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HOUSE BILL 486

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Lisa L. Lutz

AN ACT

RELATING TO TRADE PRACTICES; TRANSFERRING ENFORCEMENT
AUTHORITY FOR THE CHARITABLE SOLICITATIONS ACT TO THE PUBLIC
REGULATION COMMISSION.

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

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
Solicitations Act is to authorize the ~~[attorney general]~~
commission to monitor, supervise and enforce the charitable
purposes of charitable organizations and regulate
professional fundraisers operating in this state."

Section 2. 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:

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

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

13 C. "commission" means the public regulation
14 commission;

15 ~~[E.]~~ D. "contribution" means the promise, grant or
16 pledge of ~~any~~ money, credit or property of any kind or
17 value provided to a charitable organization in response to a
18 solicitation, but does not include program service revenue or
19 bona fide membership fees, dues or assessments; provided that
20 bona fide membership fees, dues or assessments do not include
21 contributions made in exchange for membership in a charitable
22 organization unless membership confers rights and benefits in
23 addition to receiving literature of the charitable
24 organization;

25 ~~[D.]~~ E. "educational institution" means:

(1) an entity organized and operated
primarily as a school, college or other instructional

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1 institution with a defined curriculum, student body and
2 faculty, conducting classes on a regular basis; and
3 (2) auxiliary entities, including parent-
4 teacher organizations, booster and support clubs that
5 support, encourage or promote a school, college or other
6 instructional institution and its defined curriculum, student
7 body, faculty, facilities or activities;

8 ~~[F.]~~ F. "professional fundraiser" means a person
9 that solicits or employs or directs others to solicit
10 contributions from the public on behalf of a charitable
11 organization in exchange for compensation and has custody or
12 control of the contributions; provided that "professional
13 fundraiser" does not include a director, officer, bona fide
14 employee or salaried officer, volunteer, attorney, accountant
15 or investment counselor of a charitable organization;

16 ~~[F.]~~ G. "professional fundraising counsel" means a
17 person that provides services or employs or directs others to
18 provide services for compensation to a charitable
19 organization in the solicitation of contributions, including
20 managing or preparing materials to be used in conjunction
21 with ~~[any]~~ a solicitation; provided that the person does not:

- 22 (1) directly solicit contributions; or
23 (2) receive, have access to or control any
24 contribution received in response to the solicitation;
25 provided further that "professional fundraising counsel" does
not include a director, officer, bona fide employee or
salaried officer, volunteer, attorney, accountant or

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1 investment counselor of a charitable organization;

2 [~~G.~~] H. "religious organization" means a church,
3 organization or group organized for the purpose of divine
4 worship or religious teaching or other specific religious
5 activity or any other organization that is formed in
6 association with or to primarily encourage, support or
7 promote the work, worship, fellowship or teaching of the
8 church, organization or group; and

9 [~~H.~~] I. "solicit" or "solicitation" means [~~any~~] a
10 communication requesting a contribution or offering an
11 opportunity to participate in a game of chance, raffle or
12 similar event with the representation that the contribution
13 or participation will support a charitable purpose, and
14 includes:

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

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

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

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

A contribution is not required for a solicitation to

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1 have occurred, and "solicit" or "solicitation" does not
2 include direct grants or allocation of funds received or
3 solicited from ~~[any]~~ an affiliated fundraising organization
4 by a member agency or unsolicited contributions received from
5 ~~[any]~~ an individual donor, foundation, trust, governmental
6 agency or other source, unless such contributions are
7 received in conjunction with a solicitation drive."

