

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 2044

By: Representative Drown
By: Senator G. Stubblefield

For An Act To Be Entitled

AN ACT TO MODIFY THE REGISTRATION OF CHARITABLE ORGANIZATIONS BEFORE SOLICITATION; TO AMEND ANNUAL FINANCIAL REPORTS AND FISCAL RECORDS REQUIREMENTS OF CHARITABLE ORGANIZATIONS; TO AMEND REGISTRATION OF PAID SOLICITORS; AND FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE REGISTRATION OF CHARITABLE ORGANIZATIONS BEFORE SOLICITATION; TO AMEND ANNUAL FINANCIAL REPORTS AND FISCAL RECORDS REQUIREMENTS OF CHARITABLE ORGANIZATIONS; AND TO AMEND REGISTRATION OF PAID SOLICITORS.

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

SECTION 1. Arkansas Code § 4-28-402 is amended to read as follows:

4-28-402. Registration of charitable organizations prior to solicitation.

(a)(1) ~~No~~ A charitable organization, in or out of the state, shall not solicit contributions from persons in this state by any means whatsoever until the charitable organization has:

(A) Registered; and

(B) Provided certain information concerning the charitable organization and its solicitation activity, as required by this subchapter, on forms to be provided by the ~~Attorney General~~ Secretary of State, and has



filed the information with the ~~Attorney General~~ Secretary of State.

(2) The information so filed shall be available to the general public as a matter of public record, except and to the extent ~~such the~~ records would otherwise be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

~~(b) The forms containing the information shall be sworn to and shall include, but not be limited to~~ The information required under subdivision (a)(1)(B) of this section shall be submitted in writing, sworn to under oath, and provided on a registration form provided by the Secretary of State, to include without limitation:

(1) The identity of the charitable organization by or for whom the solicitation is to be conducted, including without limitation:

(A) The federal Taxpayer Identification Number;

(B) Fictitious names or aliases under which the charitable organization operates;

(C) Program names under which the charitable organization solicits; and

(D) All chapters, branches, or affiliates that will operate, if any, under the registration of the parent charitable organization;

(2) The mailing address and physical address of the charitable organization;

(3) The charitable purpose for which the contributions solicited are to be used of the charitable organization;

(4) The individual or officer who will have custody of the contributions;

(5) The individuals responsible for the distribution of the contributions;

(6) The period of time during which the solicitation or promotion is to be conducted;

(7) A description of the method or methods of solicitation or promotion, in such detail as may from time to time be determined by the ~~Attorney General~~ Secretary of State;

(8) Whether ~~the~~ any solicitation or promotion is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both;

(9) If in whole or in part by paid solicitors:

- (A) The name and address of each paid solicitor;
- (B) The basis of payment;
- (C) The nature of the arrangement; and
- (D) A copy of the contract for services; and

(10) A copy of the appropriate Internal Revenue Service tax-exempt status form.

(c) A chapter, branch, or affiliate in this state of a registered parent charitable organization ~~shall not be~~ is not required to register provided the parent charitable organization files a consolidated financial report or tax information form for itself and the chapter, branch, or affiliate.

SECTION 2. Arkansas Code § 4-28-403 is amended to read as follows:

4-28-403. Annual financial reports and fiscal records.

(a)(1)~~(A)~~ On or before ~~May 15~~ August 1 of each year, each charitable organization subject to ~~the provisions of~~ this subchapter shall file with the ~~Attorney General~~ Secretary of State an annual financial report on forms prescribed by the Secretary of State.

(B) The annual financial report described in subdivision (a)(1)(A) of this section shall be accompanied by a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the Internal Revenue Service for the previous reporting year, except any schedules of contributors to the organization.

(2) A charitable organization which maintains its books on other than a calendar-year basis, upon application to the ~~Attorney General~~ Secretary of State, may be permitted to file the annual financial report described in subdivision (a)(1)(A) of this section with its tax or information returns referred to in this subsection within six (6) months after the close of its fiscal year.

(b)(1) A charitable organization with gross revenue in excess of five hundred thousand dollars (\$500,000) in any fiscal year it is registered shall include with its submission of the annual financial report and tax records referred to in ~~subsection (a)~~ subdivision (a)(1) of this section an audit report of a certified public accountant.

(2) For purposes of this section, "gross revenue" ~~shall~~ does not include grants or fees from government agencies.

(c) ~~Charities~~ Charitable organizations that are required to register with the ~~Attorney General~~ Secretary of State but are not required to file an information or tax return with the Internal Revenue Service should submit in lieu of the information or tax return an annual report in forms to be provided by the ~~Attorney General~~ Secretary of State.

(d) The ~~Attorney General~~ Secretary of State, ~~upon written request and for good cause shown~~, may grant an extension of time not to exceed six (6) months for the filing of the tax records and other reports required by this section upon the charitable organization's filing a notice that states the need for an extension.

(e)(1) Every charitable organization subject to the provisions of this subchapter shall keep a full and true record in such form as will enable the charitable organization accurately to provide the information required by this subchapter.

(2) All the records shall be open to inspection and copying at all times by the Secretary of State and the Attorney General.

(3) The charitable organization shall retain records for ~~no less than three (3)~~ at least five (5) years after the end of the fiscal year to which they relate.

(4)(A) Any donor lists obtained ~~pursuant to~~ under this subsection ~~shall not be~~ are not subject to disclosure ~~pursuant to~~ under the Freedom of Information Act of 1967, § 25-19-101 et seq., without a court order authorizing the disclosure.

(B) However, donor lists and other records obtained ~~pursuant to~~ under this subsection may be disclosed to other law enforcement agencies.

SECTION 3. The introductory language of Arkansas Code § 4-28-404, concerning charitable organizations exempted from registration and financial disclosure requirements, is amended to read as follows:

The following charitable organizations ~~shall not be~~ are not subject to the ~~filing or reporting requirement provisions of §§ 4-28-402, under §§ 4-28-403, and 4-28-405~~, provided each ~~such~~ organization shall submit an application for a reporting exemption to the Secretary of State, on forms prescribed by the Secretary of State, together with any information as the ~~Attorney General~~ Secretary of State may require to substantiate ~~an a~~

reporting exemption under this section:

SECTION 4. Arkansas Code § 4-28-405 is amended to read as follows:

4-28-405. Charitable organization – Filing of contracts.

(a) Each contract between a charitable organization and a fund-raising counsel shall be in writing and shall be filed by the charitable organization with the ~~Attorney General~~ Secretary of State before the performance by the fund-raising counsel of any material services ~~pursuant to~~ under the contract.

(b) The contract shall contain ~~such~~ any information ~~as~~ that will enable the ~~Attorney General~~ Secretary of State to identify the services the fund-raising counsel is to provide and the manner of his or her compensation.

SECTION 5. Arkansas Code § 4-28-406 is amended to read as follows:

4-28-406. Fund-raising counsel – Registration – Fees.

(a) ~~No~~ A person shall not act as a fund-raising counsel until he or she has first registered with the ~~Attorney General~~ Secretary of State.

(b) Applications for registration shall be submitted:

(1) ~~in~~ In writing;

(2) ~~under~~ Under oath;

(3) ~~in~~ In the form prescribed by the ~~Attorney General~~ Secretary of State; and

(4) ~~shall be accompanied~~ Accompanied by an annual fee in the sum of one hundred dollars (\$100).

(c)(1) Registrations are valid for a period of one (1) year.

(2) ~~and~~ Registrations may be renewed upon the filing of a new application and the tendering of the fee previously prescribed for registration.

SECTION 6. Arkansas Code § 4-28-407 is amended to read as follows:

4-28-407. Paid solicitors – Registration, fees, and bond – Filing of contracts – Solicitation notice – Contract requirements – Prohibited practices – Records – Deposit of funds.

(a)(1) ~~No~~ A person shall not act as a paid solicitor unless he or she has first registered with the ~~Attorney General~~ Secretary of State.

(2) Applications for registration shall be submitted:

~~(A) in~~ In writing;

~~(B) in~~ In the form prescribed by the ~~Attorney General~~
Secretary of State; and

~~(C) shall be accompanied~~ Accompanied by a fee in the amount of two hundred dollars (\$200) at the time of registration.

(3) Each registration ~~shall be~~ is valid for one (1) year and may be renewed for additional one-year periods.

(b)(1) An applicant for registration as a paid solicitor at the time of making the application shall file with and have approved by the ~~Attorney General~~ Secretary of State a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars (\$10,000), with one (1) or more responsible sureties whose liability in the aggregate as the sureties shall be no less than that sum.

(2)(A) The bond shall run to the Secretary of State and the Attorney General for the use of the state and to any person, including a charitable organization, ~~who~~ that may have a cause of action against the paid solicitor for any liabilities resulting from the paid solicitor's conduct of any activities in violation of this subchapter or arising out of a violation of this subchapter or any ~~regulation~~ rule adopted ~~pursuant to~~ under this subchapter, including any actions arising under this subchapter ~~which~~ that give rise to a violation of the Deceptive Trade Practices Act, § 4-88-101 et seq.

(B) However, the aggregate liability of the surety to the state and to all other persons, including charitable organizations, shall ~~in no event~~ not exceed the sum of the bond.

(c) ~~No less than~~ At least fifteen (15) days ~~prior to~~ before the commencement of each solicitation campaign, a paid solicitor shall file with the ~~Attorney General~~ Secretary of State a copy of the contract described in subsection (d) of this section.

(d) A contract between a paid solicitor and a charitable organization shall:

(1) Be in writing;

(2) Clearly state the respective obligations of the paid solicitor and the charitable organization, including the compensation or remuneration to be paid by the charitable organization to the paid solicitor; and

(3) Require delivery of the names and addresses of all persons making contributions and the amounts thereof to the charitable organization.

(e)(1) A paid solicitor shall not represent that any part of the contributions received will be given or donated to any charitable organization unless the organization has consented in writing to the use of its name ~~prior to~~ before the solicitation campaign.

(2) The written consent shall be signed by an authorized officer, director, or trustee of the charitable organization.

(f)(1) ~~No~~ A paid solicitor shall not represent that tickets to an event are to be donated for use by another person unless the paid solicitor has first obtained a commitment in writing from a charitable organization stating that it will accept donated tickets and specifying the number of tickets ~~which~~ that it ~~is to~~ will accept and provided no more contributions for donated tickets shall be solicited than the number of ticket commitments received from the charitable organization.

(2) A charitable organization shall not commit to accept more donated tickets than it can reasonably expect to use.

(3) Donated tickets ~~will~~ shall be used ~~in accordance with~~ according to the representations made to the consumer at the time of solicitation.

(g) A paid solicitor shall require any person he or she employs, procures, or engages to solicit to comply with the provisions of subsections (e) and (f) of this section.

(h)(1) A paid solicitor shall file a financial report for a solicitation campaign with the ~~Attorney General~~ Secretary of State no more than ninety (90) days after a solicitation campaign has been completed and on the anniversary of the commencement of any solicitation campaign which lasts more than one (1) year.

(2) The financial report shall include gross revenue and an itemization of all expenditures incurred and the amount of ~~money~~ moneys ultimately remitted to the ~~charity~~ charitable organization absent payment of any fees or costs to the paid solicitor.

(3) The report shall be completed on a form prescribed by the ~~Attorney General~~ Secretary of State.

(4) An authorized official of the paid solicitor and two (2) authorized officials of the charitable organization shall sign the report.

and they shall certify, under oath, that the report is true and complete to the best of their knowledge.

(i) A paid solicitor shall maintain during each solicitation campaign and for ~~not less than three (3)~~ at least five (5) years after the completion of each solicitation campaign the following records, which shall be available to the Secretary of State and the Attorney General for inspection upon request:

(1) The name and residence of each employee, agent, or other person involved in the solicitation campaign;

(2) Records of all income received and expenses incurred in the course of the solicitation campaign; and

(3) The names and addresses of all persons making contributions and the amounts thereof.

(j) If a paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall maintain for ~~not less than three (3)~~ at least five (5) years after the completion of the event the following record, which shall be available to the Secretary of State and the Attorney General for inspection upon request:

(1) ~~the~~ The name and address of all organizations receiving donated tickets for use by others; ~~and~~

(2) ~~including the~~ The number of tickets received by each organization.

(k) Each contribution in the control or custody of the paid solicitor shall, in its entirety and within five (5) days of its receipt, be deposited, maintained, and administered in an account in a bank or other federally insured financial institution ~~which that~~ shall be in the name of the charitable organization and over which that charitable organization ~~shall have~~ has sole control over all withdrawals.

(l) Any material change in any information filed with the ~~Attorney General~~ Secretary of State pursuant to this section shall be reported in writing by the paid solicitor to the ~~Attorney General~~ Secretary of State not more than thirty (30) days after the change occurs.

(m) All records required under this section shall be open to inspection, examination, and copying during usual and customary business hours by the Secretary of State and the Attorney General or other authorized agencies.

SECTION 7. Arkansas Code § 4-28-408(a)(1), concerning a written agreement between a charitable organization and a commercial coventurer, is amended to read as follows:

(a)(1) Every charitable organization subject to the registration requirements of this subchapter ~~which~~ that agrees to permit a charitable sales promotion to be conducted in its behalf shall obtain a written agreement from the commercial coventurer and file a copy of the agreement with the ~~Attorney General prior to~~ Secretary of State before the commencement ~~within this state~~ of the charitable sales promotion within this state.

SECTION 8. Arkansas Code § 4-28-408(b), concerning a final accounting of a charitable sales promotion, is amended to read as follows:

(b) A commercial coventurer shall keep the final accounting for each charitable sales promotion for three (3) years after the accounting date, and the accounting shall be available to the Secretary of State and the Attorney General upon reasonable request.

SECTION 9. Arkansas Code § 4-28-410 is amended to read as follows:
4-28-410. Documents.

(a) All contracts, scripts, pamphlets, handouts, and other materials used by paid solicitors shall be in writing, and true and correct copies of all documents used in any promotion shall be kept on file in the offices of the paid solicitor and in the offices of the charitable organization on whose behalf the promotion is conducted for a period of ~~three (3)~~ five (5) years from the date the solicitation of contributions for the promotion commences.

(b) The documents shall be available for inspection, examination, and copying by the Secretary of State and the Attorney General and other authorized agencies during usual and customary business hours.

SECTION 10. Arkansas Code § 4-28-411 is amended to read as follows:
4-28-411. Professional telemarketers – Registration and renewal.

(a) Every professional telemarketer ~~must~~ shall be employed in a principal-agent relationship by a paid solicitor registered ~~pursuant to~~ under this subchapter and shall, within seventy-two (72) hours after accepting employment, register with the ~~Attorney General~~ Secretary of State.

(b) ~~Application~~ An application for registration under this section shall be in writing, under oath, in the form prescribed by the ~~Attorney General~~ Secretary of State, and shall be accompanied by a fee in the sum of ten dollars (\$10.00).

(c) When effected, the registration shall be for a period of one (1) year and may be renewed upon the payment of the fee prescribed in this section for additional one-year periods.

SECTION 11. The introductory language of Arkansas Code § 4-28-412, concerning prohibited acts by a charitable organization, is amended to read as follows:

It shall be a violation of this ~~section~~ subchapter for:

SECTION 12. Arkansas Code § 4-28-412(8), concerning prohibited acts of a charitable organization involving a false or misleading statement, is amended to read as follows:

(8) Any person to knowingly make any false or misleading statements on any document required to be filed with the ~~Attorney General~~ Secretary of State;

SECTION 13. Arkansas Code § 4-28-413 is amended to read as follows:

4-28-413. Nonresident organization – Service of process.

(a) A nonresident charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer desiring to solicit funds within the State of Arkansas shall file with the ~~Attorney General~~ Secretary of State an irrevocable written consent that in suits, proceedings, and actions growing out of the violation of ~~any provision of~~ this subchapter, or as a result of any activities conducted within this state giving rise to a cause of action, service on the ~~Attorney General~~ Secretary of State shall be as valid and binding as if due service had been made on the charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer.

(b)(1) In case any process or pleadings are served upon the ~~Attorney General~~ Secretary of State, they shall be in ~~duplicate~~ triplicate, one (1) copy of which shall be filed ~~in the office of the Attorney General~~ with the Secretary of State, one (1) copy of which shall be forwarded by the Secretary

of State to the Attorney General, and the other immediately forwarded by the ~~Attorney General~~ Secretary of State by registered or certified mail to the principal office or place of business of the nonresident charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer.

(2) ~~Any service so had on the Attorney General shall be returnable in not less than thirty (30) days~~ Service placed upon the Secretary of State shall be returned no later than thirty (30) days.

SECTION 14. Arkansas Code § 4-28-415 is amended to read as follows:

4-28-415. Disposition of fees.

All registration fees collected by the ~~Attorney General~~ Secretary of State under this subchapter shall be deposited ~~in~~ into the State Treasury, and the Treasurer of State shall credit them as general revenues to the various funds in the respective amounts to each and to be used ~~for the purposes~~ as provided in the Revenue Stabilization Law, § 19-5-101 et seq.

SECTION 15. Arkansas Code Title 4, Chapter 28, Subchapter 4, is amended to add an additional section to read as follows:

4-28-416. Access to records.

The Attorney General shall have access to all records filed with the Secretary of State under this subchapter.

SECTION 16. DO NOT CODIFY. Effective date. This act is effective on and after January 1, 2018.