

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H3/25/99*

# A Bill

SENATE BILL 635

5 By: Senator Argue  
6 By: Representative Ferrell  
7  
8

## For An Act To Be Entitled

9  
10 "AN ACT TO REGULATE THE SOLICITATION OF CHARITABLE  
11 FUNDS IN ARKANSAS, TO REQUIRE THE REGISTRATION OF  
12 FUNDRAISING COUNSEL, PAID SOLICITORS, COMMERCIAL  
13 COVENTURERS, AND PROFESSIONAL TELEMARETERS WHO  
14 SOLICIT FUNDS FOR CHARITABLE ORGANIZATIONS; AND FOR  
15 OTHER PURPOSES. "

## Subtitle

16  
17  
18 "TO REGULATE THE SOLICITATION OF  
19 CHARITABLE FUNDS IN ARKANSAS AND REQUIRE  
20 THE REGISTRATION OF PROFESSIONAL FUND  
21 RAISERS OF CHARITABLE FUNDS. "

22  
23  
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Definitions. As used in this act, unless the context  
27 otherwise requires:

28 (1) "Charitable organization" means any person who is or holds himself  
29 out to be established for any benevolent, educational, philanthropic, humane,  
30 scientific, patriotic, social welfare or advocacy, public health,  
31 environmental conservation, civic or other eleemosynary purpose or for the  
32 benefit of law enforcement personnel, firefighters, or other persons who  
33 protect the public safety, or any person who in any manner employs a  
34 charitable appeal as the basis of any solicitation or an appeal which has a  
35 tendency to suggest there is a charitable purpose to any solicitation;

36 (2) "Charitable purpose" means any benevolent, educational,

1 philanthropic, humane, scientific, patriotic, social welfare or advocacy,  
2 public health, environmental conservation, civic or eleemosynary objective;

3 (3) "Charitable sales promotion" means an advertising or sales  
4 campaign, conducted by a commercial coventurer, which represents that the  
5 purchase or use of goods or services offered by the commercial coventurer,  
6 will benefit a charitable organization or purpose;

7 (4) "Commercial coventurer" means any person who, for profit or other  
8 consideration is regularly and primarily engaged in trade or commerce other  
9 than in connection with the raising of funds or any other thing of value for a  
10 charitable organization, and who advertises that the purchase or use of his  
11 goods, services, entertainment or any other thing of value, normally sold  
12 without a charitable appeal, will benefit a charitable organization during a  
13 charitable sales promotion;

14 (5) "Contribution" means the grant, promise or pledge of money, credit,  
15 property, financial assistance or other thing of value in response to a  
16 solicitation;

17 (6) "Fund raising counsel" means any person who for a flat fixed fee or  
18 fixed hourly rate, under a written agreement, plans, conducts, manages,  
19 carries on, advises or acts as a consultant, whether directly or indirectly,  
20 in connection with soliciting contributions for, or on behalf of, any  
21 charitable organization, but who actually solicits no contributions as a part  
22 of the services. Fund raising counsel do not receive or control funds or  
23 assets solicited for charitable purposes, nor do they procure or employ any  
24 compensated person to do so. No lawyer, investment counselor or banker who  
25 advises a person to make a contribution shall be deemed, as a result of that  
26 advice, to be a fund raising counsel. A bona fide salaried officer or employee  
27 of a registered or exempt charitable organization shall not be deemed to be a  
28 fund raising counsel;

29 (7) "Gross revenue" means income of any kind from all sources,  
30 including all amounts received as the result of any solicitation by a paid  
31 solicitor;

32 (8) "Membership" means those persons to whom, for payment of fees,  
33 dues, assessments, etc., an organization provides services and confers a bona  
34 fide right, privilege, professional standing, honor or other direct benefit,  
35 in addition to the right to vote, elect officers, or hold offices. The term  
36 "membership" shall not include those persons who are granted a membership upon

1 making a contribution as the result of solicitation;

2 (9) "Paid solicitor" means a person who for compensation, other than  
3 any nonmonetary gift of nominal value awarded to a volunteer solicitor as an  
4 incentive or token of appreciation, performs for a charitable organization any  
5 service in connection with which contributions are solicited by the person or  
6 by any other person he employs, procures or engages to solicit for  
7 compensation; or a person who at any time has custody or control of  
8 contributions. No lawyer, investment counselor or banker who advises a person  
9 to make a contribution shall be deemed, as a result of that advice, to be a  
10 paid solicitor. A bona fide non-temporary salaried officer or employee of a  
11 charitable organization shall not be deemed a paid solicitor;

