

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 2044

5 By: Representative Drown
6 By: Senator G. Stubblefield
7

For An Act To Be Entitled

9 AN ACT TO MODIFY THE REGISTRATION OF CHARITABLE
10 ORGANIZATIONS BEFORE SOLICITATION; TO AMEND ANNUAL
11 FINANCIAL REPORTS AND FISCAL RECORDS REQUIREMENTS OF
12 CHARITABLE ORGANIZATIONS; TO AMEND REGISTRATION OF
13 PAID SOLICITORS; AND FOR OTHER PURPOSES.
14
15

Subtitle

16
17 TO MODIFY THE REGISTRATION OF CHARITABLE
18 ORGANIZATIONS BEFORE SOLICITATION; TO
19 AMEND ANNUAL FINANCIAL REPORTS AND FISCAL
20 RECORDS REQUIREMENTS OF CHARITABLE
21 ORGANIZATIONS; AND TO AMEND REGISTRATION
22 OF PAID SOLICITORS.
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 4-28-402 is amended to read as follows:

28 4-28-402. Registration of charitable organizations prior to
29 solicitation.

30 (a)(1) ~~No~~ A charitable organization, in or out of the state, shall not
31 solicit contributions from persons in this state by any means whatsoever
32 until the charitable organization has:

33 (A) Registered; and

34 (B) Provided certain information concerning the charitable
35 organization and its solicitation activity, as required by this subchapter,
36 on forms to be provided by the ~~Attorney General~~ Secretary of State, and has



1 filed the information with the ~~Attorney General~~ Secretary of State.

2 (2) The information so filed shall be available to the general
 3 public as a matter of public record, except and to the extent ~~such the~~
 4 records would otherwise be exempt from disclosure under the Freedom of
 5 Information Act of 1967, § 25-19-101 et seq.

6 (b) ~~The forms containing the information shall be sworn to and shall~~
 7 ~~include, but not be limited to~~ The information required under subdivision
 8 (a)(1)(B) of this section shall be submitted in writing, sworn to under oath,
 9 and provided on a registration form provided by the Secretary of State, to
 10 include without limitation:

11 (1) The identity of the charitable organization by or for whom
 12 the solicitation is to be conducted, including without limitation:

13 (A) The federal Taxpayer Identification Number;

14 (B) Fictitious names or aliases under which the charitable
 15 organization operates;

16 (C) Program names under which the charitable organization
 17 solicits; and

18 (D) All chapters, branches, or affiliates that will
 19 operate, if any, under the registration of the parent charitable
 20 organization;

21 (2) The mailing address and physical address of the charitable
 22 organization;

23 (3) The charitable purpose for which the contributions solicited
 24 are to be used of the charitable organization;

25 (4) The individual or officer who will have custody of the
 26 contributions;

27 (5) The individuals responsible for the distribution of the
 28 contributions;

29 (6) The period of time during which the solicitation or
 30 promotion is to be conducted;

31 (7) A description of the method or methods of solicitation or
 32 promotion, in such detail as may from time to time be determined by the
 33 ~~Attorney General~~ Secretary of State;

34 (8) Whether ~~the~~ any solicitation or promotion is to be conducted
 35 by voluntary unpaid solicitors, by paid solicitors, or both;

36 (9) If in whole or in part by paid solicitors:

- 1 (A) The name and address of each paid solicitor;
- 2 (B) The basis of payment;
- 3 (C) The nature of the arrangement; and
- 4 (D) A copy of the contract for services; and
- 5 (10) A copy of the appropriate Internal Revenue Service tax-
- 6 exempt status form.

7 (c) A chapter, branch, or affiliate in this state of a registered
 8 parent charitable organization ~~shall not be~~ is not required to register
 9 provided the parent charitable organization files a consolidated financial
 10 report or tax information form for itself and the chapter, branch, or
 11 affiliate.

12

13 SECTION 2. Arkansas Code § 4-28-403 is amended to read as follows:
 14 4-28-403. Annual financial reports and fiscal records.

15 (a)(1)~~(A)~~ On or before ~~May 15~~ August 1 of each year, each charitable
 16 organization subject to ~~the provisions of~~ this subchapter shall file with the
 17 ~~Attorney General~~ Secretary of State an annual financial report on forms
 18 prescribed by the Secretary of State.

19 (B) The annual financial report described in subdivision
 20 (a)(1)(A) of this section shall be accompanied by a copy of all tax or
 21 information returns, including all schedules and amendments, submitted by the
 22 charitable organization to the Internal Revenue Service for the previous
 23 reporting year, except any schedules of contributors to the organization.

24 (2) A charitable organization which maintains its books on other
 25 than a calendar-year basis, upon application to the ~~Attorney General~~
 26 Secretary of State, may be permitted to file the annual financial report
 27 described in subdivision (a)(1)(A) of this section with its tax or
 28 information returns referred to in this subsection within six (6) months
 29 after the close of its fiscal year.

30 (b)(1) A charitable organization with gross revenue in excess of five
 31 hundred thousand dollars (\$500,000) in any fiscal year it is registered shall
 32 include with its submission of the annual financial report and tax records
 33 referred to in ~~subsection (a)~~ subdivision (a)(1) of this section an audit
 34 report of a certified public accountant.

35 (2) For purposes of this section, "gross revenue" ~~shall~~ does not
 36 include grants or fees from government agencies.

1 (c) ~~Charities~~ Charitable organizations that are required to register
 2 with the ~~Attorney General~~ Secretary of State but are not required to file an
 3 information or tax return with the Internal Revenue Service should submit in
 4 lieu of the information or tax return an annual report in forms to be
 5 provided by the ~~Attorney General~~ Secretary of State.

6 (d) The ~~Attorney General~~ Secretary of State, ~~upon written request and~~
 7 ~~for good cause shown~~, may grant an extension of time not to exceed six (6)
 8 months for the filing of the tax records and other reports required by this
 9 section upon the charitable organization's filing a notice that states the
 10 need for an extension.

11 (e)(1) Every charitable organization subject to the provisions of this
 12 subchapter shall keep a full and true record in such form as will enable the
 13 charitable organization accurately to provide the information required by
 14 this subchapter.

15 (2) All the records shall be open to inspection and copying at
 16 all times by the Secretary of State and the Attorney General.

17 (3) The charitable organization shall retain records for ~~no less~~
 18 ~~than three (3)~~ at least five (5) years after the end of the fiscal year to
 19 which they relate.

20 (4)(A) Any donor lists obtained ~~pursuant to~~ under this
 21 subsection ~~shall not be~~ are not subject to disclosure ~~pursuant to~~ under the
 22 Freedom of Information Act of 1967, § 25-19-101 et seq., without a court
 23 order authorizing the disclosure.

24 (B) However, donor lists and other records obtained
 25 ~~pursuant to~~ under this subsection may be disclosed to other law enforcement
 26 agencies.

27
 28 SECTION 3. The introductory language of Arkansas Code § 4-28-404,
 29 concerning charitable organizations exempted from registration and financial
 30 disclosure requirements, is amended to read as follows:

31 The following charitable organizations ~~shall not be~~ are not subject to
 32 the ~~filing or reporting requirement provisions of §§ 4-28-402,~~ under §§ 4-28-
 33 403, and 4-28-405, provided each ~~such~~ organization shall submit an
 34 application for a reporting exemption to the Secretary of State, on forms
 35 prescribed by the Secretary of State, together with any information as the
 36 ~~Attorney General~~ Secretary of State may require to substantiate ~~an a~~

1 reporting exemption under this section:

2
3 SECTION 4. Arkansas Code § 4-28-405 is amended to read as follows:

4 4-28-405. Charitable organization – Filing of contracts.

5 (a) Each contract between a charitable organization and a fund-raising
6 counsel shall be in writing and shall be filed by the charitable organization
7 with the ~~Attorney General~~ Secretary of State before the performance
8 by the fund-raising counsel of any material services ~~pursuant to~~ under the
9 contract.

10 (b) The contract shall contain ~~such~~ any information ~~as~~ that will
11 enable the ~~Attorney General~~ Secretary of State to identify the services the
12 fund-raising counsel is to provide and the manner of his or her compensation.
13

14 SECTION 5. Arkansas Code § 4-28-406 is amended to read as follows:

15 4-28-406. Fund-raising counsel – Registration – Fees.

16 (a) ~~No~~ A person shall not act as a fund-raising counsel until he or
17 she has first registered with the ~~Attorney General~~ Secretary of State.

18 (b) Applications for registration shall be submitted:

19 (1) ~~in~~ In writing;

20 (2) ~~under~~ Under oath;

21 (3) ~~in~~ In the form prescribed by the ~~Attorney General~~ Secretary
22 of State; and

23 (4) ~~shall be accompanied~~ Accompanied by an annual fee in the sum
24 of one hundred dollars (\$100).

25 (c)(1) Registrations are valid for a period of one (1) year.

26 (2) ~~and~~ Registrations may be renewed upon the filing of a new
27 application and the tendering of the fee previously prescribed for
28 registration.
29

30 SECTION 6. Arkansas Code § 4-28-407 is amended to read as follows:

31 4-28-407. Paid solicitors – Registration, fees, and bond – Filing of
32 contracts – Solicitation notice – Contract requirements – Prohibited
33 practices – Records – Deposit of funds.

34 (a)(1) ~~No~~ A person shall not act as a paid solicitor unless he or she
35 has first registered with the ~~Attorney General~~ Secretary of State.

36 (2) Applications for registration shall be submitted:

1 (A) ~~in~~ In writing;

2 (B) ~~in~~ In the form prescribed by the ~~Attorney General~~
3 Secretary of State; and

4 (C) ~~shall be accompanied~~ Accompanied by a fee in the amount
5 of two hundred dollars (\$200) at the time of registration.

6 (3) Each registration ~~shall be~~ is valid for one (1) year and may
7 be renewed for additional one-year periods.

8 (b)(1) An applicant for registration as a paid solicitor at the time
9 of making the application shall file with and have approved by the ~~Attorney~~
10 General Secretary of State a bond in which the applicant shall be the
11 principal obligor in the sum of ten thousand dollars (\$10,000), with one (1)
12 or more responsible sureties whose liability in the aggregate as the sureties
13 shall be no less than that sum.

14 (2)(A) The bond shall run to the Secretary of State and the
15 Attorney General for the use of the state and to any person, including a
16 charitable organization, ~~who~~ that may have a cause of action against the paid
17 solicitor for any liabilities resulting from the paid solicitor's conduct of
18 any activities in violation of this subchapter or arising out of a violation
19 of this subchapter or any ~~regulation~~ rule adopted ~~pursuant to~~ under this
20 subchapter, including any actions arising under this subchapter ~~which~~ that
21 give rise to a violation of the Deceptive Trade Practices Act, § 4-88-101 et
22 seq.

23 (B) However, the aggregate liability of the surety to the
24 state and to all other persons, including charitable organizations, shall ~~in~~
25 ~~no event~~ not exceed the sum of the bond.

26 (c) ~~No less than~~ At least fifteen (15) days ~~prior to~~ before the
27 commencement of each solicitation campaign, a paid solicitor shall file with
28 the ~~Attorney General~~ Secretary of State a copy of the contract described in
29 subsection (d) of this section.

30 (d) A contract between a paid solicitor and a charitable organization
31 shall:

32 (1) Be in writing;

33 (2) Clearly state the respective obligations of the paid
34 solicitor and the charitable organization, including the compensation or
35 remuneration to be paid by the charitable organization to the paid solicitor;
36 and

1 (3) Require delivery of the names and addresses of all persons
2 making contributions and the amounts thereof to the charitable organization.

3 (e)(1) A paid solicitor shall not represent that any part of the
4 contributions received will be given or donated to any charitable
5 organization unless the organization has consented in writing to the use of
6 its name ~~prior to~~ before the solicitation campaign.

7 (2) The written consent shall be signed by an authorized
8 officer, director, or trustee of the charitable organization.

9 (f)(1) ~~No~~ A paid solicitor shall not represent that tickets to an
10 event are to be donated for use by another person unless the paid solicitor
11 has first obtained a commitment in writing from a charitable organization
12 stating that it will accept donated tickets and specifying the number of
13 tickets ~~which that it is to~~ will accept and provided no more contributions
14 for donated tickets shall be solicited than the number of ticket commitments
15 received from the charitable organization.

16 (2) A charitable organization shall not commit to accept more
17 donated tickets than it can reasonably expect to use.

18 (3) Donated tickets ~~will~~ shall be used ~~in accordance with~~
19 according to the representations made to the consumer at the time of
20 solicitation.

21 (g) A paid solicitor shall require any person he or she employs,
22 procures, or engages to solicit to comply with the provisions of subsections
23 (e) and (f) of this section.

24 (h)(1) A paid solicitor shall file a financial report for a
25 solicitation campaign with the ~~Attorney General~~ Secretary of State no more
26 than ninety (90) days after a solicitation campaign has been completed and on
27 the anniversary of the commencement of any solicitation campaign which lasts
28 more than one (1) year.

29 (2) The financial report shall include gross revenue and an
30 itemization of all expenditures incurred and the amount of ~~money~~ moneys
31 ultimately remitted to the ~~charity~~ charitable organization absent payment of
32 any fees or costs to the paid solicitor.

33 (3) The report shall be completed on a form prescribed by the
34 ~~Attorney General~~ Secretary of State.

35 (4) An authorized official of the paid solicitor and two (2)
36 authorized officials of the charitable organization shall sign the report.

1 and they shall certify, under oath, that the report is true and complete to
2 the best of their knowledge.

3 (i) A paid solicitor shall maintain during each solicitation campaign
4 and for ~~not less than three (3)~~ at least five (5) years after the completion
5 of each solicitation campaign the following records, which shall be available
6 to the Secretary of State and the Attorney General for inspection upon
7 request:

8 (1) The name and residence of each employee, agent, or other
9 person involved in the solicitation campaign;

10 (2) Records of all income received and expenses incurred in the
11 course of the solicitation campaign; and

12 (3) The names and addresses of all persons making contributions
13 and the amounts thereof.

14 (j) If a paid solicitor sells tickets to an event and represents that
15 tickets will be donated for use by another, the paid solicitor shall maintain
16 for ~~not less than three (3)~~ at least five (5) years after the completion of
17 the event the following record, which shall be available to the Secretary of
18 State and the Attorney General for inspection upon request:

19 (1) ~~the~~ The name and address of all organizations receiving
20 donated tickets for use by others; and

21 (2) ~~including the~~ The number of tickets received by each
22 organization.

23 (k) Each contribution in the control or custody of the paid solicitor
24 shall, in its entirety and within five (5) days of its receipt, be deposited,
25 maintained, and administered in an account in a bank or other federally
26 insured financial institution ~~which~~ that shall be in the name of the
27 charitable organization and over which that charitable organization ~~shall~~
28 have has sole control over all withdrawals.

29 (l) Any material change in any information filed with the ~~Attorney~~
30 ~~General~~ Secretary of State pursuant to this section shall be reported in
31 writing by the paid solicitor to the ~~Attorney General~~ Secretary of State not
32 more than thirty (30) days after the change occurs.

33 (m) All records required under this section shall be open to
34 inspection, examination, and copying during usual and customary business
35 hours by the Secretary of State and the Attorney General or other authorized
36 agencies.

1
2 SECTION 7. Arkansas Code § 4-28-408(a)(1), concerning a written
3 agreement between a charitable organization and a commercial coventurer, is
4 amended to read as follows:

5 (a)(1) Every charitable organization subject to the registration
6 requirements of this subchapter ~~which~~ that agrees to permit a charitable
7 sales promotion to be conducted in its behalf shall obtain a written
8 agreement from the commercial coventurer and file a copy of the agreement
9 with the ~~Attorney General prior to~~ Secretary of State before the commencement
10 ~~within this state~~ of the charitable sales promotion within this state.

11
12 SECTION 8. Arkansas Code § 4-28-408(b), concerning a final accounting
13 of a charitable sales promotion, is amended to read as follows:

14 (b) A commercial coventurer shall keep the final accounting for each
15 charitable sales promotion for three (3) years after the accounting date, and
16 the accounting shall be available to the Secretary of State and the Attorney
17 General upon reasonable request.

18
19 SECTION 9. Arkansas Code § 4-28-410 is amended to read as follows:
20 4-28-410. Documents.

21 (a) All contracts, scripts, pamphlets, handouts, and other materials
22 used by paid solicitors shall be in writing, and true and correct copies of
23 all documents used in any promotion shall be kept on file in the offices of
24 the paid solicitor and in the offices of the charitable organization on whose
25 behalf the promotion is conducted for a period of ~~three (3)~~ five (5) years
26 from the date the solicitation of contributions for the promotion commences.

27 (b) The documents shall be available for inspection, examination, and
28 copying by the Secretary of State and the Attorney General and other
29 authorized agencies during usual and customary business hours.

30
31 SECTION 10. Arkansas Code § 4-28-411 is amended to read as follows:
32 4-28-411. Professional telemarketers – Registration and renewal.

33 (a) Every professional telemarketer ~~must~~ shall be employed in a
34 principal-agent relationship by a paid solicitor registered ~~pursuant to~~ under
35 this subchapter and shall, within seventy-two (72) hours after accepting
36 employment, register with the ~~Attorney General~~ Secretary of State.

1 (b) ~~Application~~ An application for registration under this section
 2 shall be in writing, under oath, in the form prescribed by the ~~Attorney~~
 3 ~~General~~ Secretary of State, and shall be accompanied by a fee in the sum of
 4 ten dollars (\$10.00).

5 (c) When effected, the registration shall be for a period of one (1)
 6 year and may be renewed upon the payment of the fee prescribed in this
 7 section for additional one-year periods.

8
 9 SECTION 11. The introductory language of Arkansas Code § 4-28-412,
 10 concerning prohibited acts by a charitable organization, is amended to read
 11 as follows:

12 It shall be a violation of this ~~section~~ subchapter for:

13
 14 SECTION 12. Arkansas Code § 4-28-412(8), concerning prohibited acts of
 15 a charitable organization involving a false or misleading statement, is
 16 amended to read as follows:

17 (8) Any person to knowingly make any false or misleading
 18 statements on any document required to be filed with the ~~Attorney General~~
 19 Secretary of State;

20
 21 SECTION 13. Arkansas Code § 4-28-413 is amended to read as follows:

22 4-28-413. Nonresident organization – Service of process.

23 (a) A nonresident charitable organization, paid solicitor, fund-
 24 raising counsel, or professional telemarketer desiring to solicit funds
 25 within the State of Arkansas shall file with the ~~Attorney General~~ Secretary
 26 of State an irrevocable written consent that in suits, proceedings, and
 27 actions growing out of the violation of ~~any provision of~~ this subchapter, or
 28 as a result of any activities conducted within this state giving rise to a
 29 cause of action, service on the ~~Attorney General~~ Secretary of State shall be
 30 as valid and binding as if due service had been made on the charitable
 31 organization, paid solicitor, fund-raising counsel, or professional
 32 telemarketer.

33 (b)(1) In case any process or pleadings are served upon the ~~Attorney~~
 34 ~~General~~ Secretary of State, they shall be in ~~duplicate~~ triplicate, one (1)
 35 copy of which shall be filed ~~in the office of the Attorney General~~ with the
 36 Secretary of State, one (1) copy of which shall be forwarded by the Secretary

1 of State to the Attorney General, and the other immediately forwarded by the
2 ~~Attorney General~~ Secretary of State by registered or certified mail to the
3 principal office or place of business of the nonresident charitable
4 organization, paid solicitor, fund-raising counsel, or professional
5 telemarketer.

6 (2) ~~Any service so had on the Attorney General shall be~~
7 ~~returnable in not less than thirty (30) days~~ Service placed upon the
8 Secretary of State shall be returned no later than thirty (30) days.

9
10 SECTION 14. Arkansas Code § 4-28-415 is amended to read as follows:

11 4-28-415. Disposition of fees.

12 All registration fees collected by the ~~Attorney General~~ Secretary of
13 State under this subchapter shall be deposited ~~in~~ into the State Treasury,
14 and the Treasurer of State shall credit them as general revenues to the
15 various funds in the respective amounts to each and to be used ~~for the~~
16 ~~purposes~~ as provided in the Revenue Stabilization Law, § 19-5-101 et seq.

17
18 SECTION 15. Arkansas Code Title 4, Chapter 28, Subchapter 4, is
19 amended to add an additional section to read as follows:

20 4-28-416. Access to records.

21 The Attorney General shall have access to all records filed with the
22 Secretary of State under this subchapter.

23
24 SECTION 16. DO NOT CODIFY. Effective date. This act is effective on
25 and after January 1, 2018.

26
27
28 **APPROVED: 03/28/2017**