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SENATE BILL 325

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Dede Feldman

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. -- [~~This act~~] Chapter 57, Article 22 NMSA 1978 may be cited as the "Charitable [~~Organizations and~~] 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. -- [~~Whereas charitable organizations which have been granted tax-exempt status are required to~~

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1 ~~serve the public interest]~~ The purpose of the Charitable
2 ~~[Organizations and]~~ Solicitations Act is to authorize the
3 attorney general to monitor, supervise and enforce the
4 charitable purposes of ~~[those]~~ charitable organizations and
5 regulate professional fundraisers operating in this state."

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

8 "57-22-3. DEFINITIONS. --As used in the Charitable
9 ~~[Organizations and]~~ Solicitations Act:

10 A. "charitable organization" means ~~[any trust or~~
11 ~~nonprofit corporation which:~~

12 (1) ~~has applied for or has received tax-~~
13 ~~exempt status under Section 501(c)(3) of the Internal Revenue-~~
14 ~~Code; and~~

15 (2) ~~does business in this state or holds~~
16 ~~property in this state for charitable purposes]~~ any entity
17 that has been granted exemption from the federal income tax by
18 the United States commissioner of internal revenue as an
19 organization described in Section 501(c)(3) of the Internal
20 Revenue Code of 1986, as amended, or identifies itself to the
21 public as having a charitable purpose;

22 B. "charitable purpose" means ~~[any purpose for~~
23 ~~which a charitable organization has been established to~~
24 ~~promote, directly or indirectly, the well-being of the public-~~
25 ~~at large or the benefit of an indefinite number of persons]~~ a

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1 benevolent, social welfare, scientific, educational,
2 environmental, philanthropic, humane, patriotic, public
3 health, civic or other eleemosynary objective or an activity
4 conducted in support of or in the name of law enforcement
5 officers, firefighters or other persons who protect public
6 safety;

7 C. "contribution" means the promise, grant or
8 pledge of any money, credit or property of any kind or value
9 provided to a charitable organization in response to a
10 solicitation, but does not include program service revenue or
11 bona fide membership fees, dues or assessments; provided that
12 bona fide membership fees, dues or assessments do not include
13 contributions made in exchange for membership in a charitable
14 organization unless membership confers rights and benefits in
15 addition to receiving literature of the charitable
16 organization;

17 [~~C.~~] D. "educational institution" means [a]:

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

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

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1 facilities or activities;

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

10 F. "professional fundraising counsel" means a
11 person that provides services or employs or directs others to
12 provide services for compensation to a charitable organization
13 in the solicitation of contributions, including managing or
14 preparing materials to be used in conjunction with any
15 solicitation; provided that the person does not:

- 16 (1) directly solicit contributions; or
17 (2) receive, have access to or control any
18 contribution received in response to the solicitation;
19 provided further that "professional fundraising counsel" does
20 not include a director, officer, bona fide employee or
21 salaried officer, volunteer, attorney, accountant or
22 investment counselor of a charitable organization;

23 ~~[D.] G. "religious organization" means [any church~~
24 ~~or group organized for the purpose of divine worship,~~
25 ~~religious teaching or other specifically religious activity;~~

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

7 ~~[E.]~~ H. "solicit" or "solicitation" means [any
8 ~~request or appeal, either oral or written, or any endeavor to~~
9 ~~obtain, seek or plead for funds, property, financial~~
10 ~~assistance or other thing of value, including the promise or~~
11 ~~grant of any money or property of any kind or value for a~~
12 ~~charitable purpose, but excluding] any public communication
13 requesting a contribution or offering an opportunity to
14 participate in a game of chance, raffle or similar event with
15 the representation that the contribution or participation will
16 support a charitable purpose, and includes:~~

17 (1) any verbal request made in person or by
18 telephone, radio, television, electronic communication or
19 other media;

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

24 (3) any sale or attempt to sell a good or
25 service; and

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1 (4) any invitation to attend an assembly,
2 event, exhibition, performance or social gathering of any
3 kind.