12 (10) "Parent organization" means that part of a charitable organization  
13 which supervises and exercises control over the solicitation and expenditure  
14 activities of one or more chapters, branches or affiliates;

15 (11) "Person" means an individual, corporation, limited liability  
16 corporation, association, partnership, foundation or any other entity however  
17 styled;

18 (12) "Professional telemarketer" means any person who is employed or  
19 retained for compensation by a paid solicitor to solicit contributions in this  
20 state for charitable purposes;

21 (13) "Solicitation" means each request, either directly or indirectly,  
22 for a contribution on the plea or representation that the contribution will be  
23 used for a charitable purpose. "Solicitation" shall be deemed to occur when  
24 the request is made, at the place the request is received, whether or not the  
25 person making the same actually receives any contribution and includes,  
26 without limitation, the following methods of requesting a contribution:

27 (A) Any oral or written request;

28 (B) Any announcement to the press, over the radio or television,  
29 or by telephone or telegraph concerning an appeal or campaign to which the  
30 public is requested to make a contribution for any charitable purpose  
31 connected therewith;

32 (C) The distribution, circulation, posting or publishing of any  
33 handbill, written advertisement or other publication which directly or by  
34 implication seeks to obtain public support; or

35 (D) The sale of, offer or attempt to sell, any advertisement,  
36 advertising space, subscription, ticket, or any service or tangible item in

1 connection with which any appeal is made for any charitable purpose or where  
2 the name of any charitable organization is used or referred to in the appeal  
3 as an inducement or reason for making the sale, or when or where in connection  
4 with any sale, any statement is made that the whole or any part of the  
5 proceeds from the sale will be donated to any charitable purpose.

6  
7 SECTION 2. Registration of charitable organizations prior to  
8 solicitation.

9 (a)(1) No charitable organization, in or out of the state, shall  
10 solicit contributions from persons in this state by any means whatsoever until  
11 the charitable organization has registered, provided certain information  
12 concerning the solicitation as required by this act on forms to be provided by  
13 the Attorney General, and has filed the information with the Attorney General.

14 (2) The information so filed shall be available to the general  
15 public as a matter of public record, except and to the extent such records  
16 would otherwise be exempt from disclosure under the Arkansas Freedom of  
17 Information Act.

18 (b) The forms containing the information shall be sworn to and shall  
19 include, but not be limited to:

20 (1) The identity of the charitable organization by or for whom  
21 the solicitation is to be conducted;

22 (2) The address of the charitable organization;

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

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 promotion is to be  
30 conducted;

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

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

35 (9) If in whole or in part by paid solicitors, the name and  
36 address of each paid solicitor, the basis of payment, the nature of the

1 arrangement, and a copy of the contract for services; and

2 (10) A copy of the appropriate Internal Revenue Service tax-exempt  
3 status form.

4 (c) A chapter, branch or affiliate in this state of a registered parent  
5 organization shall not be required to register provided the parent  
6 organization files a consolidated financial report or tax information form for  
7 itself and the chapter, branch or affiliate.

8  
9 SECTION 3. Annual Financial Reports and Fiscal Records.

10 (a) On or before May 15 of each year, each charitable organization  
11 subject to the provisions of this act shall file with the Attorney General a  
12 copy of all tax or information returns, including all schedules and  
13 amendments, submitted by the charitable organization to the Internal Revenue  
14 Service for the previous reporting year except any schedules of contributors  
15 to the organization. A charitable organization which maintains its books on  
16 other than a calendar-year basis may, upon application to the Attorney  
17 General, be permitted to file the tax or information returns referred to  
18 herein within six (6) months after the close of its fiscal year.

19 (b) A charitable organization with gross revenue in excess of five  
20 hundred thousand dollars (\$500,000) in any fiscal year it is registered shall  
21 include with its submission of the tax records referred to in subsection (a)  
22 herein, an audit report of a certified public accountant. For purposes of  
23 this section, gross revenue shall not include grants or fees from government  
24 agencies.

25 (c) Charities that are required to register with the Attorney General  
26 but are not required to file an information or tax return with the Internal  
27 Revenue Service should in lieu of said information or tax returns, submit an  
28 annual report in forms to be provided by the Attorney General.

29 (d) The Attorney General may, upon written request and for good cause  
30 shown, grant an extension of time, not to exceed six (6) months, for the  
31 filing of the tax records and other reports required by this section.

