters, branches, or affiliates in this state. A federated fund-raising organization is not a parent organization;

SECTION 6. Tennessee Code Annotated, Section 48-101-502(a)(2), is amended by deleting the subdivision and substituting:

(2)

(A) A charitable organization that does not raise or receive contributions from the public in excess of fifty thousand dollars (\$50,000) during a fiscal year; provided, that if the contributions raised from the public by a charitable organization during a fiscal year exceed fifty thousand dollars (\$50,000), the charitable organization, within thirty (30) days after the date it receives total contributions exceeding fifty thousand dollars (\$50,000), shall register with, and report to, the secretary of state as required by this part;

(B) Notwithstanding subdivision (a)(2)(A), a charitable organization shall file registration statements with the secretary of state pursuant to this part if a portion of their fundraising activities are conducted by professional solicitors, professional fundraising counsel, or commercial coventurers;

SECTION 7. Tennessee Code Annotated, Section 48-101-502(c), is amended by deleting the subsection.

SECTION 8. Tennessee Code Annotated, Section 48-101-502(d)(2), is amended by adding the following language at the end of the subdivision:

An organization that fails to file the form required by this part may be subject to the imposition of civil penalties pursuant to § 48-101-514 for a violation of this section.

SECTION 9. Tennessee Code Annotated, Section 48-101-503(a), is amended by deleting the language "may" and substituting "shall".

SECTION 10. Tennessee Code Annotated, Section 48-101-503(b), is amended by deleting the subsection.

SECTION 11. Tennessee Code Annotated, Section 48-101-504(b)(1), is amended by deleting the last sentence of the subdivision.

SECTION 12. Tennessee Code Annotated, Section 48-101-504(a)(2)(D), is amended by adding the language "or, if the organization has applied for, but not received, a determination of tax-exempt status, a copy of the completed application that has been submitted to the internal revenue service and any letters from the internal revenue service acknowledging receipt of the application" after "Internal Revenue Code (26 U.S.C.)".

SECTION 13. Tennessee Code Annotated, Section 48-101-504(a)(2)(G), is amended by adding the language "or has ever been subject to an administrative order" after "soliciting contributions".

SECTION 14. Tennessee Code Annotated, Section 48-101-504(c)(4), is amended by deleting the language "overhead, expenses, commissions and similar purposes" and substituting "expenses and commissions".

SECTION 15. Tennessee Code Annotated, Section 48-101-504(e), is amended by deleting the subsection.

SECTION 16. Tennessee Code Annotated, Section 48-101-506(b)(1), is amended by deleting the subdivision and substituting:

(1) A copy of any and all forms required to be filed by the organization with the United States internal revenue service, and any other information the secretary deems appropriate to substantiate how funds were raised and spent by the organization. Such other information must be provided on forms approved by the secretary. At least two (2) authorized officers of the organization, one (1) of whom must be the chief fiscal officer, shall certify that the information provided under this subdivision (b)(1) is true and correct to the best of their knowledge;

SECTION 17. Tennessee Code Annotated, Section 48-101-506(d), is amended by deleting the language "annual registration application" and substituting "renewal registration application".

SECTION 18. Tennessee Code Annotated, Section 48-101-506(e), is amended by adding the language "for good cause shown" in the first sentence of subsection (e) after "for filing a renewal application".

SECTION 19. Tennessee Code Annotated, Section 48-101-506(f)(1), is amended by deleting the language "report" and substituting "application".

SECTION 20. Tennessee Code Annotated, Section 48-101-506(f)(1), is amended by deleting the language "is also subject to" and substituting "may also be subject to".

SECTION 21. Tennessee Code Annotated, Section 48-101-507(a)(4), is amended by deleting the language "is also subject to" and substituting "may also be subject to".

SECTION 22. Tennessee Code Annotated, Section 48-101-507(b)(2), is amended by deleting the language "is also subject to" and substituting "may also be subject to".

SECTION 23. Tennessee Code Annotated, Section 48-101-508, is amended by deleting subsection (a) and substituting the following:

() The division shall examine each filing and supporting documents submitted by all applicants and shall determine whether the registration requirements are satisfied. If the registration requirements are not satisfied, then the division shall deny the registration or take other action provided under this part. The division shall notify the applicant within ten (10) business days if a registration application or renewal application has been denied or if an action is taken in response to an exemption statement filed under § 48-101-502. Within seven (7) business days after receipt of the notification that the registration requirements are not satisfied or that an action is taken in response to an exemption statement filed under § 48-101-502, the applicant may request administrative review. The administrative review must be held within seven (7) business days of the request. A final decision regarding the denial of the applicant's registration must be rendered within three (3) business days of the administrative review.

SECTION 24. Tennessee Code Annotated, Section 48-101-509(a), is amended by deleting the language "and in accordance with the rules and regulations prescribed by the secretary of state".