4 A contribution is not required for a solicitation to have
5 occurred, and "solicit" or "solicitation" does not include

6 [~~(1)~~] direct grants or allocation of funds
7 received or solicited from any affiliated fundraising
8 organization by a member agency [~~and~~
9 ~~(2)~~] or unsolicited contributions received from
10 any individual donor, foundation, trust, governmental agency
11 or other source, unless such contributions are received in
12 conjunction with a solicitation drive. "

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

15 "57-22-4. APPLICATION OF ACT. --

16 A. The Charitable [~~Organizations and~~] Solicitations
17 Act shall not apply to [~~all charitable organizations except:~~

18 ~~(1)~~] a religious [organizations] organization,
19 even if it is a charitable organization.

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

22 [~~(2)~~] (1) educational institutions and
23 organizations defined in Section 6-5A-1 NMSA 1978; and

24 [~~(3)~~] ~~charitable organizations which do not~~
25 ~~actually raise or receive contributions in cash, goods or~~

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1 ~~services valued in excess of two thousand five hundred dollars~~
2 ~~(\$2,500) during a twelve month period;]~~

3 (2) persons soliciting for an individual or
4 group that has suffered a medical or other catastrophe and:

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

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

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

16 ~~[B.]~~ C. The Charitable [Organizations and]
17 Solicitations Act shall apply to charitable organizations and
18 professional fundraisers [regardless of any contrary
19 provisions of any instrument]. "

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

22 "57-22-5. ATTORNEY GENERAL TO MAINTAIN REGISTER OF
23 CHARITABLE ORGANIZATIONS AS PUBLIC RECORD.--The attorney
24 general shall establish and maintain a register of all
25 documents filed by charitable organizations in accordance with

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1 the Charitable [~~Organizations and~~] Solicitations Act. The
2 register shall be open to public inspection except that the
3 attorney general may withhold from public inspection documents
4 or information obtained in the course of an investigation
5 undertaken pursuant to the provisions of that act or [~~which~~]
6 that otherwise may be withheld from public inspection by law."

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

9 "57-22-6. FILING OF REQUIRED DOCUMENTS. --

10 [~~A. Every charitable organization shall file with~~
11 ~~the office of the attorney general within six months of the~~
12 ~~effective date of the Charitable Organizations and~~
13 ~~Solicitations Act or within six months of the date on which~~
14 ~~the charitable organization becomes subject to the Charitable~~
15 ~~Organizations and Solicitations Act, whichever shall occur~~
16 ~~first.~~

17 (1) ~~an initial registration to be submitted on~~
18 ~~the form provided for that purpose by the attorney general;~~
19 ~~and~~

20 (2) ~~a copy of the articles of incorporation or~~
21 ~~other instrument creating the charitable organization and~~
22 ~~defining its purpose, powers and duties.~~

23 B. ~~In addition to the documents required in~~
24 ~~Subsection A of this section, every charitable organization~~
25 ~~shall file, within seventy-five days of the close of the~~

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1 ~~fiscal year first following registration and of each fiscal~~
2 ~~year thereafter, an annual report, under oath, on the form~~
3 ~~provided by the attorney general for that purpose.]~~

4 A. A charitable organization existing, operating or
5 soliciting in the state, unless exempted by Section 57-22-4
6 NMSA 1978, shall register with the attorney general on a form
7 provided by the attorney general; correct any deficiencies in
8 its registration upon notice of deficiencies provided by the
9 attorney general and provide a copy of its IRS Form 1023 or
10 IRS Form 1024 application for exempt status with its
11 registration.

12 [~~C.~~] B. The attorney general shall notify each
13 charitable organization required to register within ten
14 business days of his receipt of the registration form of any
15 deficiencies in the registration and may make [such] rules
16 [and regulations] in accordance with the State Rules Act, as
17 are necessary for the proper administration of this section,
18 including [but not limited to]:

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

22 (2) provisions for suspending the filing of
23 reports [~~where~~] or granting an exemption from the registration
24 and reporting requirements of this section for a charitable
25 organization subject to audit, registration, charter or other

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1 requirements of a statewide, regional or national association
2 and if it is determined that such reports [are no longer] or
3 registration is not necessary for the protection of the public
4 interest.