32 (e) Every charitable organization subject to the provisions of this act  
33 shall keep a full and true record in such form as will enable the charitable  
34 organization accurately to provide the information required by this act. All  
35 the records shall be open to inspection and copying at all times by the  
36 Attorney General. The charitable organization shall retain records for no

1 less than three (3) years after the end of the fiscal year to which they  
2 relate. Any donor lists obtained pursuant to this subsection shall not be  
3 subject to disclosure pursuant to the Arkansas Freedom of Information Act  
4 without a court order authorizing the same. However, donor lists and other  
5 records obtained pursuant to this subsection may be disclosed to other law  
6 enforcement agencies.

7  
8 SECTION 4. Charitable organizations exempted from registration and  
9 financial disclosure requirements.

10 The following charitable organizations shall not be subject to the  
11 filing or reporting requirement provisions of Sections 2, 3 and 5 of this act,  
12 provided each such organization shall submit any information as the Attorney  
13 General may require to substantiate an exemption under this section:

14 (1) "Religious Organizations" - any bona fide, duly constituted  
15 religious entity if the entity satisfies each of the following criteria:

16 (A) the entity is exempt from taxation pursuant to the Internal  
17 Revenue Code; and

18 (B) no part of the entity's net income inures to the direct  
19 benefit of any individual;

20 (2) "Educational Institutions" - any parent-teacher association or  
21 educational institution, the curricula of which in whole or in part are  
22 registered or approved by any state or the United States either directly or by  
23 acceptance of accreditation by an accrediting body;

24 (3) "Political Candidates and Organizations" - any candidate for  
25 national, state or local elective office or a political party or other  
26 committee required to file information with the Federal Election Commission or  
27 any state election commission or its equivalent agency;

28 (4) "Governmental Organizations" - any department branch, or other  
29 instrumentality of the federal, state or local governments;

30 (5) "Non-Profit Hospitals" - any non-profit hospital licensed by this  
31 state or in any other state;

32 (6) Any charitable organization which does not intend to solicit and  
33 receive, and does not actually receive, contributions in excess of twenty-five  
34 thousand dollars (\$25,000) during a calendar year if all of its functions,  
35 including its fund-raising functions, are carried on by persons who are unpaid  
36 for their services, and provided that no part of its assets or income inures

1 to the benefit of or is paid to any officer or member;

2 (7) Any person who solicits solely for the benefit of organizations  
3 described in subdivisions (1) to (6) of this section.

4  
5 SECTION 5. Charitable organization filing of contracts.

6 Each contract between a charitable organization and a fund-raising  
7 counsel shall be in writing and shall be filed by the charitable organization  
8 with the Attorney General prior to the performance by the fund raising counsel  
9 of any material services pursuant to the contract. The contract shall contain  
10 such information as will enable the Attorney General to identify the services  
11 the fund raising counsel is to provide and the manner of his compensation.

12  
13 SECTION 6. Fund raising counsel registration and fees.

14 No person shall act as a fund raising counsel until he has first  
15 registered with the Attorney General. Applications for registration shall be  
16 in writing, under oath, in the form prescribed by the Attorney General, and  
17 shall be accompanied by an annual fee in the sum of one hundred dollars  
18 (\$100). Registrations are for a period of one (1) year and may be renewed  
19 upon the filing of a new application and the tendering of the fee previously  
20 prescribed for registration.

21  
22 SECTION 7. Paid solicitors registration, fees and bond - Filing of  
23 contracts - Solicitation notice - Contract requirements - Prohibited  
24 practices - Records - Deposit of funds.

25 (a) No person shall act as a paid solicitor unless he has first  
26 registered with the Attorney General. Applications for registration shall be  
27 in writing, in the form prescribed by the Attorney General and shall be  
28 accompanied by a fee in the amount of two hundred dollars (\$200.) at the time  
29 of registration. Each registration shall be valid for one (1) year and may be  
30 renewed for additional one-year periods.

31 (b) An applicant for registration as a paid solicitor shall at the time  
32 of making the application file with and have approved by the Attorney General  
33 a bond, in which the applicant shall be the principal obligor in the sum of  
34 ten thousand dollars (\$10,000), with one or more responsible sureties whose  
35 liability in the aggregate as the sureties shall be no less than such sum.  
36 The bond shall run to the Attorney General for the use of the state and to any

1 person, including a charitable organization who may have a cause of action  
2 against the paid solicitor for any liabilities resulting from the paid  
3 solicitor's conduct of any activities in violation of this act, or arising out  
4 of a violation of this act or any regulation adopted pursuant to this act,  
5 including any actions arising under this act which give rise to a violation of  
6 the Arkansas Deceptive Trade Practices Act. However, the aggregate liability  
7 of the surety to the state and to all other persons, including charitable  
8 organizations, shall in no event exceed the sum of the bond.

