

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 759
SENATE BILL 940

AN ACT TO REWRITE THE CHARITABLE SOLICITATIONS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131C of the General Statutes is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 131F.

"Solicitation of Contributions.

"ARTICLE 1.

"General Provisions.

"§ 131F-1. Purpose.

The General Assembly recognizes the right of persons or organizations to conduct solicitation activities. It is the intent of the General Assembly to protect the public by requiring full disclosure by persons who solicit contributions from the public of the purposes for which the contributions are solicited and how the contributions are actually used. It is the intent of the General Assembly to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.

"§ 131F-2. Definitions.

The following definitions apply in this Chapter:

- (1) 'Association' means any voluntary statewide organization of persons for common ends especially as in an organized group working together or periodically meeting because of common interests, beliefs, or professions. These associations may serve charitable organizations including environmental, health, educational, humane, patriotic, scientific, artistic, social welfare, and civic.
- (2) 'Charitable' means for a benevolent purpose, including environmental, health, educational, humane, patriotic, scientific, artistic, social welfare, and civic.
- (3) 'Charitable organization' means any person who has or holds out as having a section 501(c)(3) tax exempt determination by the Internal Revenue Service and operates for a charitable purpose, or a person who is or holds himself out to be established for a charitable or civic purpose; or a person who employs a charitable or civic appeal as the basis of a solicitation, or employs an appeal that suggests there is a charitable or civic purpose for the appeal. 'Charitable organization' includes a chapter, branch, area office, or similar affiliate soliciting

- contributions within the State for a charitable organization which has its principal place of business outside the State.
- (4) 'Charitable sales promotion' means an advertising or sales campaign that represents that the purchase or use of goods or services offered by a coventurer is to benefit a charitable organization. The provision of advertising services alone to a charitable organization does not constitute a charitable sales promotion.
- (5) 'Contribution' means a promise, pledge, grant of any money or property, financial assistance, or any other thing of value in response to a solicitation. 'Contribution' includes, in the case of a charitable organization or sponsor offering a good or service to the public, the excess of the price at which the charitable organization or sponsor or any person acting on behalf of the charitable organization or sponsor sells the good or service to the public over the fair market value of the good or service. 'Contribution' does not include bona fide fees, dues, or assessments paid by members if the membership is not conferred solely as consideration for making a contribution in response to a solicitation. 'Contribution' does not include funds obtained by a charitable organization or sponsor under government grants or contracts.
- (6) 'Coventurer' means any person who, for compensation, conducts a charitable sales promotion or a sponsor sales promotion, other than in connection with the solicitation of contributions.
- (7) 'Department' means the Department of Human Resources.
- (8) 'Emergency service employees' means employees who are firefighters, ambulance drivers, emergency medical technicians, or paramedics.
- (9) 'Federated fund-raising organization' means a federation of independent charitable organizations which have voluntarily joined together, including a united way, united arts fund, or community chest, for the purpose of raising and distributing contributions and where membership does not confer operating authority and control of the individual organization upon the federated group organization.
- (10) 'Fund-raising consultant' means any person who meets all of the following:
- a. Is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, consult, or prepare material for the solicitation of contributions in this State.
 - b. Does not solicit contributions or employ, procure, or engage any person to solicit contributions.
 - c. Does not at any time have custody or control of contributions.
- (11) 'Fund-raising costs' means those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fund-raising

costs include salaries, rent, acquiring and obtaining mailing lists, printing, mailing, all direct and indirect costs of soliciting, and the cost of unsolicited merchandise sent to encourage contributions.

- (12) 'Law enforcement officers' means persons who are elected, appointed, or employed by the State or any political subdivision of the State and who meet either of the following:
- a. Are vested with the authority to bear arms and make arrests and have primary responsibility to prevent and detect crime or enforce the criminal, traffic, or highway laws of the State.
 - b. Have responsibility for supervision, protection, care, custody, or control of inmates within a correctional institution.
- (13) 'Membership' means the relationship of a person to an organization that entitles that person to the privileges, professional standing, honors, or other direct benefits of the organization in addition to the right to vote, elect officers, and hold office in the organization.
- (14) 'Owner' means any person who has a direct or indirect interest in any fund-raising consultant or solicitor.
- (15) 'Parent organization' means that part of a charitable organization or sponsor which coordinates, supervises, or exercises control over policy, fund-raising, and expenditures, or assists or advises one or more chapters, branches, or affiliates of a charitable organization or sponsor.
- (16) 'Person' means any individual, organization, trust, foundation, association, group, entity, partnership, corporation, society, or any combination of these acting as a unit.
- (17) 'Religious institution' means any church, ecclesiastical, or denominational organization, or any established physical place for worship in this State at which nonprofit religious services and activities are regularly conducted, and any bona fide religious groups that do not maintain specific places of worship. 'Religious institution' includes any separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code, and that is primarily supported by funds solicited inside its own membership or congregation.
- (18) 'Solicitation' means a request, directly or indirectly, for money, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. 'Solicitation' may occur by any of the following methods:
- a. Any oral or written request.
 - b. Any announcement to the press, radio, or television, by telephone or telegraph, or by any other communication device.