5 ~~[D. This section shall not apply to any local~~
6 ~~affiliate of a statewide or national organization for which~~
7 ~~all local fundraising expenses are paid by the parent~~
8 ~~organization if the parent organization files a report~~
9 ~~required by this section.~~

10 ~~E.]~~ C. In addition to any other reporting
11 requirements pursuant to the Charitable ~~[Organizations and]~~
12 Solicitations Act, every charitable organization ~~[to which~~
13 ~~that act applies and]~~ that has received tax-exempt status
14 ~~[under]~~ pursuant to Section 501(c)(3) of the federal Internal
15 Revenue Code of 1986, as amended, and is required to file a
16 form 990, ~~[or]~~ 990EZ or 990PF pursuant to the Internal Revenue
17 Code of 1986, as amended, shall file that form and the
18 accompanying schedule A annually with the office of the
19 attorney general up to six months following the close of the
20 charitable organization's fiscal year. Extensions of time for
21 filing may be allowed at the discretion of the attorney
22 general for good cause shown. Such forms shall be public
23 records and available for public inspection. Organizations
24 that do not file a form 990, 990EZ or 990PF pursuant to the
25 Internal Revenue Code of 1986, as amended, shall file an

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1 annual report, under oath, on the form provided by the
2 attorney general for that purpose. The financial report of a
3 charitable organization that received total revenue in excess
4 of five hundred thousand dollars (\$500,000) shall be audited
5 by an independent certified public accountant. Audits shall
6 be performed in accordance with generally acceptable
7 accounting principles. A charitable organization shall
8 correct any deficiencies in an annual report upon notice of
9 deficiencies provided by the attorney general.

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

15 E. The attorney general may accept information filed
16 by a charitable organization with another state or the federal
17 government in lieu of the registration and reporting
18 requirements of the Charitable Solicitations Act if such
19 information is determined by the attorney general to be in
20 substantial compliance with the registration and reporting
21 requirements of that act. "

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

24 "57-22-7. RESTRICTION ON USE OF FACT OF FILING IN
25 SOLICITATION.--No solicitation [of funds] for charitable

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1 purposes shall use the fact or requirement of registration or
2 of the filing of any report with the attorney general pursuant
3 to the Charitable [~~Organizations and~~] Solicitations Act with
4 the intent to cause or in a manner tending to cause any person
5 to believe that [~~such~~] the solicitation, the manner in which
6 it is conducted, its purposes, any use to which the proceeds
7 will be applied or the person or organization conducting it
8 [~~have~~] has been or will be in any way endorsed, sanctioned or
9 approved by the attorney general or any governmental agency or
10 office. "

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

13 "57-22-8. DISCLOSURE OF FUNDRAISING COSTS. --

14 A. All charitable organizations subject to the
15 Charitable [~~Organizations and~~] Solicitations Act shall
16 disclose upon request the percentage of the funds solicited
17 [~~which~~] that are spent on the costs of fundraising. For
18 purposes of this section, costs of fundraising shall include
19 all money directly expended on fundraising and that portion of
20 all administrative expenses and salaries of the charitable
21 organization attributable to fundraising activities.

22 B. Whenever a solicitation [~~of funds~~] on behalf of a
23 charitable organization subject to the Charitable
24 [~~Organizations and~~] Solicitations Act is undertaken by a
25 professional fundraiser, the professional fundraiser [~~must~~]

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1 shall disclose that fact to prospective contributors. [~~For~~
2 ~~purposes of this section, a professional fundraiser shall mean~~
3 ~~any individual, corporation, association or other entity~~
4 ~~employed or retained or otherwise compensated by or on behalf~~
5 ~~of a charitable organization to solicit funds.~~] "

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

8 "57-22-9. AUTHORITY OF THE ATTORNEY GENERAL. --

9 A. The attorney general [~~is authorized~~] may, on
10 behalf of the state, [~~to~~] examine and investigate any
11 charitable organization subject to the Charitable
12 [~~Organizations and~~] Solicitations Act to ascertain the
13 conditions of its affairs and to what extent, if at all, it
14 fails to comply with the trusts [~~which~~] that it has assumed or
15 if it has departed from the purposes for which it [~~is~~] was
16 formed. In the case of [~~such~~] failure or departure, the
17 attorney general may institute, in the name of the state, [~~the~~
18 ~~proceedings~~] a proceeding necessary to correct the
19 noncompliance or departure by any remedy available under the
20 common law.

