

SENATE BILL 259

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Katy M. Duhigg

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CHARITIES; AMENDING THE CHARITABLE SOLICITATIONS ACT TO STRENGTHEN REQUIREMENTS FOR PROFESSIONAL FUNDRAISERS AND THIRD-PARTY SOLICITORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

STBTC → ~~SECTION 1. Section 57-22-2 NMSA 1978 (being Laws 1983, Chapter 140, Section 2, as amended) is amended to read:~~

~~"57-22-2. PURPOSE.---The purpose of the Charitable~~

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~~Solicitations Act is to authorize the attorney general to monitor, supervise and enforce the charitable purposes of charitable organizations and regulate professional fundraisers and third-party solicitors operating in this state."~~←STBTC

SECTION STBTC→2.←STBTC STBTC→1.←STBTC Section 57-22-3
NMSA 1978 (being Laws 1983, Chapter 140, Section 3, as amended)
is amended to read:

"57-22-3. DEFINITIONS.--As used in the Charitable Solicitations Act:

A. "charitable organization" means [~~any~~] an entity that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or identifies itself to the public as having a charitable purpose;

B. "charitable purpose" means a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic or other eleemosynary objective or an activity conducted in support of or in the name of law enforcement officers, firefighters or other persons who protect public safety;

C. "contribution" means the promise, grant or pledge of [~~any~~] money, credit or property of any kind or value provided to a charitable organization in response to a solicitation, but does not include program service revenue or

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bona fide membership fees, dues or assessments; provided that bona fide membership fees, dues or assessments do not include contributions made in exchange for membership in a charitable organization unless membership confers rights and benefits in addition to receiving literature of the charitable organization;

D. "educational institution" means:

(1) an entity organized and operated primarily as a school, college or other instructional institution with a defined curriculum, student body and faculty, conducting classes on a regular basis; and

(2) auxiliary entities, including parent-teacher organizations, booster and support clubs that support, encourage or promote a school, college or other instructional institution and its defined curriculum, student body, faculty, facilities or activities;

E. "professional fundraiser" means a person that solicits or employs or directs others to solicit contributions from the public on behalf of a charitable organization in exchange for compensation and has custody or control of the contributions; provided that "professional fundraiser" does not include a director, officer, bona fide employee or salaried officer, volunteer, attorney, accountant or investment counselor of a charitable organization;

F. "professional fundraising counsel" means a

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person that provides services or employs or directs others to provide services for compensation to a charitable organization in the solicitation of contributions, including managing or preparing materials to be used in conjunction with ~~any~~ a solicitation; provided that the person does not:

(1) directly solicit contributions; or

(2) receive, have access to or control any contribution received in response to the solicitation; provided further that "professional fundraising counsel" does not include a director, officer, bona fide employee or salaried officer, volunteer, attorney, accountant or investment counselor of a charitable organization;

G. "religious organization" means a church, organization or group organized for the purpose of divine worship or religious teaching or other specific religious activity or any other organization that is formed in association with or to primarily encourage, support or promote the work, worship, fellowship or teaching of the church, organization or group; ~~and~~

H. "solicit" or "solicitation" means ~~any~~ the donation of nonperishable goods or a communication requesting a contribution or offering an opportunity to participate in a game of chance, raffle or similar event with the representation that the contribution or participation will support a charitable purpose, and includes:

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(1) [~~any~~] a verbal request made in person or by telephone, radio, television, electronic communication or other media;

(2) [~~any~~] a written or published request mailed, sent, delivered, circulated, distributed, posted in a public place, advertised or communicated through any medium to the public;

(3) [~~any~~] a sale or attempt to sell a good or service; and

(4) [~~any~~] an invitation to attend an assembly, event, exhibition, performance or social gathering of any kind.

A contribution is not required for a solicitation to have occurred, and "solicit" or "solicitation" does not include direct grants or allocation of funds received or solicited from [~~any~~] an affiliated fundraising organization by a member agency or unsolicited contributions received from [~~any~~] an individual donor, foundation, trust, governmental agency or other source, unless such contributions are received in conjunction with a solicitation drive; and

I. "third-party solicitor" means a person that contracts with a charitable organization to facilitate the sale of nonperishable goods as a fundraising mechanism."