- c. Distributing, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contribution.
- d. Selling or offering or attempting to sell any good, service, chance, right, or any thing of value to benefit a charitable organization or sponsor.

The selling or offering or attempting to sell is a 'solicitation' whether or not the person making the solicitation receives any contribution. It is not a 'solicitation' when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under section 501(a) of the Internal Revenue Code and described in section 501(c) of the Internal Revenue Code.

- (19) 'Solicitor' means any person who, for compensation, does not qualify as a fund-raising consultant and does either of the following:
 - a. Performs any service, including the employment or engagement of other persons or services, to solicit contributions for a charitable organization or sponsor.
 - b. Plans, conducts, manages, consults, whether directly or indirectly, in connection with the solicitation of contributions for a charitable organization or sponsor.
- (20) 'Sponsor' means a person who is or holds out to others as soliciting contributions by the use of any name that implies affiliation with emergency service employees or law enforcement officers and who is not a charitable organization. 'Sponsor' includes a chapter, branch, or affiliate that has its principal place of business outside the State, if this chapter, branch, or affiliate solicits or holds out to be soliciting contributions in this State.
- (21) 'Sponsor purpose' means any program or endeavor performed to benefit emergency service employees or law enforcement officers.
- (22) 'Sponsor sales promotion' means an advertising or sales campaign conducted by a coventurer who represents that the purchase or use of goods or services offered by the coventurer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services alone to a sponsor does not constitute a sponsor sales promotion.

"§ 131F-3. Exemptions.

The following are exempt from the provisions of this Chapter:

- (1) Any person who solicits charitable contributions for a religious institution.
- (2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.
- (3) Any person who receives less than twenty-five thousand dollars (\$25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.

- (4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body, and any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, and any foundation or department having an established identity with any of these educational institutions.
- (5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.
- (6) Any noncommercial radio or television station.
- (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).
- (8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.
- (9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.
- (10) A volunteer fire department, rescue squad, or emergency medical service.

"ARTICLE 2.

"Charitable Organizations and Sponsors.

"§ 131F-5. License of charitable organizations and sponsors required.

(a) License Required. – Unless exempted under G.S. 131F-3, a charitable organization, sponsor, or person that intends to solicit contributions in this State, to have funds solicited on its behalf, or to participate in a charitable sales promotion or sponsor sales promotion shall obtain a license by filing an application with the Department, obtaining approval of that application by the Department, and paying the applicable fee.

(b) Departmental Review. – The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A recommended decision must be made within three days of the hearing. A final decision must be made within two days after the recommended decision. The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or

continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(c) License Renewal. – The license shall be renewed on an annual basis. Any change in information from the original application for a license shall be filed annually on or before the fifteenth day of the fifth calendar month after the close of each fiscal year in which the charitable organization or sponsor solicited in this State, or by the date of any applicable extension of the federal filing date, whichever is later, provided that extensions given under this section shall not exceed three months after the initial renewal date or eight months after the conclusion of the year for which financial information is due at the time of renewal. A charitable organization or sponsor whose federal filing date has been extended shall, within seven days after receipt, forward a copy of the document granting the extension to the Department.

(d) Extension of Time. – For good cause shown, the Department may extend the time for the license renewal and the annual filing of updated information for a period not to exceed 60 days, during which time the previous license shall remain in effect.

"§ 131F-6. Information required for licensure.

(a) Initial Information Required. – The initial application for a license for a charitable organization or sponsor shall be submitted on a form provided by the Department, signed under oath by the treasurer or chief fiscal officer of the charitable organization or sponsor, and shall include the following:

- (1) The name of the charitable organization or sponsor, the purpose for which it is organized, the name under which it intends to solicit contributions, and the purpose for which the contributions to be solicited will be used.
- (2) The principal street address and telephone number of the charitable organization or sponsor and the street address and telephone numbers of any offices in this State or, if the charitable organization or sponsor does not maintain an office in this State, the name, street address, and telephone number of the person who has custody of its financial records. The parent organization that files a consolidated registration statement under G.S. 131F-7 on behalf of its chapters, branches, or affiliates shall additionally provide the street addresses and telephone numbers of all of its locations in this State.
- (3) The names and street addresses of the officers, directors, trustees, and the salaried executive personnel.
- (4) The date when the charitable organization's or sponsor's fiscal year ends.
- (5) A list or description of the major program activities.
- (6) The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.