9 (c) No less than fifteen (15) days prior to the commencement of each  
10 solicitation campaign, a paid solicitor shall file with the Attorney General a  
11 copy of the contract described in subsection (d) of this section.

12 (d) A contract between a paid solicitor and a charitable organization  
13 shall be in writing, shall clearly state the respective obligations of the  
14 paid solicitor and the charitable organization including the compensation or  
15 remuneration to be paid by the charitable organization to the paid solicitor,  
16 and shall require delivery of the names and addresses of all persons making  
17 contributions and the amounts thereof to the charitable organization.

18 (e) A paid solicitor shall not represent that any part of the  
19 contributions received will be given or donated to any charitable organization  
20 unless such organization has consented in writing to the use of its name prior  
21 to the solicitation. The written consent shall be signed by an authorized  
22 officer, director or trustee of the charitable organization.

23 (f) No paid solicitor shall represent that tickets to an event are to  
24 be donated for use by another, unless the paid solicitor has first obtained a  
25 commitment, in writing, from a charitable organization stating that it will  
26 accept donated tickets and specifying the number of tickets which it is to  
27 accept and provided no more contributions for donated tickets shall be  
28 solicited than the number of ticket commitments received from the charitable  
29 organization. A charitable organization shall not commit to accept more  
30 donated tickets than it can reasonably expect to use. Donated tickets will be  
31 used in accordance with the representations made to the consumer at the time  
32 of solicitation.

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

36 (h) A paid solicitor shall file a financial report for a campaign with

1 the Attorney General no more than ninety (90) days after a solicitation  
2 campaign has been completed, and on the anniversary of the commencement of any  
3 solicitation campaign which lasts more than one (1) year. The financial  
4 report shall include gross revenue and an itemization of all expenditures  
5 incurred, and the amount of money ultimately remitted to the charity absent  
6 payment of any fees or costs to the paid solicitor. The report shall be  
7 completed on a form prescribed by the Attorney General. An authorized  
8 official of the paid solicitor and two (2) authorized officials of the  
9 charitable organization shall sign such report and they shall certify, under  
10 oath, that such report is true and complete to the best of their knowledge.

11 (i) A paid solicitor shall maintain during each solicitation campaign  
12 and for not less than three (3) years after the completion of each such  
13 campaign the following records, which shall be available to the Attorney  
14 General for inspection upon request:

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

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

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

21 (j) If a paid solicitor sells tickets to an event and represents that  
22 tickets will be donated for use by another, the paid solicitor shall maintain,  
23 for not less than three (3) years after the completion of the event, the  
24 following record, which shall be available to the Attorney General for  
25 inspection upon request: the name and address of all organizations receiving  
26 donated tickets for use by others, including the number of tickets received by  
27 each organization.

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

34 (l) Any material change in any information filed with the Attorney  
35 General pursuant to this section shall be reported in writing by the paid  
36 solicitor to the Attorney General not more than thirty (30) days after the

1 change occurs.

2 (m) All records required under this section shall be open to  
3 inspection, examination and copying during usual and customary business hours  
4 by the Attorney General or other authorized agencies.

5  
6 SECTION 8. Commercial coventurers - Filing of contracts - Terms -  
7 Accounting - Disclosures required in advertising.

8 (a) Every charitable organization subject to the registration  
9 requirements of this act, which agrees to permit a charitable sales promotion  
10 to be conducted in its behalf, shall obtain a written agreement from the  
11 commercial coventurer and file a copy of the agreement with the Attorney  
12 General prior to the commencement within this state of the charitable sales  
13 promotion. An authorized representative of the charitable organization and  
14 the commercial coventurer shall sign the agreement and the terms of the  
15 agreement shall include at a minimum the following:

16 (1) the goods or services to be offered to the public;

17 (2) the geographic area where, and the starting and final date  
18 when, such offering is to be made;

19 (3) the manner in which the name of the charitable organization  
20 is to be used, including any representation to be made to the public as to the  
21 amount or percent per unit of goods or service purchased or used that is to  
22 benefit the charitable organization;

23 (4) a provision for an accounting on a per unit basis to be given  
24 by the commercial coventurer to the charitable organization and the date on  
25 which it is to be made; and

26 (5) the date when and the manner in which the benefit is to be  
27 conferred on the charitable organization.

28 (b) A commercial coventurer shall keep the final accounting for each  
29 charitable sales promotion for three (3) years after the accounting date and  
30 the accounting shall be available to the Attorney General upon reasonable  
31 request.

