

CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT

Act 169 of 1975

AN ACT to regulate organizations and persons soliciting or collecting contributions for charitable purposes; to require registration, disclosure of information and licensing before solicitation of contributions; to provide for reporting of financial and other information by those licensed or registered and those claiming exemption; to prescribe standards of conduct and administration, and to prohibit certain actions; to provide for enforcement, investigation, and promulgation of rules by the attorney general; to preempt local regulation; to provide penalties for violations; and to repeal certain acts and parts of acts.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

The People of the State of Michigan enact:

400.271 Short title.

Sec. 1. This act shall be known and may be cited as the “charitable organizations and solicitations act”.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.272 Definitions.

Sec. 2. As used in this act:

(a) “Charitable organization” means a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization of persons which solicits or obtains contributions solicited from the public for charitable purposes. A chapter, branch, area office, or similar affiliate or person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state is a charitable organization. This definition does not include duly constituted religious organizations or a group affiliated with and forming an integral part of a religious organization no part of the net income of which inures to the direct benefit of any individual if it has received a declaration of current tax exempt status from the United States. The affiliated group shall not be required to obtain a declaration if the parent or principal organization has obtained tax exempt status. Charitable organization does not include a candidate or committee as defined in section 901 of Act No. 116 of the Public Acts of 1954, being section 168.901 of the Michigan Compiled Laws, or a political party qualified to be on the general election ballot pursuant to section 560a of Act No. 116 of the Public Acts of 1954, as added, being section 168.560a of the Michigan Compiled Laws.

(b) “Contribution” means the promise, grant, or payment of money or property of any kind or value, including promises to pay, except payments by members of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the organization confers a bona fide right, privilege,

professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from a governmental authority or foundation restricted as to use.

(c) "Person" means an individual, organization, group, association, partnership, corporation, trust, or any combination of them.

(d) "Soliciting material" means printed or similar material, including but not limited to labels, posters, television scripts, radio scripts, or recordings used in soliciting funds from the public.

(e) "Solicitor" means a person who solicits on behalf of a charitable organization.

(f) "Professional fund raiser" means a person who for compensation or other consideration plans, conducts, manages, or carries on a drive or campaign of soliciting contributions for or on behalf of a charitable organization, religious organization, or any other person; or who engages in the business of or holds himself out as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization is not a professional fund raiser unless his salary or other compensation is computed on the basis of funds to be raised or actually raised.

(g) "Professional solicitor" means a person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes.

(h) "Prohibited transaction" is that dealing, activity, conduct, administration, or management of the charitable organization or by any of its officers, trustees, personnel, or related persons which may be prohibited as constituting activity contrary to proper administration of the charitable organization or conduct of a fund raising campaign or solicitation by a professional fund raiser or solicitor.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.273 Charitable organization; application for license.

Sec. 3. Before a solicitation, a charitable organization which is not an exempt organization and which is not described in section 13, which solicits or intends to solicit or receives or intends to receive contributions from persons by any means whatsoever, shall file with the attorney general upon forms prescribed by him, an application for a license. It shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The principal address of the organization and the address of any office in this state. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records.

(c) The names and addresses of the officers, directors, trustees, chief executive officer, and state agent.

(d) Where and when the organization was legally established, the form of its organization, and its tax exempt status.

(e) The purpose for which it is organized and the purposes for which contributions to be solicited will be used.

(f) The fiscal year date of the organization.

(g) Whether the organization is or has ever been enjoined from soliciting contributions.

(h) All methods by which solicitations will be made.

(i) Copies of contracts between charitable organizations and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. When the contract is executed after filing of application statement, a copy shall be filed within 10 days of the date of execution.

(j) Other information as required by rule.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.274 Copies of contracts and soliciting materials.

Sec. 4. (1) True and correct copies of the contracts of professional fund raisers shall be kept on file in the offices of the charitable organization and the professional fund raiser during the term of employment and for 6 years subsequent to the date the solicitation of contributions provided for therein actually terminates.

(2) Copies of all soliciting materials shall be supplied upon request of the attorney general.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.275 Examination of license application; issuance of license; exceptions; purpose of license; suspension or revocation of license; notice; hearing; evidence of compliance.