- (7) The name of the individuals or officers who are in charge of any solicitation activities.
- (8) A financial report for the immediately preceding fiscal year upon a form provided by the Department. The report shall include the following:
 - a. The balance sheet.
 - b. A statement of support, revenue, and expenses, and any change in the fund balance.
 - c. The names and addresses of any fund-raising consultant, solicitor, and coventurer used, if any, and the amounts received from each of them, if any.
 - d. A statement of expenses in the following categories:
 - 1. Program.
 - 2. Management and general.
 - 3. Fund-raising.
- (9) In substitution for the financial report described in subdivision (8) of this subsection, a charitable organization or sponsor may submit a copy of its Internal Revenue Service Form 990 and Schedule A filed for the preceding fiscal year, or a copy of its Form 990-EZ filed for the preceding fiscal year.
- (10) A charitable organization or sponsor may include a financial report which has been audited by an independent certified public accountant or an audit with opinion by an independent certified public accountant. In the event that a charitable organization or sponsor elects to file this, this optional filing shall be noted in the Department's annual report submitted under G.S. 131F-25.
- (11) A newly organized charitable organization or sponsor with no financial history shall file a budget for the current fiscal year.
- (12) A statement indicating all of the following:
 - a. Whether or not the charitable organization or sponsor is authorized by any other state to solicit contributions.
 - b. Whether or not the charitable organization or sponsor or any of its officers, directors, trustees, or salaried executive personnel have been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets.
 - c. Whether or not the charitable organization or sponsor has had its authority denied, suspended, or revoked by any governmental agency, together with the reasons for the denial, suspension, or revocation.
 - d. Whether or not the charitable organization or sponsor has voluntarily entered into an assurance of voluntary compliance

or agreement similar to that set forth in G.S. 131F-24(c), together with a copy of that agreement.

- (13) The names, street addresses, and telephone numbers of any solicitor, fund-raising consultant, or coventurer who is acting or has agreed to act on behalf of the charitable organization or sponsor, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other compensation to be paid the fund-raising consultant, solicitor, or coventurer.
- (14) With initial licensing only, when and where the organization was established, the tax-exempt status of the organization, and a copy of any federal tax exemption determination letter. If the charitable organization or sponsor has not received a federal tax exemption determination letter at the time of initial licensing, a copy of the determination shall be filed with the Department within 30 days after receipt of the determination by the charitable organization or sponsor. If the organization is subsequently notified by the Internal Revenue Service of any challenge to its continued entitlement to federal tax exemption, the charitable organization or sponsor shall notify the Department of this fact within 30 days after receipt.

(b) Renewal Information Required. – A license shall be renewed on an annual basis. The charitable organization or sponsor shall submit any changes in the information submitted from the initial application.

"§ 131F-7. Consolidated application and renewal.

(a) Election to File Consolidated Application. – Each chapter, branch, member, or affiliate of a parent organization or association that is required to obtain a license under G.S. 131F-5 shall either file a separate application or shall report the required information to its parent organization or association. The parent organization or association may then file, on a form provided by the Department, a consolidated application for the parent organization or association and its chapters, branches, members, and affiliates located in this State.

(b) Consolidated Financial Information. – If all contributions received by chapters, branches, or affiliates are remitted directly into the parent organization's centralized accounting system from which all disbursements are made, the parent organization may submit one consolidated financial report as part of the application on a form provided by the Department.

(c) Renewal Information. – The parent organization or association may file the information required for a renewal of a license in a consolidated form provided by the Department.

"§ 131F-8. License fees.

(a) Required Fees. – Except as provided in subsections (b) and (c) of this section, every charitable organization or sponsor shall pay the following fees with each license application:

- (1) Fifty dollars (\$50.00), if the contributions received for the last fiscal year were less than one hundred thousand dollars (\$100,000).

(2) One hundred dollars (\$100.00), if the contributions received for the last fiscal year were one hundred thousand dollars (\$100,000) or more, but less than two hundred thousand dollars (\$200,000).

(3) Two hundred dollars (\$200.00), if the contributions received for the last fiscal year were two hundred thousand dollars (\$200,000) or more.

(b) Exemption. – A licensed charitable organization or sponsor that received less than five thousand dollars (\$5,000) in the last calendar or fiscal year shall not pay a fee.

(c) Parent Organization. – A parent organization or association filing on behalf of one or more chapters, branches, members, or affiliates shall pay a single license fee for itself and its other chapters, branches, members, or affiliates. These license fees shall be imposed as follows:

(1) One hundred dollars (\$100.00) for a parent organization or association and one to five chapters, branches, members, or affiliates.

(2) Two hundred dollars (\$200.00) for a parent organization or association and 6 to 10 chapters, branches, members, or affiliates.

(3) Two hundred fifty dollars (\$250.00) for a parent organization or association and 11 to 15 chapters, branches, members, or affiliates.

(4) Four hundred dollars (\$400.00) for a parent organization or association and 16 or more chapters, branches, members, or affiliates.

(d) Late Filing. – A charitable organization or sponsor which fails to file the renewal information by the due date may be assessed an additional fee for the late filing. The late filing fee shall be established by rule of the Department and shall not exceed twenty-five dollars (\$25.00) for each month or part of a month after the date on which the information was due to be filed or after the period of extension granted for the filing.

"§ 131F-9. Disclosure requirements of charitable organizations and sponsors.

(a) Contributions for Expressed Purpose. – A charitable organization or sponsor shall solicit contributions only for the purpose expressed in its application and may apply contributions only in a manner substantially consistent with that purpose.