8 Section 3. Section 57-22-5 NMSA 1978 (being Laws 1983,
9 Chapter 140, Section 5, as amended) is amended to read:

10 "57-22-5. ~~[ATTORNEY GENERAL]~~ COMMISSION TO MAINTAIN
11 REGISTER OF CHARITABLE ORGANIZATIONS AS PUBLIC RECORD.--The
12 ~~[attorney general]~~ commission shall establish and maintain a
13 register of all documents filed by charitable organizations
14 in accordance with the Charitable Solicitations Act. The
15 register shall be open to public inspection except that the
16 ~~[attorney general]~~ commission may withhold from public
17 inspection documents or information obtained in the course of
18 an investigation undertaken pursuant to the provisions of
19 that act or that otherwise may be withheld from public
20 inspection by law."

21 Section 4. Section 57-22-6 NMSA 1978 (being Laws 1983,
22 Chapter 140, Section 6, as amended) is amended to read:

23 "57-22-6. FILING OF REQUIRED DOCUMENTS.--

24 A. A charitable organization existing, operating or
25 soliciting in the state, unless exempted by Section 57-22-4
NMSA 1978, shall register with the ~~[attorney general]~~
commission on a form provided by the ~~[attorney general]~~

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1 commission; correct any deficiencies in its registration upon
2 notice of deficiencies provided by the ~~[attorney general]~~
3 commission; and provide a copy of its IRS Form 1023 or IRS
4 Form 1024 application for exempt status with its
5 registration.

6 B. The ~~[attorney general]~~ commission shall notify
7 each charitable organization required to register within ten
8 business days of his receipt of the registration form of any
9 deficiencies in the registration and may make rules in
10 accordance with the State Rules Act, as are necessary for the
11 proper administration of this section, including:

12 (1) requirements for filing additional
13 information, including disclosure of professional fundraising
14 counsel retained by the charitable organization; and

15 (2) provisions for suspending the filing of
16 reports or granting an exemption from the registration and
17 reporting requirements of this section for a charitable
18 organization subject to audit, registration, charter or other
19 requirements of a statewide, regional or national association
20 and if it is determined that such reports or registration is
21 not necessary for the protection of the public interest.

22 C. In addition to any other reporting requirements
23 pursuant to the Charitable Solicitations Act, every
24 charitable organization that has received tax-exempt status
25 pursuant to Section 501(c)(3) of the federal Internal Revenue
Code of 1986, as amended, and is required to file a form 990,
990EZ or 990PF pursuant to the Internal Revenue Code of 1986,

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1 as amended, shall file that form and the accompanying
2 schedule A annually with the ~~[office of the attorney general]~~
3 commission up to six months following the close of the
4 charitable organization's fiscal year. Extensions of time
5 for filing may be allowed at the discretion of the ~~[attorney~~
6 ~~general]~~ commission for good cause shown. Such forms shall
7 be public records and available for public inspection.
8 Organizations that do not file a form 990, 990EZ or 990PF
9 pursuant to the Internal Revenue Code of 1986, as amended,
10 shall file an annual report, under oath, on the form provided
11 by the ~~[attorney general]~~ commission for that purpose. A
12 charitable organization that received total revenue in excess
13 of five hundred thousand dollars (\$500,000) shall be audited
14 by an independent certified public accountant. Audits shall
15 be performed in accordance with generally acceptable
16 accounting principles. A charitable organization shall
17 correct any deficiencies in an annual report upon notice of
18 deficiencies provided by the ~~[attorney general]~~ commission.

19 D. A charitable organization that fails to register
20 before a solicitation is made or fails to timely file its tax
21 filings with the ~~[attorney general]~~ commission pursuant to
22 Subsection C of this section may be assessed a late filing
23 fee of one hundred dollars (\$100).

24 E. The ~~[attorney general]~~ commission may accept
25 information filed by a charitable organization with another
state or the federal government in lieu of the registration
and reporting requirements of the Charitable Solicitations

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1 Act if such information is determined by the ~~[attorney~~
2 ~~general]~~ commission to be in substantial compliance with the
3 registration and reporting requirements of that act."