Sec. 5. (1) An application in proper form and supported by material information required shall be examined by the attorney general. If the application and supporting material conforms to the requirements of this act and the rules, the attorney general shall issue a license to the charitable organization within 30 days, except where the organization has materially misrepresented or omitted information required or the organization has acted or is acting in violation of this act or rules promulgated hereunder.

(2) The license shall be without charge and issued to the charitable organization, its agents and representatives for the purpose of soliciting and receiving contributions and donations or to sell memberships or otherwise raise moneys from the public for the specified charitable purpose.

(3) A license issued to a professional fund raiser, professional solicitor, or a charitable organization, its agents and representatives may be suspended or revoked by the attorney general for violation of this act or rules promulgated hereunder, after reasonable notice and opportunity to be heard. The attorney general may suspend on an emergency basis, without hearing, any license issued to a professional fund raiser, professional solicitor, or a charitable organization when the attorney general specifies in the notice of emergency suspension the reasons and grounds indicating a violation

of this act or any rule which constitutes the emergency. The notice shall set forth that within 48 hours, at a designated time and place, a hearing shall be held on whether the license should be permanently suspended or revoked. The professional fund raiser, professional solicitor, or charitable organization may show compliance with the requirements of this act or the rules and shall have the burden of adducing the evidence.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.276 Notice of change in information; report.

Sec. 6. A charitable organization shall notify the attorney general within 30 days of any change in the information required to be furnished under section 3. A report shall be filed and signed by the president or other authorized officer and the chief fiscal officer of the organization.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.277 Expiration of license; renewal application and supporting information.

Sec. 7. The license of a charitable organization shall expire 1 year after the date of issuance. A charitable organization desiring renewal of a license shall file with the attorney general a renewal application and supporting information on or before 30 days prior to the expiration date.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.278 Documents; books and records; inspection.

Sec. 8. Documents required to be filed with the attorney general shall be open to public inspection. Persons subject to this act shall maintain accurate and detailed books and records at the office of the resident agent or the principal office which shall be open to inspection at all reasonable times by the attorney general or his authorized representative.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.279 Local, county, or area division supervised and controlled by superior or parent organization; registration; application statement; annual report.

Sec. 9. If a local, county, or area division of a charitable organization is directly supervised and controlled by a superior or parent organization, which is incorporated, qualified to do business or doing business within this state, the local, county, or area division is not required to register under section 3 if the superior or parent organization files an application statement on behalf of the local, county, or area division in addition to or as part of its application statement. When an application statement has been filed by a superior or parent organization, it shall file the annual report required under sections 14 and 16 on behalf of the local, county, or area division in such detail as required by the rules.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.280 Rules.

Sec. 10. The attorney general may promulgate rules necessary for the administration of this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. Emergency rules may not be promulgated pursuant to this act.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.281 Designation of resident agent; service of process.

Sec. 11. (1) An application for a license shall not be accepted from a charitable organization located in another state or country unless it first designates a resident agent in this state for the acceptance of process issued by any court.

(2) A charitable organization, person, professional fund raiser, or professional solicitor, soliciting contributions in this state but not maintaining an office within the state shall be subject to service of process as follows:

(a) By service on its registered agent within the state or if there is no registered agent, then upon the person who has been designated in the application statement as having custody of books and records within this state. When service is effected upon the person designated in the registration statement a copy of the process shall be mailed to the charitable organization at its last known address.

(b) When a charitable organization has solicited contributions in this state but does not maintain an office within the state, have a registered agent within this state and have a designated person having custody of its books and records within the state, or when a registered agent or person having custody of its books and records within the state cannot be found as shown by the return of the sheriff of the county in which the registered agent or person having custody of books and records has been represented by the charitable organization as maintaining an office, service may be made as otherwise provided by law or court rules.

(3) Solicitation of a contribution within this state by any means, is the agreement of the charitable organization, person, professional fund raiser, or professional solicitor, that any process against it or him which is served in accordance with this section is of the same legal force and effect as if served personally.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.282 Suspending filing of reports; written application and statement.

Sec. 12. Upon initial filing of an application statement pursuant to section 3, the attorney general may suspend for a reasonable, specifically designated time the filing of reports otherwise required by sections 14 and 15 as to a particular charitable corporation, trust, or organization incorporated or established for charitable purposes, upon written application filed with the attorney general, and after the attorney general has determined and acquiesced by a written statement that the interest of the public will not be prejudiced thereby.

