

AN ACT
RELATING TO CHARITIES; REQUIRING REGISTRATION, REPORTING AND
STANDARDS OF CONDUCT FOR CHARITABLE ORGANIZATIONS AND
PROFESSIONAL FUNDRAISERS; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.

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

Section 1. Section 57-22-1 NMSA 1978 (being Laws 1983,
Chapter 140, Section 1) is amended to read:

"57-22-1. SHORT TITLE.--Chapter 57, Article 22 NMSA
1978 may be cited as the "Charitable Solicitations Act"."

Section 2. Section 57-22-2 NMSA 1978 (being Laws 1983,
Chapter 140, Section 2) is amended to read:

"57-22-2. PURPOSE.--The purpose of the Charitable
Solicitations Act is to authorize the attorney general to
monitor, supervise and enforce the charitable purposes of
charitable organizations and regulate professional
fundraisers operating in this state."

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

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

A. "charitable organization" means any 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 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 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 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 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:

- (1) any verbal request made in person or by

telephone, radio, television, electronic communication or other media;

(2) any 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 sale or attempt to sell a good or service; and

(4) any 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 affiliated fundraising organization by a member agency or unsolicited contributions received from any individual donor, foundation, trust, governmental agency or other source, unless such contributions are received in conjunction with a solicitation drive."

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

"57-22-4. APPLICATION OF ACT.--

A. The Charitable Solicitations Act shall not apply to a religious organization, even if it is a charitable organization.

B. Exempt from the registration and reporting requirements of the Charitable Solicitations Act are:

(1) educational institutions and organizations defined in Section 6-5A-1 NMSA 1978; and

(2) persons soliciting for an individual or

group that has suffered a medical or other catastrophe and:

(a) the individual or group is identified by name at the time of the solicitation;

(b) the purpose for the solicited contribution is clearly stated; and

(c) the gross contributions collected, without any deductions for or by the solicitor or any other person, are deposited directly to an account in the name of the individual or group in a local federally insured financial institution established for that sole purpose and solely used for the direct benefit of the named individual or group as beneficiary.

C. The Charitable Solicitations Act shall apply to charitable organizations and professional fundraisers."

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

"57-22-5. ATTORNEY GENERAL TO MAINTAIN REGISTER OF CHARITABLE ORGANIZATIONS AS PUBLIC RECORD.--The attorney general shall establish and maintain a register of all documents filed by charitable organizations in accordance with the Charitable Solicitations Act. The register shall be open to public inspection except that the attorney general may withhold from public inspection documents or information obtained in the course of an investigation undertaken pursuant to the provisions of that act or that otherwise may be withheld from public inspection by law."

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

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

A. A charitable organization existing, operating

or soliciting in the state, unless exempted by Section 57-22-4 NMSA 1978, shall register with the attorney general on a form provided by the attorney general; correct any deficiencies in its registration upon notice of deficiencies provided by the attorney general and provide a copy of its IRS Form 1023 or IRS Form 1024 application for exempt status with its registration.

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

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

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

C. In addition to any other reporting requirements pursuant to the Charitable Solicitations Act, every charitable organization that has received tax-exempt status 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, as amended, shall file that form and the accompanying schedule A annually with the office of the attorney general up to six months following the close of the charitable organization's fiscal year. Extensions of time for filing may be allowed at the discretion of the attorney general for good cause shown. Such forms shall be public records and available for public inspection. Organizations that do not file a form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file an annual report, under oath, on the form provided by the attorney general for that purpose. A charitable organization that received total revenue in excess of five hundred thousand dollars (\$500,000) shall be audited by an independent certified public accountant. Audits shall be performed in accordance with generally acceptable accounting principles. A charitable organization shall correct any deficiencies in an annual report upon notice of deficiencies provided by the attorney general.

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

E. The attorney general may accept 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 Act if such information is determined by the attorney general to be in substantial compliance with the registration and reporting

requirements of that act."