4 Section 5. Section 57-22-6.1 NMSA 1978 (being Laws 1999,
5 Chapter 124, Section 12) is amended to read:

6 "57-22-6.1. PROFESSIONAL FUNDRAISERS--REGISTRATION.--

7 A. Professional fundraisers shall, before entering
8 into a contract with ~~[any]~~ a charitable organization, except
9 a religious organization, to solicit for or on its behalf:

10 (1) register with the ~~[attorney general]~~
11 commission on a form provided by the ~~[attorney general]~~
12 commission;

13 (2) file with the ~~[attorney general]~~ commission
14 a surety bond pursuant to the Charitable Solicitations Act;
15 and

16 (3) file with the ~~[attorney general]~~ commission
17 a copy of the intended written contract between the
18 professional fundraiser and the charitable organization on
19 whose behalf the professional fundraiser intends to conduct a
20 solicitation campaign.

21 B. The contract between the professional fundraiser
22 and the charitable organization shall clearly describe the:

23 (1) compensation and authority of the
24 professional fundraiser;

25 (2) solicitation campaign;

(3) location and telephone numbers from where
solicitations are intended to be conducted;

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1 (4) list of names and addresses of all
2 employees, agents or other persons who are to solicit during
3 the campaign; and

4 (5) copies of the solicitation literature,
5 including scripts of any written or verbal solicitation.

6 C. The charitable organization on whose behalf the
7 professional fundraiser is acting shall certify that the
8 contract and solicitation materials filed with the [~~attorney~~
9 ~~general~~] commission are true and complete.

10 D. Within ten business days after receiving a
11 registration pursuant to this section, the [~~attorney general~~]
12 commission shall notify the professional fundraiser of any
13 deficiencies in the registration, contract or bond; otherwise
14 the filing is deemed approved as filed.

15 E. A professional fundraiser who fails to register
16 with the [~~attorney general~~] commission may be assessed a late
17 registration fee of five hundred dollars (\$500)."

18 Section 6. Section 57-22-6.2 NMSA 1978 (being Laws 1999,
19 Chapter 124, Section 13) is amended to read:

20 "57-22-6.2. PROFESSIONAL FUNDRAISERS--BOND.--A
21 professional fundraiser shall file a surety bond at the time
22 of the registration with the [~~attorney general~~] commission in
23 an amount and on a form provided by the [~~attorney general~~]
24 commission. The professional fundraiser shall maintain the
25 surety bond, or alternative financial assurances approved by
the [~~attorney general~~] commission, as long as the
professional fundraiser solicits in the state."

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1 Section 7. Section 57-22-6.4 NMSA 1978 (being Laws 1999,
2 Chapter 124, Section 15) is amended to read:

3 "57-22-6.4. PROFESSIONAL FUNDRAISER--RECORDS AND
4 REPORTS.--

5 A. At least every six months, the professional
6 fundraiser shall account in writing to the charitable
7 organization for all contributions received and all expenses
8 incurred under their contract. The charitable organization
9 shall maintain a copy of the accounting of contributions and
10 expenses for three years and make it available to the
11 ~~[attorney general]~~ commission upon request.

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

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

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

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

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

7 (4) a record of expenses incurred by the
8 professional fundraiser that the charitable organization
9 paid; and

10 (5) the name and address of each financial
11 institution and the account number of each account in which
12 the professional fundraiser deposited contributions received
13 from the solicitation.

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

17 (1) the name of the charitable organization;
18 and

19 (2) the fact that the solicitation is made by
20 or through a professional fundraiser.

21 E. Every professional fundraiser and charitable
22 organization shall have either a registered agent in the
23 state or shall file a consent to service of process with the
24 [~~attorney general~~] commission. The consent to service shall
25 be in the form prescribed by the [~~attorney general~~]
commission and shall be irrevocable."