SECTION 25. Tennessee Code Annotated, Section 48-101-512, is amended by designating the existing language as subsection (a) and adding the following subsection (b):

(b) If a person solicits by telephone, then the identifications required by subsection (a) must be made orally.

SECTION 26. Tennessee Code Annotated, Section 48-101-513(f), is amended by adding the language "in a writing signed" after "without first being authorized to do so".

SECTION 27. Tennessee Code Annotated, Section 48-101-513(i), is amended by deleting the first sentence and substituting:

A person shall not, in connection with the solicitation of contributions or the sale of goods, magazines, newspaper advertising, or any other service, use the name "POLICE," "FIREFIGHTER," "FIREMEN," or "VETERAN," unless properly authorized to do so in writing by a bona fide police, firefighter, or veteran organization or police or fire department.

SECTION 28. Tennessee Code Annotated, Section 48-101-513(l)(4), is amended by deleting the language "or as large as the largest letter on the box, whichever is greater,".

SECTION 29. Tennessee Code Annotated, Section 48-101-513(l), is amended by adding the following as a new subdivision:

(10) A charitable organization or person that is not a charitable organization that places or maintains a collection receptacle for the purpose of collecting donated clothing, household items, or similar goods shall maintain a comprehensive list of the location of every such collection receptacle placed or managed by the organization or person within this state. Such list, along with

any written permissions required by subsection (h)(5), must be filed by the charitable organization or person who is not a charitable organization that places or maintains a collection receptacle for the purpose of collecting donated clothing, household items, or similar goods with the secretary of state on forms prescribed by the secretary of state. Such list must be filed on an annual basis, and an updated list must also be filed within fourteen (14) days of the placement of a new bin or the change of a bin's location.

SECTION 30. Tennessee Code Annotated, Section 48-101-514(a)(1), is amended by deleting the language ", or the secretary of state's authorized representative,".

SECTION 31. Tennessee Code Annotated, Section 48-101-514(a)(1), is amended by deleting the language "may impose a civil penalty" and substituting "may assess a civil penalty".

SECTION 32. Tennessee Code Annotated, Section 48-101-514(a)(1), is amended by deleting the language "should be imposed" and substituting "should be assessed".

SECTION 33. Tennessee Code Annotated, Section 48-101-514(a)(2)(B), is amended by adding the language "through the attorney general and reporter," after "in the name of the state,".

SECTION 34. Tennessee Code Annotated, Section 48-101-514(b)(1), is amended by deleting the language "or the secretary of state's authorized representative".

SECTION 35. Tennessee Code Annotated, Section 48-101-514(b), is amended by adding the following new subdivision (3) and redesignating the existing subdivision (3) and subsequent subdivisions accordingly:

(3) In addition to other actions authorized by law, the secretary of state, by order, letter, or other appropriate means, may enjoin the charitable organization, professional fundraiser, or other person from continuing an act or violation, or committing other acts in furtherance of it, during the course of an investigation.

SECTION 36. Tennessee Code Annotated, Section 48-101-514(b)(5), is amended by adding the language "in the name of the state, through the attorney general and reporter," after "upon application by the secretary of state,".

SECTION 37. Tennessee Code Annotated, Section 48-101-514(b)(6), is amended by deleting the language "ten (10) days" and substituting "ten (10) business days".

SECTION 38. Tennessee Code Annotated, Section 48-101-514(b)(6), is amended by deleting the language "one (1) day's notice" and substituting "five (5) business days' notice".

SECTION 39. Tennessee Code Annotated, Section 48-101-514(c)(1)(B), is amended by deleting the language "Impose civil penalties" and substituting "Assess civil penalties".

SECTION 40. Tennessee Code Annotated, Section 48-101-514(c)(1)(C), is amended by deleting the language "Appropriately remedy" and substituting "Remedy".

SECTION 41. Tennessee Code Annotated, Section 48-101-514(c)(2), is amended by deleting the subdivision and substituting:

(2) The action may be brought in a court of competent jurisdiction in the county where all or part of the alleged violation or failure to comply occurred, in the county where such person resides, in the county that has such person's principal place of conducting solicitations, or in the county where such person has conducted or transacted business or solicitation campaigns.

SECTION 42. Tennessee Code Annotated, Section 48-101-514(d), is amended by deleting the language ", or the secretary of state's designee,".

SECTION 43. Tennessee Code Annotated, Section 48-101-519(b), is amended by adding the following language at the end of the subsection:

The executed agreement must be filed by the charitable or civic organization with the secretary of state at least five (5) business days before the initiation of the charitable sales promotion. The executed agreement must be filed on forms

prescribed by the secretary of state and must state the names of the charitable or civic organization and commercial co-venturer, that the charitable organization and the commercial co-venturer will conduct a charitable sales promotion, and the date the charitable sales promotion is expected to commence.

SECTION 44. Tennessee Code Annotated, Title 48, Chapter 101, Part 5, is amended by adding the following as a new section:

The secretary of state may promulgate rules to effectuate this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 45. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2024, the public welfare requiring it.