32 (c) A commercial coventurer shall disclose in each advertisement for a  
33 charitable sales promotion the amount per unit of goods or services purchased  
34 or used that is to benefit the charitable organization or purpose. The amount  
35 may be expressed as a dollar amount or as a percentage of the value of the  
36 goods or services purchased or used.

1  
2 SECTION 9. Disclosures.

3 (a) It is an unlawful practice for any person to solicit or request  
4 contributions when any part of the proceeds is pledged to be given to a  
5 charitable organization or solicited for a charitable purpose unless:

6 (1) The person discloses to each party solicited and to every  
7 purchaser, prior to accepting funds, the identity of the person responsible  
8 for soliciting the funds and whether any compensation is received for those  
9 services;

10 (2) Whether soliciting by telephone, by mail, or by any other  
11 means, the person clearly and unambiguously discloses to each party and every  
12 purchaser, at the time or point of solicitation, his professional status;

13 (3) Upon request by a solicited party, the person truthfully and  
14 accurately discloses the percentage of funds raised which is being paid to the  
15 solicitor, either directly or as reimbursement of costs, and what percentage  
16 will be ultimately retained by the charity.

17 (b)(1) The provisions of this section shall not apply to any bona fide  
18 full-time employee of a charitable organization, or to any volunteer who  
19 donates or gives all of the gross proceeds from sales or all contributions to  
20 the organizations for which the funds or things of value were solicited.

21 (2) However, this exemption shall not apply to any person who  
22 directly or indirectly receives a commission as compensation for services in  
23 relation to fund-raising activities performed for the charitable organization.

24  
25 SECTION 10. Documents.

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

32 (b) The documents shall be available for inspection, examination, and  
33 copying by the Attorney General and other authorized agencies during usual and  
34 customary business hours.

35  
36 SECTION 11. Professional telemarketers - Registration and renewal.

1       (a) Every professional telemarketer must be employed in a principal -  
2 agent relationship by a paid solicitor registered pursuant to this act, and  
3 shall, within seventy-two (72) hours after accepting such employment, register  
4 with the Attorney General.

5       (b) Application for registration shall be in writing under oath in the  
6 form prescribed by the Attorney General and shall be accompanied by a fee in  
7 the sum of ten dollars (\$10.00).

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

11  
12       SECTION 12. Prohibited acts.

13       It shall be a violation of this act for:

14       (1) Any person to make any misrepresentation either express or implied  
15 during the course of soliciting funds for a charitable organization;

16       (2) Any charitable organization to engage in any financial transaction  
17 which knowingly jeopardizes or interferes with the ability of the charitable  
18 organization to accomplish its charitable purpose;

19       (3) Any person to knowingly use or exploit the fact of registration so  
20 as to lead the public to believe that such registration constitutes an  
21 endorsement or approval by the state;

22       (4) Any person to knowingly misrepresent that any other person sponsors  
23 or endorses a solicitation;

24       (5) Any person to knowingly either use the name of a charitable  
25 organization or display any emblem, device or printed matter belonging to or  
26 associated with a charitable organization without the express written  
27 permission of the charitable organization;

28       (6) Any charitable organization to knowingly use a name which is the  
29 same as or confusingly similar to the name of another charitable organization  
30 unless the latter organization shall consent in writing to its use;

31       (7) Any charitable organization to represent itself as being associated  
32 with another charitable organization without the express written  
33 acknowledgment and endorsement of the other charitable organization;

34       (8) Any person to knowingly make any false or misleading statements on  
35 any document required to be filed with the Attorney General;

36       (9) Any person to fail to substantially comply with the requirements of

1 this act;

2 (10) Any charitable organization to use the services of an unregistered  
3 paid solicitor who is required to register pursuant to this act; and

4 (11) Any paid solicitor to solicit contributions from citizens or  
5 entities located in this state of behalf of an unregistered charitable  
6 organization.

7  
8 SECTION 13. Nonresident organization - Service of process.

9 (a) A nonresident charitable organization, paid solicitor, fund raising  
10 counsel or professional telemarketer desiring to solicit funds within the  
11 State of Arkansas shall file with the Attorney General an irrevocable written  
12 consent that in suits, proceedings, and actions growing out of the violation  
13 of any provision of this act, or as a result of any activities conducted  
14 within this state giving rise to a cause of action, service on the Attorney  
15 General shall be as valid and binding as if due service had been made on the  
16 said charitable organization, paid solicitor, fund raising counsel or  
17 professional telemarketer.