Section 8. Section 57-22-7 NMSA 1978 (being Laws 1983,

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1 Chapter 140, Section 7) is amended to read:

2 "57-22-7. RESTRICTION ON USE OF FACT OF FILING IN
3 SOLICITATION.--No solicitation for charitable purposes shall
4 use the fact or requirement of registration or of the filing
5 of [~~any~~] a report with the [~~attorney general~~] commission
6 pursuant to the Charitable Solicitations Act with the intent
7 to cause or in a manner tending to cause [~~any~~] a person to
8 believe that the solicitation, the manner in which it is
9 conducted, its purposes, any use to which the proceeds will
10 be applied or the person or organization conducting it has
11 been or will be in any way endorsed, sanctioned or approved
12 by the [~~attorney general~~] commission or [~~any~~] a governmental
13 agency or office."

14 Section 9. Section 57-22-9 NMSA 1978 (being Laws 1983,
15 Chapter 140, Section 9, as amended) is amended to read:

16 "57-22-9. AUTHORITY OF THE [~~ATTORNEY GENERAL~~]
17 COMMISSION.--

18 A. The [~~attorney general~~] commission may, on behalf
19 of the state, examine and investigate [~~any~~] a charitable
20 organization subject to the Charitable Solicitations Act to
21 ascertain the conditions of its affairs and to what extent,
22 if at all, it fails to comply with the trusts that it has
23 assumed or if it has departed from the purposes for which it
24 was formed. In the case of failure or departure, the
25 [~~attorney general~~] commission may institute, in the name of
the state, a proceeding necessary to correct the
noncompliance or departure by any remedy available [~~under~~]

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1 pursuant to the common law.

2 B. The ~~[attorney general]~~ commission may, in the
3 name of the state, seek injunctive relief, civil penalties,
4 financial accounting or restitution from ~~[any]~~ a person who
5 has failed to comply with the registration, filing or
6 disclosure provisions of the Charitable Solicitations Act or
7 who has otherwise violated the provisions of that act.

8 C. The ~~[attorney general]~~ commission, in the name
9 of the state, may initiate appropriate proceedings to seek
10 compliance with the provisions of the Charitable
11 Solicitations Act and with ~~[any]~~ rules promulgated by the
12 ~~[attorney general]~~ commission pursuant to that act. The
13 ~~[attorney general]~~ commission may promulgate rules for the
14 proper administration of that act.

15 D. Nothing in this section shall be construed to
16 preclude a person or group of persons from asserting a
17 private cause of action against a charitable organization or
18 professional fundraiser."

19 Section 10. Section 57-22-9.1 NMSA 1978 (being Laws
20 1999, Chapter 124, Section 16) is amended to read:

21 "57-22-9.1. INVESTIGATIVE DEMAND--CIVIL PENALTY.--

22 A. Whenever the ~~[attorney general]~~ commission has
23 reason to believe that ~~[any]~~ a person may be in possession,
24 custody or control of information or documentary material,
25 including an original or copy of any book, record, report,
memorandum, paper, communication, tabulation, chart,
photograph, mechanical transcription or other tangible

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1 document or recording, that the ~~[attorney general]~~ commission
2 believes to be relevant to the subject matter of an
3 investigation of a probable violation of the Charitable
4 Solicitations Act, the ~~[attorney general]~~ commission may,
5 prior to the institution of a civil proceeding, execute in
6 writing and cause to be served upon the person a civil
7 investigative demand. The demand shall require the person to
8 answer interrogatories or to produce documentary material and
9 permit the inspection and copying of the material. The
10 demand of the ~~[attorney general]~~ commission shall not be a
11 matter of public record and shall not be published by him
12 except by order of the court.

13 B. Each demand shall:

14 (1) state the general subject matter of the
15 investigation;

16 (2) describe with reasonable certainty the
17 information or documentary material to be provided;

18 (3) identify the time period within which the
19 information or documentary material is to be provided, which
20 in no case shall be less than ten days after the date of
21 service of the demand; and

22 (4) state the date on which ~~[any]~~ documentary
23 material ~~[shall be]~~ is available for inspection and copying.