SECTION STBTC→3.←STBTC STBTC→2.←STBTC Section 57-22-6.1 NMSA 1978 (being Laws 1999, Chapter 124, Section 12) is amended to read:

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"57-22-6.1. PROFESSIONAL FUNDRAISERS AND THIRD-PARTY

SOLICITORS--REGISTRATION.--

A. Professional fundraisers and third-party solicitors shall, before entering into a contract with [~~any~~] a charitable organization, except a religious organization, to solicit for or on its behalf money, nonperishable goods or other things of value:

(1) register with the attorney general on a form provided by the attorney general, pay a registration fee of two hundred dollars (\$200) and submit the names and addresses of all officers, employees, agents and contractors within five business days of their hiring or engagement;

(2) file with the attorney general a surety bond [~~pursuant to the Charitable Solicitations Act~~] at the time of registration in the amount of twenty-five thousand dollars (\$25,000); and

(3) file with the attorney general a copy of the intended written contract between the professional fundraiser or third-party solicitor and the charitable organization on whose behalf the professional fundraiser or third-party solicitor intends to conduct a solicitation campaign or set up collection receptacles or a charitable store or other means of collecting donated nonperishable goods for a charitable organization.

B. The contract between [~~the~~] a professional

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fundraiser and ~~the~~ a charitable organization shall clearly describe the:

- (1) compensation and authority of the professional fundraiser;
- (2) solicitation campaign;
- (3) location and telephone numbers from where solicitations are intended to be conducted;
- (4) list of names and addresses of all employees, agents or other persons who are to solicit during the campaign; and
- (5) copies of the solicitation literature, including scripts of any written or verbal solicitation.

C. The contract between a third-party solicitor and a charitable organization shall clearly describe the:

- (1) authority and compensation of the third-party solicitor and the share, if any, of money earned on the sale of donated nonperishable goods that does not go to the charitable organization;
- (2) location of collection receptacles, a charitable store or other means of collecting donated nonperishable goods for a charitable organization and, if a store, the store's telephone number;
- (3) list of names and addresses of all officers and agents of the third-party solicitor and of all managers and supervisors in stores in New Mexico, by location; and

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(4) other information the attorney general deems necessary.

[G-] D. The charitable organization on whose behalf the professional fundraiser or third-party solicitor is acting shall certify that the contract and solicitation and other information and materials filed with the attorney general are true and complete.

[D-] E. Within ten business days after receiving a registration pursuant to this section, the attorney general shall notify the professional fundraiser or third-party solicitor of any deficiencies in the registration, contract or bond; otherwise the filing is deemed approved as filed.

[E-] F. A professional fundraiser or third-party solicitor who fails to register with the attorney general may be assessed a late registration fee of five hundred dollars (\$500). In addition to the late fee, a professional fundraiser or third-party solicitor who fails to comply with registration or reporting requirements shall be assessed an administrative penalty of two hundred dollars (\$200) per violation."

SECTION STBTC→4.←STBTC STBTC→3.←STBTC Section 57-22-6.3 NMSA 1978 (being Laws 1999, Chapter 124, Section 14) is amended to read:

"57-22-6.3. GENERAL PROVISIONS--CHARITABLE ORGANIZATIONS--PROFESSIONAL FUNDRAISERS--THIRD-PARTY SOLICITORS--PROHIBITED PRACTICES.--A charitable organization or

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a professional fundraiser or third-party solicitor shall not:

A. engage in deceptive fundraising or third-party soliciting practices, meaning any false or misleading verbal or written statement, description or representation of any kind knowingly made in connection with a solicitation and that may, tends to or does deceive or mislead [~~any~~] a person and includes:

(1) using the name or likeness of [~~any~~] a person in solicitation literature without the express written consent of the person; provided that publication of previous contributors' names to acknowledge their contributions shall not require their express written consent;