18 (b) In case any process or pleadings are served upon the Attorney  
19 General, they shall be in duplicate, one (1) copy of which shall be filed in  
20 the office of the Attorney General, and the other immediately forwarded by the  
21 Attorney General by registered or certified mail to the principal office or  
22 place of business of the nonresident charitable organization, paid solicitor,  
23 fund raising counsel or professional telemarketer. Any service so had on the  
24 Attorney General shall be returnable in not less than thirty (30) days.

25  
26 SECTION 14. City ordinances provisionally authorized.

27 Nothing contained in the provisions of this act shall prohibit any city  
28 or incorporated town in the State of Arkansas from enacting otherwise lawful  
29 ordinances regulating a solicitation of contributions within the limits of the  
30 city.

31  
32 SECTION 15. Disposition of fees.

33 All fees collected by the Attorney General under this act shall be  
34 deposited in the State Treasury, and the Treasurer of State shall credit them,  
35 as general revenues, to the various funds in the respective amounts to each  
36 and to be used for the purposes as provided in the Revenue Stabilization Law,

1 beginning at Arkansas Code § 19-5-101.

3 SECTION 16. Violation of the Deceptive Trade Practices Act.

4 (a) A violation of the provisions of this act shall constitute an  
5 unfair and deceptive act or practice as defined by the Deceptive Trade  
6 Practices Act, beginning at Arkansas Code § 4-88-101. All remedies, penalties  
7 and authority granted to the Attorney General or other person under the  
8 Deceptive Trade Practices Act shall be available to the Attorney General or  
9 other person for the enforcement of this act.

10 (b) Nothing in this section limits the rights or remedies which are  
11 otherwise available to a consumer under any other law.

12 (c) The obligations under this section are cumulative and should in no  
13 way be deemed to limit the obligations imposed under any other law.

15 SECTION 17. Arkansas Code Title 4, Chapter 28, Subchapter 4, regarding  
16 the Solicitation of Contributions, Arkansas Code §§ 4-28-401 through 4-28-410,  
17 is repealed.

18 ~~4-28-401. Definitions.~~

19 ~~As used in this subchapter, unless the context otherwise requires:~~

20 ~~(1) "Person" means an individual, organization, group,~~  
21 ~~association, partnership, corporation, or any combination of them;~~

22 ~~(2) "Charitable organization" means any benevolent,~~  
23 ~~philanthropic, patriotic, or eleemosynary person or any other person not~~  
24 ~~regulated by §§ 17-41-101 - 17-41-111, raising money on behalf of such an~~  
25 ~~organization;~~

26 ~~(3) "Contribution" means the pledge or grant of any money or~~  
27 ~~property of any kind or value;~~

28 ~~(4) "Promotion" means, for each charitable organization~~  
29 ~~represented, each and every fundraising drive or campaign for which~~  
30 ~~contributions are solicited; and~~

31 ~~(5) "Solicitation" means each request for a contribution.~~

33 ~~—4-28-402. Penalties.~~

34 ~~(a) Any person conducting a solicitation in violation of the provisions~~  
35 ~~of this subchapter or providing to the Attorney General false information~~  
36 ~~pursuant to the provisions of this subchapter shall be guilty of a Class A~~

1 ~~misdemeanor.~~

2 ~~(b) In connection with any promotion by a charitable organization, any~~  
3 ~~person employing any device, scheme, or artifice to defraud or obtaining money~~  
4 ~~or property by means of any false pretense, misrepresentation, or promise~~  
5 ~~which the actor does not intend to perform, shall be guilty of a Class D~~  
6 ~~felony.~~

7  
8 ~~4-28-403. Injunctions.~~

9 ~~Upon complaint of any person, or other information coming to the~~  
10 ~~attention of the prosecuting attorney or Attorney General, the prosecuting~~  
11 ~~attorney or Attorney General may institute an action in the proper court to~~  
12 ~~enjoin a solicitation of contributions which would violate any provisions of~~  
13 ~~this chapter.~~

14  
15 ~~4-28-404. Prerequisite filings.~~

16 ~~(a)(1) No charitable organization, in or out of state, shall solicit~~  
17 ~~contributions from persons in this state by any means whatsoever until the~~  
18 ~~charitable organization has registered, provided certain information~~  
19 ~~concerning the solicitation as required by this subchapter on forms to be~~  
20 ~~provided by the Attorney General, and has filed the information with the~~  
21 ~~Attorney General.~~

22 ~~(2) The information so filed shall be available to the general~~  
23 ~~public as a matter of public record, except and to the extent such records~~  
24 ~~would otherwise be exempt from disclosure under the Arkansas Freedom of~~  
25 ~~Information Act.~~

26 ~~(b) The forms containing such information shall be sworn to and shall~~  
27 ~~include, but not be limited to:~~