24 C. No demand shall:

25 (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;

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1 (2) require the disclosure of [~~any~~] documentary
2 material that would be privileged or that for any other
3 reason would not be required by a subpoena duces tecum by a
4 court of the state; or

5 (3) require the removal of [~~any~~] documentary
6 material from the custody of the person upon which the demand
7 is served except in accordance with the provisions of
8 Subsection E of this section.

9 D. Service of the demand may be made by:

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

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

17 (3) mailing by registered mail or certified
18 mail a duly executed copy of the demand addressed to the
19 person to be served at his principal place of business in the
20 state or, if the person has no place of business in the
21 state, to his principal place of business.

22 E. Documentary material demanded pursuant to
23 Subsection A of this section shall be produced for inspection
24 and copying during normal business hours at the principal
25 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~~]

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1 commission.

2 F. Documentary material and its contents produced
3 pursuant to a demand or answers to interrogatories shall not
4 be produced for inspection or copying by anyone other than an
5 authorized employee of the ~~[attorney general]~~ commission.

6 The district court in the county in which the person resides
7 or has his principal place of business or is about to perform
8 or is performing the practice that is alleged to be unlawful
9 ~~[under]~~ pursuant to the Charitable Solicitations Act may
10 order documentary material, its contents or answers to
11 interrogatories to be produced for inspection or copying by
12 someone other than an authorized employee of the ~~[attorney~~
13 ~~general]~~ commission.

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

23 H. If after service of the demand the person
24 neglects or refuses to comply with the demand, the ~~[attorney~~
25 ~~general]~~ commission may invoke the aid of the court in the
enforcement of the demand.

I. This section shall not be applicable to criminal

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1 prosecutions.

2 J. In an action brought pursuant to the Charitable
3 Solicitations Act, if the court finds that a person has
4 violated a provision of that act or rules promulgated
5 pursuant to that act, the ~~[attorney general]~~ commission may
6 recover, on behalf of the state, a maximum civil penalty of
7 five thousand dollars (\$5,000) per violation."

8 Section 11. Section 57-22-9.2 NMSA 1978 (being Laws
9 1999, Chapter 124, Section 17) is amended to read:

10 "57-22-9.2. EXCHANGE OF INFORMATION WITH OTHER STATES.--
11 The ~~[attorney general]~~ commission may exchange information
12 obtained by the civil investigative demand with comparable
13 authorities of other states or the federal government
14 regarding charitable organizations, professional fundraisers
15 and professional fundraising counsel. Information acquired
16 by exchange with other states or the federal government shall
17 be exempt from inspection pursuant to the Inspection of
18 Public Records Act. Information shall not be exchanged with
19 comparable authorities of other states or the federal
20 government unless the information is similarly exempt from
21 inspection pursuant to applicable laws of such other states
22 or the federal government."

23 Section 12. Section 57-22-11 NMSA 1978 (being Laws 1983,
24 Chapter 140, Section 11, as amended) is amended to read:

25 "57-22-11. EXEMPTIONS FROM STATE AND LOCAL TAXATION.--
Every officer, agency, board or commission of this state, or
political subdivision of this state receiving applications

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1 for exemption from taxation shall provide to the [~~attorney~~
2 ~~general~~] commission copies of all the applications,
3 supporting documents and official responses."

4 Section 13. TEMPORARY PROVISION--TRANSFERS OF PERSONNEL,
5 FUNCTIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS.--

6 A. On the effective date of this act, all
7 appropriations, money, records, furniture, equipment and
8 other property belonging to or allocated to enforcement of
9 the Charitable Solicitations Act by the attorney general
10 shall be transferred to the public regulation commission.

11 B. Contractual obligations of the attorney general
12 related to the enforcement of the Charitable Solicitations
13 Act shall be binding on the public regulation commission.

14 Section 14. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2000.