(b) Disclosures. – A charitable organization or sponsor soliciting in this State shall include all of the following disclosures at the point of solicitation:

(1) The name of the charitable organization and state of the principal place of business of the charitable organization or sponsor.

(2) A description of the purpose for which the solicitation is being made.

(3) Upon request, the name and either the address or telephone number of a representative to whom inquiries could be addressed.

(4) Upon request, the amount of the contribution which may be deducted as a charitable contribution under federal income tax laws.

(5) Upon request, the source from which a written financial statement may be obtained. The financial statement shall be for the immediate past fiscal year and shall be consistent with G.S. 131F-6. The written financial statement shall be provided within 14 days after the request and shall state the purpose for which funds are raised, the total amount of all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the

stated purpose or disbursed for the stated purpose, and whether the services of another person or organization have been contracted to conduct solicitation activities.

(c) Printed Disclosure. – Every charitable organization or sponsor that is required to obtain a license under G.S. 131F-5 shall conspicuously display in capital letters in bold type of a minimum size 10 points, the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

'A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.'

When the solicitation consists of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page.

"ARTICLE 3.

"Fund-Raising Consultants, Solicitors, and Coventurers.

"§ 131F-15. License required for fund-raising consultant.

(a) License Required. – Unless exempted under G.S. 131F-3, a person shall not act as a fund-raising consultant in this State unless that person has obtained a license from the Department.

(b) License Application. – Applications for a license or renewal of a license shall be submitted on a form provided by the Department, shall be signed under oath, and shall include the following:

- (1) The street address and telephone number of the principal place of business of the applicant and any street addresses of business locations in this State if the principal place of business is located outside this State.
- (2) The form of the applicant's business.
- (3) The names and residence addresses of all officers, directors, and owners.
- (4) Whether any of the owners, directors, officers, or employees of the applicant are related as parent, child, spouse, or sibling to any of the following individuals:
 - a. Other directors, officers, owners, or employees of the applicant.
 - b. Any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant.
 - c. Any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.
- (5) Whether the applicant or any of the applicant's officers, directors, employees, or owners have, within the last five years, been convicted of any felony, or of any misdemeanor arising from the conduct of a solicitation for a charitable organization or sponsor or charitable or

sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.

(c) Fees. – The application for an initial or renewal license shall be accompanied by a license fee of two hundred dollars (\$200.00). A fund-raising consultant that is a partnership or corporation may obtain a license for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all of the officers, employees, and agents of the fund-raising consultant and all other persons with whom the fund-raising consultant has contracted to work under its direction shall be listed in the license application. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for additional one-year periods upon application to the Department and payment of the license fee.

(d) Contracts. – Every contract or agreement between a fund-raising consultant and a charitable organization or sponsor shall be in writing, signed by two authorized officials of the charitable organization or sponsor, and filed by the fund-raising consultant with the Department at least five days prior to the performance of any service by the fund-raising consultant. Solicitation under the contract or agreement shall not begin before the filing of the contract or agreement. The contract shall contain all of the following provisions:

- (1) A statement of the charitable purpose or sponsor purpose for which the solicitation campaign is being conducted.
- (2) A statement of the respective obligations of the fund-raising consultant and the charitable organization or sponsor.
- (3) A clear statement of the fee that will be paid to the fund-raising consultant.
- (4) The effective and termination dates.
- (5) A statement that the fund-raising consultant shall not, at any time, have control or custody of contributions.

(e) Departmental Review. – The Department shall examine each application or renewal filed by a fund-raising consultant and determine whether the requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the fund-raising consultant within 10 days after its receipt of the application or renewal. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the license requirements are not satisfied, the applicant may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A recommended decision must be made within three days of the hearing. A final decision must be made within two days after the recommended decision. The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the

review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(f) Fund. – All license fees shall be paid to the Department and deposited into the Solicitation of Contributions Fund to be used to pay the costs incurred in administering and enforcing this Chapter.

(g) Change in Information. – Unless otherwise provided, any material change in information filed with the Department pursuant to this section shall be reported in writing to the Department within seven working days after the change occurred.

"§ 131F-16. License required for solicitors.

(a) Licensure Required. – Unless exempted under G.S. 131F-3, a person shall not act as a solicitor in this State unless that person has obtained a license from the Department and paid the applicable fees.

(b) Applications. – Applications for a license or renewal of a license shall be submitted on a form provided by the Department, shall be signed under oath, and shall include the following information:

- (1) The street address and telephone number of the principal place of business of the applicant and any North Carolina street addresses if the principal place of business is located outside this State.
- (2) The form of the applicant's business.
- (3) The place and date when the applicant, if other than an individual, was legally established.
- (4) The names and residence addresses of all officers, directors, and owners.
- (5) A statement as to whether any of the owners, directors, officers, or employees of the applicant are related as parent, spouse, child, or sibling to:
 - a. Any other directors, officers, owners, or employees of the applicant.
 - b. Any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant.
 - c. Any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.
- (6) A statement as to whether the applicant or any of the directors, officers, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have been convicted, within the last five years, of any felony, or of a misdemeanor arising from the conduct of a solicitation for any charitable organization or sponsor or charitable or sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.
- (7) The names of all persons in charge of any solicitation activity.