28 ~~(1) The identity of the charitable organization by or for whom~~  
29 ~~the solicitation is to be conducted;~~

30 ~~(2) The address of the charitable organization;~~

31 ~~(3) The purpose for each promotion for which the contributions~~  
32 ~~solicited are to be used;~~

33 ~~(4) The individual or officer who will have custody of the~~  
34 ~~contributions;~~

35 ~~(5) The individuals responsible for the distribution of the~~  
36 ~~contributions;~~

1           ~~(6) The period of time during which such promotion is to be~~  
2 ~~conducted;~~

3           ~~(7) A description of the method or methods of solicitation in~~  
4 ~~such detail as may from time to time be determined by the Attorney General;~~

5           ~~(8) Whether the promotion is to be conducted by voluntary unpaid~~  
6 ~~solicitors, by paid solicitors, or both;~~

7           ~~(9) If in whole or in part by paid solicitors, the name and~~  
8 ~~address of each professional fundraiser supplying the solicitors, the basis of~~  
9 ~~payment, and the nature of the arrangement; and~~

10           ~~(10) A copy of the appropriate Internal Revenue Service tax-~~  
11 ~~exempt status form.~~

12  
13           ~~4-28-405. Reciprocal agreements with other states regarding required~~  
14 ~~information.~~

15           ~~(a) The Attorney General may enter into reciprocal agreements with a~~  
16 ~~like authority of any other state or states for the purpose of exchanging~~  
17 ~~information made available to the Attorney General under this subchapter.~~

18           ~~(b) Pursuant to such agreements, the Attorney General may accept~~  
19 ~~information filed by a charitable organization with another state in lieu of~~  
20 ~~the information required to be filed by a charitable organization in~~  
21 ~~accordance with the provisions of § 4-28-404 if the information is~~  
22 ~~substantially similar to the information required to be filed under § 4-28-~~  
23 ~~404.~~

24  
25           ~~4-28-406. Reports.~~

26           ~~(a) On or before May 15 of each year, every charitable organization~~  
27 ~~subject to the provisions of this subchapter which has received contributions~~  
28 ~~in excess of ten thousand dollars (\$10,000) during the previous calendar year~~  
29 ~~but which is not required to submit tax or information returns to the Internal~~  
30 ~~Revenue Service shall file the following information on forms to be provided~~  
31 ~~by the Attorney General:~~

32           ~~(1) The gross amount of the contributions pledged or collected;~~

33           ~~(2) The amount allocated and dedicated to the charitable purpose~~  
34 ~~represented for each promotion;~~

35           ~~(3) The aggregate amount paid and to be paid for the expense of~~  
36 ~~the promotion including overhead; and~~

1           ~~(4) The aggregate amount paid to and to be paid to professional~~  
2 ~~fundraisers and solicitors.~~

3           ~~(b) On or before May 15 of each year, each charitable organization~~  
4 ~~subject to the provisions of this subchapter which is required to file tax or~~  
5 ~~information returns with the Internal Revenue Service shall, in lieu of an~~  
6 ~~annual report, file with the Attorney General's office a copy of all tax or~~  
7 ~~information returns, including all schedules and amendments, submitted by the~~  
8 ~~charitable organization to the Internal Revenue Service for the previous~~  
9 ~~calendar year except any schedules of contributors to the organization.~~

10           ~~(c) A charitable organization which maintains its books on other than a~~  
11 ~~calendar-year basis may, upon application to the Attorney General, be~~  
12 ~~permitted to file the information referred to in subsection (b) of this~~  
13 ~~section within six (6) months after the close of its fiscal year.~~

14  
15           ~~4-28-407. Records.~~

16           ~~(a) Every charitable organization subject to the provisions of this~~  
17 ~~subchapter shall keep a full and true record in such form as will enable the~~  
18 ~~charitable organization accurately to provide the information required by this~~  
19 ~~subchapter.~~

20           ~~(b) All records required hereunder shall be open to inspection,~~  
21 ~~examination, and copying at all times by the Attorney General or other~~  
22 ~~authorized agencies.~~

23  
24           ~~4-28-408. Exemptions.~~

25           ~~(a) This subchapter shall not apply to any promotion by the members of~~  
26 ~~a charitable organization where the contributions are solicited solely from~~  
27 ~~persons who are members thereof at the time of the promotion nor shall this~~  
28 ~~subchapter apply to promotions made solely for church, missionary, or~~  
29 ~~religious purposes.~~