21 B. The attorney general [~~is authorized~~] may, in the
22 name of the state, [~~to initiate appropriate proceedings to~~
23 ~~enjoin the solicitation of funds by any charitable~~
24 ~~organization which~~] seek injunctive relief, civil penalties,
25 financial accounting or restitution from any person who has

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1 failed to comply with the registration, filing or disclosure
2 provisions of the Charitable [~~Organizations and~~] Solicitations
3 Act or [~~which~~] who has [~~filed any false or misleading report~~
4 ~~or has made any false or misleading disclosure~~] otherwise
5 violated the provisions of that act.

6 C. The attorney general [~~is authorized~~], in the name
7 of the state, [~~to~~] may initiate appropriate proceedings to
8 seek compliance with the provisions of the Charitable
9 [~~Organizations and~~] Solicitations Act and with any rules [~~and~~
10 ~~regulations duly~~] promulgated by the attorney general
11 [~~thereunder~~] pursuant to that act. The attorney general may
12 promulgate rules for the proper administration of that act.

13 D. Nothing in this section shall be construed to
14 preclude [~~any~~] a person or group [~~or~~] of persons from
15 asserting [~~any~~] a private cause of action [~~they might have~~]
16 against a charitable organization or professional fundraiser."

17 Section 10. Section 57-22-10 NMSA 1978 (being Laws 1983,
18 Chapter 140, Section 10) is amended to read:

19 "57-22-10. STANDARD OF CARE. --All officers, directors,
20 managers, trustees, professional fundraisers, professional
21 fundraising counsel or other persons having access to the
22 [~~funds~~] money of a charitable organization intended for use
23 for charitable purposes shall be held to the standard of care
24 defined for fiduciary trustees under common law."

25 Section 11. Section 57-22-11 NMSA 1978 (being Laws 1983,

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1 Chapter 140, Section 11) is amended to read:

2 "57-22-11. EXEMPTIONS FROM STATE AND LOCAL TAXATION. --
3 Every officer, agency, board or commission of this state, or
4 political subdivision [~~thereof~~] of this state receiving
5 applications for exemption from taxation shall provide to the
6 attorney general copies of all [~~such~~] the applications,
7 supporting documents and official responses. "

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

10 "[NEW MATERIAL] PROFESSIONAL FUNDRAISERS--REGISTRATION. --

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

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

23 B. The contract between the professional fundraiser
24 and the charitable organization shall clearly describe the:

- 25 (1) compensation and authority of the

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

10 C. The charitable organization on whose behalf the
11 professional fundraiser is acting shall certify that the
12 contract and solicitation materials filed with the attorney
13 general are true and complete.

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

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

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

24 " [NEW MATERIAL] PROFESSIONAL FUNDRAISERS-- BOND. -- A
25 professional fundraiser shall file a surety bond at the time

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1 of the registration with the attorney general in an amount and
2 on a form provided by the attorney general. The professional
3 fundraiser shall maintain the surety bond, or alternative
4 financial assurances approved by the attorney general, as long
5 as the fundraiser solicits in the state."