(c) Fees. – The application for an initial or renewal license shall be accompanied by a fee of two hundred dollars (\$200.00). A solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of the partners,

members, officers, directors, agents, and employees. In that case, the names and street addresses of all the officers, employees, and agents of the solicitor and all other persons with whom the solicitor has contracted to work under that solicitor's direction, including solicitors, shall be listed in the license application or furnished to the Department within five days after the date of employment or contractual arrangement. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for an additional one-year period upon application to the Department and payment of the license fee.

(d) Bond. – A solicitor shall, at the time of application or renewal of the license, file with and have approved by the Department a bond with a surety authorized to do business in this State and to which the solicitor is the principal obligor. The amount of the bond shall be determined as follows:

- (1) Twenty thousand dollars (\$20,000), if the contributions received for the last fiscal year were less than one hundred thousand dollars (\$100,000).
- (2) Thirty thousand dollars (\$30,000), if the contributions received for the last fiscal year were at least one hundred thousand dollars (\$100,000) but less than two hundred thousand dollars (\$200,000).
- (3) Fifty thousand dollars (\$50,000), if the contributions received for the last fiscal year were at least two hundred thousand dollars (\$200,000).

The solicitor shall maintain the bond in effect as long as the license is in effect. The liability of the surety under the bond shall not exceed an all-time aggregate liability of fifty thousand dollars (\$50,000). The bond, which may be in the form of a rider to a larger blanket liability bond, shall be payable to the State and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this Chapter or any rule adopted under this Chapter.

(e) Departmental Review. – The Department shall examine each application filed by a solicitor. If the Department determines that the requirements are not satisfied, the Department shall notify the solicitor within 10 days after its receipt of the application. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the requirements are not satisfied, the applicant may request a hearing. The state shall bear the burden of proof at such hearing. The hearing shall be held within seven days after receipt of the request. Any recommended order, if one is issued, shall be rendered within three days after the hearing. The final order shall then be issued within two days after the recommended order. If there is no recommended order, the final order shall be issued within five days after the hearing. The proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provision set forth in this subsection prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(f) Solicitation Notice. – No less than five days before commencing any solicitation campaign or event, the solicitor shall file with the Department a solicitation notice on a form provided by the Department. The notice shall be signed and sworn to by the contracting officer of the solicitor and shall include:

- (1) A description of the solicitation event or campaign.
- (2) Each location and telephone number from which the solicitation is to be conducted.
- (3) The legal name and residence address of each person responsible for directing and supervising the conduct of the campaign.
- (4) A statement as to whether the solicitor will, at any time, have custody of contributions.
- (5) The account number and location of each bank account where receipts from the campaign are to be deposited.
- (6) A full and fair description of the charitable or sponsor program for which the solicitation campaign is being carried out as provided in the contract between the solicitor and the charitable organization or sponsor.
- (7) The fund-raising methods to be used.
- (8) A copy of the contract executed in accordance with subsection (g) of this section.

(g) Contracts. – Each contract or agreement between a solicitor and a charitable organization or sponsor for each solicitation campaign shall be in writing, shall be signed by two authorized officials of the charitable organization or sponsor, one of whom shall be a member of the organization's governing body and one of whom shall be the authorized contracting officer for the solicitor. Each contract or agreement shall contain all of the following provisions:

- (1) A statement of the charitable or sponsor purpose and program for which the solicitation campaign is being conducted.
- (2) A statement of the respective obligations of the solicitor and the charitable organization or sponsor.
- (3) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor. If the solicitation involves the sale of goods, services, or tickets to a fund-raising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor. Any stated percentage shall exclude any amount which the charitable organization or sponsor shall pay as fund-raising costs.
- (4) A statement of the percentage of the gross revenue for which the solicitor shall be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the amount of revenue received, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the

relevant facts known to the solicitor regarding the solicitation to be conducted by the solicitor.

(5) The effective and termination dates of the contract.

(h) Financial Report. – Within 90 days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the solicitor shall provide to the charitable organization or sponsor and file with the Department a financial report of the campaign, including the gross revenue received and an itemization of all expenses incurred. The report shall be completed on a form provided by the Department and shall be signed by an authorized official of the solicitor who shall certify under oath that the report is true and correct.

(i) Handling of Contributions. – Each contribution collected by or in the custody of the solicitor shall be solely in the name of the charitable organization or sponsor on whose behalf the contribution was solicited. Not later than two days after receipt of each contribution, the solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which account shall be in the name of that charitable organization or sponsor. The charitable organization or sponsor shall have sole control of all withdrawals from the account and the solicitor shall not be given the authority to withdraw any deposited funds from the account.