Section 7. Section 57-22-7 NMSA 1978 (being Laws 1983, Chapter 140, Section 7) is amended to read:

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

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

"57-22-8. DISCLOSURE OF FUNDRAISING COSTS.--

A. All charitable organizations subject to the Charitable Solicitations Act shall disclose upon request the percentage of the funds solicited that are spent on the costs of fundraising. For purposes of this section, costs of fundraising shall include all money directly expended on fundraising and that portion of all administrative expenses and salaries of the charitable organization attributable to fundraising activities.

B. Whenever a solicitation on behalf of a charitable organization subject to the Charitable Solicitations Act is undertaken by a professional fundraiser, the professional fundraiser shall disclose that fact to prospective contributors."

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

"57-22-9. AUTHORITY OF THE ATTORNEY GENERAL.--

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

B. The attorney general may, in the name of the state, seek injunctive relief, civil penalties, financial accounting or restitution from any person who has failed to comply with the registration, filing or disclosure provisions of the Charitable Solicitations Act or who has otherwise violated the provisions of that act.

C. The attorney general, in the name of the state, may initiate appropriate proceedings to seek compliance with the provisions of the Charitable Solicitations Act and with any rules promulgated by the attorney general pursuant to that act. The attorney general may promulgate rules for the proper administration of that act.

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

Section 10. Section 57-22-10 NMSA 1978 (being Laws

1983, Chapter 140, Section 10) is amended to read:

"57-22-10. STANDARD OF CARE.--All officers, directors, managers, trustees, professional fundraisers, professional fundraising counsel or other persons having access to the money of a charitable organization intended for use for charitable purposes shall be held to the standard of care defined for fiduciary trustees under common law."

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

"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 for exemption from taxation shall provide to the attorney general copies of all the applications, supporting documents and official responses."

Section 12. A new section of the Charitable Solicitations Act is enacted to read:

"PROFESSIONAL FUNDRAISERS--REGISTRATION.--

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

- (1) register with the attorney general on a form provided by the attorney general;
- (2) file with the attorney general a surety bond pursuant to the Charitable Solicitations Act; and
- (3) file with the attorney general a copy of the intended written contract between the professional fundraiser and the charitable organization on whose behalf the professional fundraiser intends to conduct a solicitation campaign.

B. The contract between the professional fundraiser and the 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 charitable organization on whose behalf the professional fundraiser is acting shall certify that the contract and solicitation materials filed with the attorney general are true and complete.

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

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

Section 13. A new section of the Charitable Solicitations Act is enacted to read:

"PROFESSIONAL FUNDRAISERS--BOND.--A professional fundraiser shall file a surety bond at the time of the registration with the attorney general in an amount and on a

form provided by the attorney general. The professional fundraiser shall maintain the surety bond, or alternative financial assurances approved by the attorney general, as long as the professional fundraiser solicits in the state."

Section 14. A new section of the Charitable Solicitations Act is enacted to read:

"GENERAL PROVISIONS--CHARITABLE ORGANIZATIONS--PROFESSIONAL FUNDRAISERS--PROHIBITED PRACTICES.--A charitable organization or a professional fundraiser shall not:

A. engage in deceptive fundraising 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 person and includes:

(1) using the name or likeness of any 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 person to reasonably believe incorrectly that the contributions being solicited are or will be used for purposes, persons or programs in the state; or

B. collect or attempt to collect a contribution in person or by courier unless:

(1) the solicitation and collection or attempt to collect occur contemporaneously; or

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

Section 15. A new section of the Charitable Solicitations Act is enacted to read:

"PROFESSIONAL FUNDRAISER--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.

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 record of expenses incurred by the professional fundraiser that the charitable organization paid; and

(5) 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.

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. Every professional fundraiser 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 16. A new section of the Charitable Solicitations Act is enacted to read:

"INVESTIGATIVE DEMAND--CIVIL PENALTY.--

A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of information or documentary material, including an original or copy of any 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 published by him 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 available for inspection and copying.

C. No demand shall:

(1) contain any 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.

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 principal place of business in the state or, if the person has no place of business in the state, to his 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 principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under 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 principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under 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