400.283 Exemptions from licensing and financial statement requirements.

Sec. 13. The licensing and financial statement requirements of this act do not apply to any of the following:

(a) A person who requests a contribution for the relief or benefit of an individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary after deducting reasonable expenses for costs of solicitation, if any, and if all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for their services.

(b) A person who does not intend to solicit and receive and does not actually receive contributions in excess of \$8,000.00 during any 12-month period if all of its fund-raising functions are carried on by persons who are unpaid for their services and if the organization makes available to its members and the public a financial statement of its activities for the most recent fiscal year. If the gross contributions received during any 12-month period exceed \$8,000.00, the person shall file an application for license with required supporting information as provided in section 3 within 30 days after the date it has received total contributions in excess of \$8,000.00.

(c) An organization that does not invite the general public to become a member of the organization and confines solicitation activities to solicitation drives solely among its members and the members' immediate families, if the drives are not held more frequently than quarterly. "Immediate family" means the grandparents, parents, spouse, brothers, sisters, children, and grandchildren.

(d) An educational institution certified by the state board of education.

(e) A veterans' organization incorporated under federal law.

(f) An organization that receives funds from a charitable organization licensed under this act that does not solicit or intend to solicit or receive or intend to receive contributions from persons other than a charitable organization, if the organization makes available to its members and the public a financial statement of its activities for the most recent fiscal year.

(g) A licensed hospital, hospital based foundation, and hospital auxiliary that solicit funds solely for 1 or more licensed hospitals.

(h) A nonprofit service organization that is exempt from taxation pursuant to a provision of the United States internal revenue code other than section 501(c)(3), whose principal purpose is not charitable, but solicits from time to time funds for a charitable purpose by members of the organization who are not paid for the solicitation. The funds shall be wholly used for the charitable purposes for which they were solicited, and the organization shall file with the attorney general a federal form 990 or 990 AR.

(i) A nonprofit corporation whose stock is wholly owned by a religious or fraternal society that owns and operates facilities for the aged and chronically ill in which no part of the net income from the operation of the corporation inures to the benefit of a person other than the residents.

(j) Charitable organizations licensed by the department of social services that serve children and families.

(k) A person registered under and complying with the requirements of the public safety solicitation act.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 1992, Act 299, Imd. Eff. Dec. 18, 1992.

400.284 Financial statement.

Sec. 14. A charitable organization subject to this act in support of its application for a license or renewal shall file with the attorney general a financial statement covering the immediately preceding 12-month period of operation containing information and detail as shall be required on forms prescribed by the attorney general.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.285 Repealed. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

Compiler's note: The repealed section required statement of basis for claiming continuing exemption.

400.286 Continuing license upon noncompliance.

Sec. 16. The attorney general may continue under conditions the license of an organization, professional fund raiser, or professional solicitor which fails to comply with this act including failure to comply with the rules regarding prohibited transactions, standards of solicitation, conduct, or administration.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.287 Professional fund raiser; application for license; bond; renewal of license; registration or reregistration of professional solicitor.

Sec. 17. (1) A person shall not act as a professional fund raiser for a charitable organization or charitable purpose before he has filed an application for a license with the attorney general or after the expiration or cancellation of a license or renewal thereof. Applications for license shall be in writing, under oath, in the form prescribed by the attorney general. The applicant when making application, shall file with and have approved by the attorney general a bond in which the applicant shall be the principal obligor, in the sum of \$10,000.00. The bond shall run to the people of the state and to any person including charitable organizations who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of the solicitation. The aggregate limit of liability of the surety to the state and to all the persons shall not exceed the sum of the bond. Application for renewal of licenses when effected shall be for a period of 1 year, or a part thereof, expiring on June 30, and may be renewed for additional 1-year periods upon written

application, under oath, in the form prescribed by the attorney general and the filing of the bond.

(2) A person shall not act as a professional solicitor in the employ of a professional fund raiser required to be licensed before he has registered with the attorney general or after the expiration or cancellation of registration. Application for registration or reregistration shall be in writing, under oath, in the form prescribed by the attorney general. Registration or reregistration when effected shall be for a period of 1 year, or a part thereof, expiring on June 30, and may be renewed upon written application, under oath, in the form prescribed by the attorney general for additional 1-year periods.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.288 Using name of another for purpose of soliciting contributions; publishing names of contributors; prohibited names, symbols, or statements; identification.

Sec. 18. (1) A person shall not use for the purpose of soliciting contributions the name of another person, except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the consent of such other person.

(2) A person has used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on stationery, an advertisement, brochure, or in correspondence by which a contribution is solicited by or on behalf of a charitable organization or the name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or indorsed the organization or its activities.

(3) This section does not prevent the publication of names of contributors without their written consent in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(4) A charitable organization or professional fund raiser soliciting contributions shall not use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that would tend to confuse or mislead the public.

(5) A charitable organization, whether exempt or not from this act, shall supply to each solicitor and each solicitor shall have in immediate possession identification which sets forth the name of the solicitor and the name of the charitable organization on whose behalf the solicitation is conducted.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.289 Repealed. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

Compiler's note: The repealed section contained provisions to licensure or registration.

400.290 Grounds for injunction, suspension of license, or revocation of license; operating under guise or pretense.

Sec. 20. (1) The attorney general may institute an action in any circuit court to enjoin preliminarily or permanently a charitable organization, professional fund raiser, solicitor, or other person who:

(a) Engages in a method, act, or practice in violation of this act or any of the rules promulgated hereunder.

(b) Employs or uses in a solicitation or collection of contributions for a charitable organization on behalf of any other person for a charitable purpose a device, scheme, or artifice to defraud, or for obtaining money or property by means of any false pretense, deception, representation, or promise.

(2) In addition to any relief afforded under this section, the attorney general may exercise the authority to suspend or revoke a license issued pursuant to this act.

(3) The attorney general may exercise the authority granted in this section against a charitable organization or person which or who operates under the guise or pretense of being an organization or person exempted by this act and is not in fact an organization or person entitled to such an exemption.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.291 Investigation; appearance; order; service; contempt; oath or affirmation.

Sec. 21. (1) The attorney general may investigate the operations or conduct of charitable organizations, professional fund raisers, or professional solicitors subject to this act. He may require a person, corporation, institution, or association, and the officers, members, and employees and agents thereof, to appear at a named time and place in the county designated by the attorney general or where the person resides or is found, to give information under oath and to produce books, memoranda, papers, records, documents of title, evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

(2) When the attorney general requires the attendance of a person, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be served upon the person in the manner provided for service of process in civil cases at least 5 days before the date fixed for attendance. The order shall have the same force and effect as a subpoena and, upon application of the attorney general, obedience to the order may be enforced by a court having jurisdiction over the person, the circuit court for the county of Ingham, or for the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. In case of contumacy or refusal to obey the order issued by the attorney general, the court may issue an order requiring the person to appear before the court or to produce documentary evidence, if so ordered, or to give evidence touching the matter in question. Failure to obey the order of the court shall be punished by that court as a contempt. The investigation may be made by or before an assistant attorney general designated in writing by the attorney general to conduct the investigation. The attorney general or the assistant attorney general acting in his behalf may administer the necessary oath or affirmation to witnesses.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.292 Powers and duties of attorney general not restricted.

Sec. 22. This act shall not be construed to limit or restrict the exercise of powers or the performance of the duties of the attorney general which he otherwise is authorized to exercise or perform under any other provisions of law.

History: 1975, Act 169, Imd. Eff. July 20, 1975.

400.293 Conduct constituting misdemeanor; penalty; prosecution.

Sec. 23. (1) A person who does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$500.00, or imprisonment for not more than 6 months, or both:

(a) Violates this act.

(b) Solicits and receives public donations, or sells memberships in this state for and on behalf of any organization, institution, or association subject to the provisions of this act and which is not duly licensed pursuant to this act.

(c) Solicits funds under a license and thereafter diverts the same to purposes other than that for which the funds were contributed.

(2) This section shall not be construed to limit or restrict prosecution under the general criminal statutes of the state.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976.

400.294 Repeal of §§ 400.301 to 400.304.

Sec. 24. Act No. 68 of the Public Acts of 1915, being sections 400.301 to 400.304 of the Compiled Laws of 1970, is repealed.

History: 1975, Act 169, Imd. Eff. July 20, 1975.