(j) Records of Solicitors. – During each solicitation campaign, and for not less than three years after its completion, the solicitor shall maintain the following records:

- (1) The date and amount of each contribution received and the name, address, and telephone number of each contributor.
- (2) The name and residence street address of each employee, agent, and any other person, however designated, who is involved in the solicitation, the amount of compensation paid to each, and the dates on which the payments were made.
- (3) A record of all contributions that at any time are in the custody of the solicitor.
- (4) A record of all expenses incurred by the solicitor for the payment of which the solicitor is liable.
- (5) A record of all expenses incurred by the solicitor for the payment of which the charitable organization or sponsor is liable.
- (6) The location of each bank or financial institution in which the solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made.
- (7) A copy of each pitch sheet or solicitation script used during the completed solicitation campaign.
- (8) If a refund of a contribution has been requested, the name and address of each person requesting the refund. If a refund was made, the amount and the date it was made.

(k) Records of Tickets. – If the solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the solicitor shall maintain for at least three years the following records:

- (1) The name and address of each contributor who purchases or donates tickets and the number of tickets purchased or donated by the contributor.
- (2) The name and address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

(l) Review of Records. – Any of the records described in this section shall be made available to the Department upon request and shall be furnished within 10 days after the request.

(m) Change in Information. – Unless otherwise provided in this Chapter, any change in any information filed with the Department under this section shall be reported in writing to the Department within seven days after the change occurs.

(n) License Rescinded. – Any person licensed as a solicitor shall permanently lose that person's license if it is determined that that person, any officer or director thereof, any person with a ten percent (10%) or greater interest therein, or any person the solicitor employs, engages, or procures to solicit for compensation, has been convicted in the last five years of a crime arising from the conduct of a solicitation for a charitable organization or sponsor or a charitable purpose or sponsor purpose.

"§ 131F-17. Disclosure requirements of solicitors.

(a) General Disclosures. – A solicitor shall comply with the following disclosures:

- (1) Prior to orally requesting a contribution or along with a written request for a contribution, a solicitor shall clearly disclose:
 - a. The name of the solicitor as on file with the Department.
 - b. If the individual acting on behalf of the solicitor identifies himself by name, the individual's legal name.
 - c. That the caller is a paid solicitor.
- (2) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt, or reminder sent to any person who has contributed or has pledged to contribute, shall include a clear disclosure of the information required under subdivision (1) of this subsection.
- (3) In addition to the information required by subdivision (1) of this subsection, any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state in capital letters in bold type of a minimum of 10 points:
'A COPY OF THE LICENSE AND FINANCIAL INFORMATION OF THE SOLICITOR MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.'

When the solicitation materials consist of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page.

- (4) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as a benefit from the solicitation campaign.
- (5) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the percentage of the contribution which may be deducted as a charitable contribution under federal income tax laws.

(b) Tickets. – A solicitor shall not represent that tickets to any event will be donated for use by another person, unless:

- (1) The solicitor has the written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.
- (2) The written commitments are filed with the Department prior to any solicitation.

The contributions solicited for donated tickets shall not be more than the amount representing the number of ticket commitments received from persons and filed with the Department. At least seven days before the date of the event, the solicitor shall give all donated tickets to each person that made the written commitment to accept them.

"§ 131F-18. Requirements of coventurers.

(a) Written Consent. – Prior to the commencement of any charitable sales promotion or sponsor sales promotion in this State conducted by a coventurer on behalf of a charitable organization or sponsor, the coventurer shall obtain the written consent of the charitable organization or sponsor whose name will be used during the charitable sales promotion or sponsor sales promotion.

(b) Rules. – The Department may adopt rules requiring disclosure in advertising for a charitable sales promotion or sponsor sales promotion of information relating to the portion or amount that will benefit the charitable organization or sponsor or the charitable purpose or sponsor purpose.

(c) Final Accounting. – A final accounting for each charitable sales promotion or sponsor sales promotion shall be prepared by the coventurer following completion. The final accounting shall be provided to the charitable organization or sponsor on whose behalf the sales promotion was conducted within 10 days after a request by the charitable organization or sponsor. The final accounting shall be kept by the coventurer for a period of three years, unless the coventurer and the charitable organization or sponsor mutually agree that the accounting should be kept by the charitable organization or sponsor instead of the coventurer. A copy of the final accounting shall be provided to the Department no later than 10 days after the Department requests it.

"ARTICLE 4.

"Prohibited Acts and Enforcement.

"§ 131F-20. Prohibited acts.

It is unlawful for any person to:

- (1) Violate or fail to comply with the requirements of this Chapter.
- (2) Act as a fund-raising consultant or solicitor after the expiration, suspension, or revocation of that person's license.
- (3) Enter into any contract or agreement with or employ a fund-raising consultant or solicitor unless that fund-raising consultant or solicitor is licensed by the Department.
- (4) Knowingly file false or misleading information in any document required to be filed with the Department or in response to any request or investigation by the Department or the Attorney General.
- (5) Make misrepresentations or misleading statements to the effect that any other person sponsors or endorses the solicitation, approves of its purpose, or is connected therewith, when that person has not given written consent to the use of that person's name.
- (6) Represent that a contribution is for or on behalf of a charitable organization or sponsor, or to use any emblem, device, or printed matter belonging to or associated with a charitable organization or sponsor, without first being authorized in writing to do so by the charitable organization or sponsor.
- (7) Use a name, symbol, emblem, device, service mark, or statement so closely related or similar to that used by another charitable organization or sponsor that the use would mislead the public.
- (8) Falsely state that the person is a member of or a representative of a charitable organization or sponsor or falsely state or represent that the person is a member of or represents law enforcement officers or emergency service employees.
- (9) Misrepresent or mislead anyone by any manner, means, practice, or device to believe that the person on whose behalf the solicitation or sale is being conducted is a charitable organization or sponsor, or that any of the proceeds of the solicitation or sale will be used for charitable or sponsor purposes.
- (10) Represent that a charitable organization or sponsor will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Department under this Chapter, or that a charitable organization or sponsor will receive an actual or estimated dollar amount or percentage per unit of goods or services purchased or used in the charitable or sponsor sales promotion that is greater than that agreed to by the coventurer and the charitable organization or sponsor.
- (11) Use or exploit the fact of registration or the filing of any report with any governmental agency to lead any person to believe that the registration in any manner constitutes an endorsement or approval by

- the State. However, use of the statement required in G.S. 131F-9(c) or G.S. 131F-17(a)(3) is not a prohibited use or exploitation.
- (12) Make misrepresentations or misleading statements to the effect that the donation of a contribution or the display of any sticker, emblem, or insignia offered to contributors shall entitle a person to any special treatment by emergency service employees or law enforcement officers in the performance of their official duties.
 - (13) Solicit contributions from another person while wearing the uniform of an emergency service employee or law enforcement officer, or while on duty as an emergency service employee or law enforcement officer, except where the solicitation is for a charitable organization or sponsor or except when soliciting contributions to benefit an emergency service employee or law enforcement officer who has been injured in the line of duty or to benefit the family or dependents of an emergency service employee or law enforcement officer who has been killed in the line of duty.
 - (14) Solicit contributions on behalf of another person using any statement that the failure to make a contribution shall result in a reduced level of law enforcement services being provided to the public or the person solicited.
 - (15) Employ in any solicitation any device or scheme to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise.
 - (16) Notify any other person by any means, as part of an advertising scheme or plan, that the other person has won a prize, received an award, or has been selected or is eligible to receive anything of value if the other person is required to purchase goods or services, pay any money to participate in, or submit to a promotion effort.
 - (17) Fail to provide complete and timely payment to a charitable organization or sponsor of the proceeds from a solicitation campaign or a charitable or sponsor sales promotion.
 - (18) Fail to apply contributions in a manner substantially consistent with the solicitation.
 - (19) Fail to identify the professional relationship to the person for whom the solicitation is being made.
 - (20) To send to any person a writing which simulates or resembles an invoice unless the intended recipient has contracted for goods, property, or services from the charitable organization or solicitor who sends the writing.

"§ 131F-21. Violation as deceptive or unfair trade practice.

Any person who commits an act or practice that violates any provision of this Chapter engages in an unfair trade practice in violation of G.S. 75-1.1.

"§ 131F-22. Criminal penalties.

Except as otherwise provided in this Chapter and in addition to any administrative or civil penalties, any person who willfully and knowingly violates a provision of this Chapter commits a Class 1 misdemeanor.

"§ 131F-23. Enforcement.

(a) Investigation. – The Department may conduct an investigation of any person whenever there is an allegation or appearance, either upon complaint or otherwise, that a violation of this Chapter or of any rule adopted or of any order issued pursuant to this Chapter has occurred or is about to occur.

(b) Subpoena Power. – The Department may issue and serve subpoenas and subpoenas **duces tecum** to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The Department, or its duly authorized representative, may administer oaths and affirmations to any person.

(c) Court Action. – In the event of substantial noncompliance with a subpoena or subpoena **duces tecum** issued or caused to be issued by the Department, the Department may petition the superior court of the county in which the person subpoenaed resides or has the principal place of business for an order requiring the subpoenaed person to appear and testify and to produce any books, accounts, records, and other documents as are specified in the subpoena **duces tecum**. The court may grant injunctive relief restraining the person from collecting contributions and any other relief, including the restraint by injunction or appointment of a receiver, or any transfer, pledge, assignment, or other disposition of the person's assets, or any concealment, alteration, destruction, or other disposition of subpoenaed books, accounts, records, or other documents and materials as the court deems appropriate, until the person or organization has fully complied with the subpoena or subpoena **duces tecum** and the Department has completed its investigation or examination. The court may also order the person to produce a financial statement that has been audited by an independent certified public accountant. Costs incurred by the Department to obtain an order granting, in whole or in part, a petition for enforcement of a subpoena or subpoena **duces tecum** shall be taxed against the subpoenaed person and failure to comply with the order shall be contempt of court.