(2) using a name, symbol or statement that is so closely related or similar to that used by another charitable organization or governmental agency that the use would tend to confuse or mislead the public; [~~and~~]

(3) misrepresenting, confusing or misleading [~~any~~] a person to reasonably believe incorrectly that the contributions being solicited are or will be used for purposes, persons or programs in the state; [~~or~~]

(4) misleading a person regarding sponsorship, endorsement or approval of the solicitation;

(5) representing that a charitable organization will receive a greater percentage of revenue than outlined in the professional fundraiser's or third-party solicitor's

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contract; and

(6) failing to disclose the market value of donated nonperishable goods to the charitable organization; or

B. collect or attempt to collect a contribution in person or by courier [~~unless~~] if:

(1) the solicitation and collection [~~or attempt to collect occur contemporaneously~~] occurs simultaneously; or

(2) the solicitation [~~includes~~] involves the sale of goods or items and the collection [~~or attempt to collect occurs contemporaneously~~] occurs simultaneously with the delivery of the goods or items agreed to be purchased by the contributor."

SECTION STBTC→5.←STBTC STBTC→4.←STBTC Section 57-22-6.4 NMSA 1978 (being Laws 1999, Chapter 124, Section 15) is amended to read:

"57-22-6.4. PROFESSIONAL FUNDRAISER--THIRD-PARTY SOLICITOR--RECORDS AND REPORTS.--

A. At least every six months, the professional fundraiser shall account in writing to the charitable organization for all contributions received and all expenses incurred under their contract. The charitable organization shall maintain a copy of the accounting of contributions and expenses for three years and make it available to the attorney general upon request. The professional fundraiser shall maintain a record of written commitments from recipients of

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donated tickets and provide those records to the attorney
general upon request.

B. All contributions of money received by the professional fundraiser shall be deposited in an account at a federally insured financial institution within two days after receipt. The account shall be established and maintained in the name of the charitable organization. Disbursements from the account shall be made upon warrants signed by an authorized representative of the charitable organization and may also be signed by the professional fundraiser.

C. The professional fundraiser shall include the following information in its accounting required by Subsection A of this section to the charitable organization:

(1) the name and address of each person contributing to the charitable organization and the date and amount of the contribution. This information shall not be publicly disclosed and shall be used only for law enforcement purposes;

(2) the name and residence address of each employee, agent or other person involved in the solicitation;

(3) the script or other instructional information provided by the charitable organization or professional fundraiser to employees, agents or other persons conducting solicitations;

(4) a description of the location and telephone

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numbers from which the solicitation campaign will be conducted if conducted by telephone;

(5) an audio recording of each telephone solicitation conducted by the professional fundraiser;

~~[(4)]~~ (6) a record of expenses incurred by the professional fundraiser that the charitable organization paid;
~~[and]~~

~~[(5)]~~ (7) the name and address of each financial institution and the account number of each account in which the professional fundraiser deposited contributions received from the solicitation;

(8) the gross revenue received and an itemized list of expenses incurred; and

(9) a sworn statement certifying that the solicitation campaign records are true and correct.

D. The professional fundraiser and the employees of the professional fundraiser shall disclose the following in solicitations:

(1) the name of the charitable organization; and
(2) the fact that the solicitation is made by or through a professional fundraiser.

E. No later than ninety days after the completion of a solicitation campaign, the professional fundraiser shall provide a detailed financial report, including gross revenue and expenses, to the charitable organization and file a copy

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with the attorney general.

F. On a schedule provided in the contract with a charitable organization, the third-party solicitor shall account in writing to the charitable organization for the market value of the total weight of goods donated within the reporting period and a detailed financial report, including gross revenue and expenses for the period. The third-party solicitor shall file a copy of the report with the attorney general.

[E-] G. Every professional fundraiser, third-party solicitor and charitable organization shall have either a registered agent in the state or shall file a consent to service of process with the attorney general. The consent to service shall be in the form prescribed by the attorney general and shall be irrevocable."

SECTION STBTC→6.←STBTC STBTC→5.←STBTC A new section of the Charitable Solicitations Act, Section 57-22-6.5 NMSA 1978, is enacted to read:

"57-22-6.5. [NEW MATERIAL] COLLECTION RECEPTACLES-- INFORMATION REQUIRED.--The operator of a collection receptacle shall display the following information on the receptacle in clear and legible letters at least three inches in height:

A. the name, address and telephone number of the charitable organization that will receive goods collected in the receptacle;

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B. if operated by a professional fundraiser or third-party solicitor, the name, address and telephone number of the professional fundraiser or third-party solicitor; and

C. a statement that financial arrangements between the professional fundraiser or third-party solicitor and the charitable organization are on file with the attorney general."

SECTION STBTC→7.←STBTC STBTC→6.←STBTC Section 57-22-9.1 NMSA 1978 (being Laws 1999, Chapter 124, Section 16) is amended to read:

"57-22-9.1. INVESTIGATIVE DEMAND--CIVIL PENALTY.--

A. Whenever the attorney general has reason to believe that [any] a person may be in possession, custody or control of information or documentary material, including an original or copy of [any] a book, record, report, memorandum, paper, communication, tabulation, chart, photograph, mechanical transcription or other tangible document or recording, that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Charitable Solicitations Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand. The demand shall require the person to answer interrogatories or to produce documentary material and permit the inspection and copying of the material. The demand of the attorney general shall not be a matter of public record and shall not be

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published by ~~him~~ the attorney general except by order of the court.

B. Each demand shall:

- (1) state the general subject matter of the investigation;
- (2) describe with reasonable certainty the information or documentary material to be provided;
- (3) identify the time period within which the information or documentary material is to be provided, which in no case shall be less than ten days after the date of service of the demand; and
- (4) state the date on which ~~any~~ documentary material ~~shall be~~ is available for inspection and copying.

C. No demand shall:

- (1) contain ~~any~~ a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state;
- (2) require the disclosure of ~~any~~ documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum by a court of the state; or
- (3) require the removal of ~~any~~ documentary material from the custody of the person upon which the demand is served except in accordance with the provisions of Subsection E of this section.

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D. Service of the demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or, if the person is not a natural person, to the registered or statutory agent for the person to be served;

(2) delivering a duly executed copy of the demand to the principal place of business in New Mexico of the person to be served; or

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at [~~his~~] the person's principal place of business in the state or, if the person has no place of business in the state, to [~~his~~] the person's principal place of business.

E. Documentary material demanded pursuant to Subsection A of this section shall be produced for inspection and copying during normal business hours at the principal place of business of the person served or may be inspected and copied at such other times and places as may be agreed upon by the person served and the attorney general.

F. Documentary material and its contents produced pursuant to a demand or answers to interrogatories shall not be produced for inspection or copying by anyone other than an authorized employee of the attorney general. The district court in the county in which the person resides or has [~~his~~] the person's principal place of business or is about to perform

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or is performing the practice that is alleged to be unlawful
[~~under~~] pursuant to the Charitable Solicitations Act may order
documentary material, its contents or answers to
interrogatories to be produced for inspection or copying by
someone other than an authorized employee of the attorney
general.

G. At any time before the return date of the
demand, a petition to set aside the demand, modify the demand
or extend the return date on the demand may be filed in the
district court in the county in which the person resides or has
[~~his~~] the person's principal place of business or is about to
perform or is performing the practice that is alleged to be
unlawful [~~under~~] pursuant to the Charitable Solicitations Act,
and the court upon showing of good cause may set aside the
demand, modify it or extend the return date on the demand.

H. If after service of the demand the person
neglects or refuses to comply with the demand, the attorney
general may invoke the aid of the court in the enforcement of
the demand.

I. This section shall not be applicable to criminal
prosecutions.

J. In an action brought pursuant to the Charitable
Solicitations Act, if the court finds that a person has
violated a provision of that act or rules promulgated pursuant
to that act, the attorney general may recover, on behalf of the

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state, a maximum civil penalty of five thousand dollars (\$5,000) per violation.

K. The attorney general may require a financial audit, conducted by an independent certified public accountant, for any charitable organization, professional fundraiser or third-party solicitor."

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