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

8 "[NEW MATERIAL] GENERAL PROVISIONS-- CHARITABLE
9 ORGANIZATIONS-- PROFESSIONAL FUNDRAISERS-- PROHIBITED
10 PRACTICES.--A charitable organization or a professional
11 fundraiser shall not:

12 A. engage in deceptive fundraising practices, meaning
13 any false or misleading verbal or written statement,
14 description or representation of any kind knowingly made in
15 connection with a solicitation and that may, tends to or does
16 deceive or mislead any person and includes:

17 (1) using the name or likeness of any person in
18 solicitation literature without the express written consent of
19 the person; provided that publication of previous
20 contributors' names to acknowledge their contributions shall
21 not require their express written consent;

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

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

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

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

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

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

15 "[NEW MATERIAL] PROFESSIONAL FUNDRAISER--RECORDS AND
16 REPORTS.--

17 A. At least every six months, the professional
18 fundraiser shall account in writing to the charitable
19 organization for all contributions received and all expenses
20 incurred under their contract. The charitable organization
21 shall maintain a copy of the accounting of contributions and
22 expenses for three years and make it available to the attorney
23 general upon request.

24 B. All contributions of money received by the
25 professional fundraiser shall be deposited in an account at a

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1 federally insured financial institution within two days after
2 receipt. The account shall be established and maintained in
3 the name of the charitable organization. Disbursements from
4 the account shall be made upon warrants signed by an
5 authorized representative of the charitable organization and
6 may also be signed by the professional fundraiser.

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

10 (1) the name and address of each person
11 contributing to the charitable organization and the date and
12 amount of the contribution;

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

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

19 (4) a record of expenses incurred by the
20 professional fundraiser that the charitable organization paid;
21 and

22 (5) the name and address of each financial
23 institution and the account number of each account in which
24 the professional fundraiser deposited contributions received
25 from the solicitation.

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

4 (1) the name of the charitable organization;
5 and

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

8 E. Every professional fundraiser and charitable
9 organization shall have either a registered agent in the state
10 or shall file a consent to service of process with the
11 attorney general. The consent to service shall be in the form
12 prescribed by the attorney general and shall be irrevocable."

13 Section 16. A new section of the Charitable
14 Solicitations Act is enacted to read:

15 "NEW MATERIAL INVESTIGATIVE DEMAND--CIVIL PENALTY. --

16 A. Whenever the attorney general has reason to
17 believe that any person may be in possession, custody or
18 control of information or documentary material, including an
19 original or copy of any book, record, report, memorandum,
20 paper, communication, tabulation, chart, photograph,
21 mechanical transcription or other tangible document or
22 recording, that the attorney general believes to be relevant
23 to the subject matter of an investigation of a probable
24 violation of the Charitable Solicitations Act, the attorney
25 general may, prior to the institution of a civil proceeding,

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1 execute in writing and cause to be served upon the person a
2 civil investigative demand. The demand shall require the
3 person to answer interrogatories or to produce documentary
4 material and permit the inspection and copying of the
5 material. The demand of the attorney general shall not be a
6 matter of public record and shall not be published by him
7 except by order of the court.

8 B. Each demand shall:

9 (1) state the general subject matter of the
10 investigation;

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

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

17 (4) state the date on which any documentary
18 material shall be available for inspection and copying.

19 C. No demand shall:

20 (1) contain any requirement that would be
21 unreasonable or improper if contained in a subpoena duces
22 tecum issued by a court of the state;

23 (2) require the disclosure of any documentary
24 material that would be privileged or that for any other reason
25 would not be required by a subpoena duces tecum by a court of

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1 the state; or

2 (3) require the removal of any documentary
3 material from the custody of the person upon which the demand
4 is served except in accordance with the provisions of
5 Subsection E of this section.

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

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

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

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

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

25 F. No documentary material or copies of the

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1 documentary material produced pursuant to a demand shall be
2 produced for inspection or copying by anyone other than an
3 authorized employee of the attorney general, nor shall the
4 contents of the documentary material be disclosed to anyone
5 other than an authorized employee of the attorney general or
6 in court in an action relating to a violation of the
7 Charitable Solicitations Act. The district court in the
8 county in which the person resides or has his principal place
9 of business or is about to perform or is performing the
10 practice that is alleged to be unlawful under the Charitable
11 Solicitations Act may order documentary material to be
12 produced for inspection or copying by someone other than an
13 authorized employee of the attorney general.