(d) Violations. – The Department may enter an order imposing one or more of the penalties set forth in subsection (e) of this section if the Department finds that a charitable organization, sponsor, fund-raising consultant, or solicitor, or their officers, agents, directors, or employees have engaged in any of the following acts:

- (1) Violated or is operating in violation of any of the provisions of this Chapter or of the rules adopted or orders issued under this Chapter.
- (2) Made a false statement in an application, statement, or report required to be filed under this Chapter.
- (3) Refused or failed, after notice, to produce any records or to disclose any information required to be disclosed under this Chapter or the rules adopted by the Department.
- (4) Made a false statement in response to any request or investigation by the Department or the Attorney General.

(e) Penalties. – Upon a finding as set forth in subsection (d) of this section, the Department may enter an order as follows:

- (1) Imposing an administrative penalty not to exceed one thousand dollars (\$1,000) for each act or omission which constitutes a violation of this Chapter or a rule or an order.
- (2) Issuing a cease and desist order that directs that the person cease and desist specified fund-raising activities.
- (3) Refusing to register or cancelling or suspending a registration.
- (4) Placing the registrant on probation for a period of time, subject to such conditions as the Department may specify.
- (5) Issuing of a letter of concern.
- (6) Cancelling an exemption granted under G.S. 131F-3.

(f) Procedures. – Except as otherwise provided in this section, the administrative proceedings which could result in the entry of an order imposing any of the penalties specified in subsection (e) of this section are governed by Chapter 150B of the General Statutes.

(g) Disposition of Penalties. – Penalties collected by the Department under subsection (e) of this section shall be credited to the General Fund as nontax revenue.

"§ 131F-24. Civil remedies and enforcement.

(a) Civil Remedies. – In addition to other remedies authorized by law, the Attorney General may bring a civil action in superior court to enforce this Chapter. Upon a finding that any person has violated this Chapter, a court may make any necessary order or enter a judgment, including a temporary or permanent injunction, a declaratory judgment, the appointment of a master or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions in accordance with the charitable or sponsor purpose expressed in the registration statement or in accordance with the representations made to the person solicited, the reimbursement of the Department for attorneys' fees and costs, including investigative costs, and any other equitable relief the court finds appropriate. Upon a finding that any person has violated any provision of this Chapter, a court may enter an order imposing a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation.

(b) Attorney General. – The Attorney General may conduct any investigation necessary to bring a civil action under this section, including administering oaths and affirmations, subpoenaing witnesses or material, and collecting evidence.

(c) Voluntary Compliance. – The Attorney General may terminate an investigation or an action upon acceptance of a person's written assurance of voluntary compliance with this Chapter. Acceptance of an assurance may be conditioned on commitment to reimburse donors or to take other appropriate corrective action. An assurance is not evidence of a prior violation of any of this Chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is **prima facie** evidence of a violation of this Chapter.

"ARTICLE 5.

"Miscellaneous.

"§ 131F-25. Public information; annual report.

(a) Public Information Program. – The Department shall develop a public information program to further the purposes of this Chapter. The purpose of the program is to help the public recognize unlawful, misleading, deceptive, or fraudulent solicitations and make knowledgeable, informed decisions concerning contributions.

(b) Information to Be Included. – The program shall include information concerning:

- (1) The laws governing solicitations, including licensing and disclosure requirements, prohibited acts, and penalties.
- (2) The means by which the public can report suspected violations or file a complaint.
- (3) Any other information the Department believes will assist the public in making knowledgeable and informed decisions concerning contributions.

(c) Annual Report. – The Department shall prepare an annual report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the information filed under this Chapter which the Department determines will assist the public in making informed and knowledgeable decisions concerning contributions. The report shall include the following:

- (1) A list of complaints filed for which violations were found to have occurred in each of the following categories: charitable organizations, sponsors, solicitors, and fund-raising consultants.
- (2) A list of the number of investigations by the Department, enforcement actions commenced under this Chapter, and the disposition of those actions.
- (3) A list of those charitable organizations and sponsors that have voluntarily submitted an audited financial statement pursuant to G.S. 131F-6(a)(10) or an audit with an opinion prepared by an independent certified public accountant.

"§ 131F-26. Contributions solicited for, or accepted by or on behalf of, a named individual.

(a) Trust Account Required. – Contributions solicited for, or accepted by or on behalf of, a named individual shall be deposited in a trust account opened by a trustee named in a properly established trust document.

(b) Use of Trust Funds. – Contributions deposited in the trust fund may be used only for the purpose for which the contributions were solicited; if the contributions are no longer needed for the purpose for which they were solicited, they may be used for another similar charitable purpose. The trustee may disburse funds from the trust account only after making a written record verifying the purpose for which the funds will be used accompanied by documentation of the identity of the payee and the justification for the payment. The Trustee shall retain these records for each disbursement from the trust account for a period of three years after the disbursement.

"§ 131F-27. Records.

Each charitable organization, sponsor, fund-raising consultant, and solicitor shall keep, for a period of at least three years, true and accurate records as to their activities in the State. The records shall be made available to the Department for inspection and shall be furnished no later than 10 days after the request was made.

"§ 131F-28. Rule-making authority.

The Department shall have the authority to adopt rules necessary for the implementation of this Chapter or to prevent false or deceptive statements or conduct in the solicitation of charitable contributions."

Sec. 3. This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives