

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: February 4, 2025

Check all that apply:

Bill Number: SB 259

Original Correction
Amendment Substitute

Sponsor: Sen. Katy Duhigg

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Professional Fundraiser Requirements

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25 | FY26 | | |
| | | | |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25 | FY26 | FY27 | | |
| | | | | |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|---------------------------------|------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB 259 makes several amendments to the Charitable Solicitations Act, NMSA 1978, §§ 57-22-1 to -11.

Section 1 adds “third-party solicitors” to the Purpose section.

Section 2 defines “third-party solicitors” and clarifies that the definition of “solicit” or “solicitation” includes donating nonperishable goods. It also strikes several instances of the word “any,” generally substituting for “a”.

Section 3 adds several requirements for contracting to solicit for or on behalf of a charitable organization, including paying a \$200 registration fee, identifying officers, employees, agents, and contractors, filing a surety bond of \$25,000, and providing the New Mexico Department of Justice (NMDOJ) with a copy of any prospective contract intended to permit a solicitation campaign or setting up means of collecting donated nonperishable goods. The section further adds third-party solicitors to the actors required to perform such actions.

The section also requires contracts between third-party solicitors and charitable organizations to contain certain disclosures relating to the authority and compensation of the solicitor, the share of money raised that does not go to the charitable organization, the location of the means of collecting donated nonperishable goods, and the identities of the solicitor’s officers, agents, and employees.

The section imposes a \$200 administrative penalty for professional fundraisers or third-party solicitors who fail to comply with registration or reporting requirements.

Section 4 defines misleading representations that both professional fundraisers and third-party solicitors are prohibited from making.

The section also clarifies that professional fundraisers and third-party solicitors are prohibited from collecting contributions in person or by courier if the solicitation and collection occur at the same time *or* if they solicit a contribution through the sale of goods or items and they collect a contribution while delivering the sold goods or items.

Section 5 requires professional fundraisers to keep and provide the NMDOJ with a record of commitments from recipients of donated tickets.

If a professional fundraiser conducts a solicitation by telephone, the section also requires them to include in their accounting to a charitable organization a description of where the solicitation campaign will be conducted, a description of its phone numbers, and an audio recording of each telephone solicitation.

The section would require a professional fundraiser to include in its accounting to a charitable organization the gross revenue received, an itemized list of expenses incurred, and a sworn statement that the campaign records are true and correct.

The section requires professional fundraisers to provide a financial report to the charitable organization and the NMDOJ within 90 days after a solicitation campaign. It also requires third-party solicitors to provide the charitable organization and the NMDOJ with a financial report and an accounting regarding the market value of the donated goods, and for their contracts with charitable organizations to provide a schedule for making the required accounting.

Section 6 creates a new section of the Charitable Solicitations Act, requiring an operator of a collection receptacle to make certain written disclosures on the receptacle, including the name and contact information of the charitable organization receiving the collected goods, the name and contact information of any professional fundraiser or third-party solicitor operating the receptacle, and a statement that “financial arrangements” have been filed with the NMDOJ.

Section 7 authorizes the NMDOJ to require a financial audit of a charitable organization, professional fundraiser, or third-party solicitor.

FISCAL IMPLICATIONS

The bill would add duties to the NMDOJ without appropriating additional funds. It is unclear whether the NMDOJ would require additional resources, including full-time employees, to fulfill the additional database maintenance, monitoring, and compliance obligations as outlined above.

SIGNIFICANT ISSUES

The bill would require certain disclosures and prohibit certain representations from professional fundraisers and third-party solicitors. Such requirements and prohibitions could implicate the First Amendment. However, the First Amendment “accords a lesser protection to commercial speech than to other constitutionally guaranteed expression” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 562–63 (1980).

PERFORMANCE IMPLICATIONS

NMDOJ would have to perform additional tasks, such as receiving and maintaining additional reports and disclosures.

ADMINISTRATIVE IMPLICATIONS

In addition to the additional tasks noted above, the NMDOJ would gain the authority to order a financial audit of “any charitable organization, professional fundraiser or third-party solicitor.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill relates to HB 62, which would repeal most of Section 57-22-9.1 (i.e., Subsections A to

I). However, because HB 62 does not repeal the entirety of Section 57-22-9.1—leaving Subsection J intact—passage of the two bills would likely not create a conflict but would require that SB 259’s added subsection be compiled as Subsection B rather than Subsection K.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

Section 6 would impose new display requirements for “collection receptacles.” “Collection receptacles” is not defined.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.