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 the Charitable Solicitations Act, and the court upon
21 showing of good cause may set aside the demand, modify it or
22 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 may invoke the aid of the court in the enforcement of

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1 the demand. In appropriate cases the court shall issue its
2 order requiring the person to appear and produce the
3 documentary material required in the demand. Upon failure of
4 the person to comply with the court order, the court shall
5 punish the person for contempt of court.

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

8 J. In an action brought pursuant to the Charitable
9 Solicitations Act, if the court finds that a person has
10 violated a provision of that act or rules promulgated pursuant
11 to that act, the attorney general may recover, on behalf of
12 the state, a maximum civil penalty of five thousand dollars
13 (\$5,000) per violation. "

14 Section 17. A new section of the Charitable
15 Solicitations Act is enacted to read:

16 "[NEW MATERIAL] EXCHANGE OF INFORMATION WITH OTHER
17 STATES. --The attorney general may exchange information, either
18 filed with, obtained by the civil investigative demand or
19 otherwise, with appropriate authorities of other states and
20 the federal government regarding charitable organizations,
21 professional fundraisers and professional fundraising counsel.
22 Information provided to or acquired by exchange with other
23 states or the federal government may be law enforcement
24 records exempt from inspection pursuant to the Public Records
25 Act. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

SB 325/a

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8 February 8, 1999

9
10 Mr. President:

11
12 Your JUDICIARY COMMITTEE, to whom has been referred

13
14 SENATE BILL 325

15
16 has had it under consideration and reports same with

17 recommendation that it DO PASS, amended as follows:

18
19
20 1. On page 5, line 12, strike "public".

21
22 2. On page 11, line 2, strike "The financial report of a"
23 and insert in lieu thereof "A".

24
25 3. On page 17, line 5, before "fundraiser", insert

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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SJC/SB 325

Page 27

"professional".

4. On page 22, line 25, strike "No documentary material or copies of the" and insert in lieu thereof "Documentary material and its contents".

5. On page 23, line 1, strike "documentary material".

6. On page 23, line 1, after "demand" insert "or answers to interrogatories".

7. On page 23, line 1, after "shall" insert "not".

8. On page 23, line 3, after "general", insert ".".

9. On page 23, line 3, strike ", nor shall the" and strike all of lines 4 through 6 and strike line 7 through the period.

10. On page 23, line 11, after "material" insert ", its contents or answers to interrogatories".

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FIRST SESSION, 1999

SJC/SB 325

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11. On page 24, line 1, strike "In appropriate cases the court shall issue its" and strike all of lines 2 through 5.

12. On page 24, line 17, strike ", either".

13. On page 24, line 18, strike "filed with,".

14. On page 24, line 18, strike "or".

15. On page 24, line 19, strike "otherwise,".

16. On page 24, line 19, strike "appropriate" and insert in lieu thereof "comparable".

17. On page 24, line 19, strike "and" and insert in lieu thereof "or".

18. On page 24, line 22, strike "provided to or".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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19. On page 24, line 23, strike "may be law enforcement"
and insert in lieu thereof "shall be".

20. On page 24, line 24, strike "records".

21. On page 24, line 24, after "the" insert "Inspection
of".

22. On page 24, line 25, after the period insert
"Information shall not be exchanged with comparable authorities
of other states or the federal government unless the information
is similarly exempt from inspection pursuant to applicable laws
of such other states or the federal government.".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 325

Page 30

Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 4 For 2 Against

Yes: 4

No: Davis, Payne

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SJC/SB 325

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Excused: Aragon, Tsosie

Absent: None

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

March 13, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 325, AS

AMENDED

AMENDMENT sponsored by SENATOR DEDE FELDMAN

1. On page 19, line 12, after the word contribution,
insert a period and "This information shall not be publicly
disclosed and shall be used only for law enforcement purposes".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 325

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Senator Dede Feldman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 325

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S0325fs1

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 12, 1999
7

8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 325, as amended
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

16 Respectfully submitted,
17

18
19
20 _____
21 R. David Pederson, Chairman
22
23
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25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

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