30           ~~(b) The following organizations shall not be subject to § 4-28-404 or §~~  
31 ~~4-28-406, but shall keep full and accurate records in such form as will enable~~  
32 ~~the organization to provide to the Attorney General, upon request, the~~  
33 ~~information specified in § 4-28-406(a) for each promotion conducted. Each such~~  
34 ~~organization shall submit such information as the Attorney General may require~~  
35 ~~to substantiate an exemption under this section:~~

36           ~~(1) Any duly organized religious corporation, institution, or~~

1 society;

2 ~~(2) Any parent-teacher association or educational institution,~~  
3 ~~the curricula of which in whole or in part are registered or approved by any~~  
4 ~~state or the United States either directly or by acceptance of accreditation~~  
5 ~~by an accrediting body;~~

6 ~~(3) Any civic organization, including any local service club,~~  
7 ~~veteran's post, fraternal society, volunteer fire or rescue group, or local~~  
8 ~~civic league not organized for profit;~~

9 ~~(4) Any nonprofit hospital licensed by this state or in any other~~  
10 ~~state;~~

11 ~~(5) Any governmental unit or instrumentality of any state or the~~  
12 ~~United States; or~~

13 ~~(6) Any broadcast media owned or operated by an educational~~  
14 ~~institution or governmental entity, or any entity organized solely for the~~  
15 ~~support of such broadcast media.~~

16 ~~(c) This subchapter shall not apply to any charitable organization~~  
17 ~~which does not intend to solicit and receive, and does not actually receive,~~  
18 ~~contributions in excess of ten thousand dollars (\$10,000) during a calendar~~  
19 ~~year if all of its functions, including its fund-raising functions, are~~  
20 ~~carried on by persons who are unpaid for their services, and provided that no~~  
21 ~~part of its assets or income inures to the benefit of or is paid to any~~  
22 ~~officer or member.~~

23  
24 ~~4-28-409. Nonresident organization - Service of process.~~

25 ~~(a) A nonresident charitable organization desiring to solicit funds~~  
26 ~~within the State of Arkansas shall file with the information required in § 4-~~  
27 ~~28-404 an irrevocable written consent that in suits, proceedings, and actions~~  
28 ~~growing out of the violation of any provision of this subchapter, or as a~~  
29 ~~result of any activities conducted within this state giving rise to a cause of~~  
30 ~~action, service on the Attorney General shall be as valid and binding as if~~  
31 ~~due service had been made on the said charitable organization.~~

32 ~~(b) In case any process or pleadings are served upon the Attorney~~  
33 ~~General, they shall be in duplicate, one (1) copy of which shall be filed in~~  
34 ~~the office of the Attorney General, and the other immediately forwarded by the~~  
35 ~~Attorney General by registered or certified mail to the principal office or~~  
36 ~~place of business of the nonresident charitable organization. Any service so~~

1 ~~had on the Attorney General shall be returnable in not less than thirty (30)~~  
2 ~~days.~~

3  
4 ~~4-28-410. City ordinances provisionally authorized.~~

5 ~~Nothing contained in the provisions of this subchapter shall prohibit~~  
6 ~~any city in the State of Arkansas from enacting ordinances regulating a~~  
7 ~~solicitation of contributions within the limits of the city, unless the~~  
8 ~~charitable organization subject to the provisions of this subchapter complies~~  
9 ~~with the filing, reporting, and registration requirements thereof.~~

10  
11 SECTION 18. Arkansas Code Title 17, Chapter 41, regarding Professional  
12 Fund Raisers and Solicitors, Arkansas Code §§ 17-41-101 through 17-41-111, is  
13 repealed.

14 ~~17-41-101. Definitions.~~

15 ~~As used in this chapter, unless the context otherwise requires:~~

16 ~~(1) "Charitable organization" means any benevolent,~~  
17 ~~philanthropic, patriotic, civic, or eleemosynary person;~~

18 ~~(2) "Professional fund raiser" means any person who, for~~  
19 ~~compensation or any other consideration, plans, conducts, or manages in this~~  
20 ~~state the solicitation of contributions for or on behalf of any charitable~~  
21 ~~organization or any other person, or any person who engages in the business~~  
22 ~~of, or holds himself out to persons in this state as independently engaged in~~  
23 ~~the business of, soliciting contributions for such purpose, but shall not~~  
24 ~~include a bona fide officer or employee of a charitable organization;~~

25 ~~(3) "Professional solicitor" means any person who is employed or~~  
26 ~~retained for compensation by a professional fund raiser to solicit~~  
27 ~~contributions in this state for charitable purposes;~~

28 ~~(4) "Person" means any individual, organization, group,~~  
29 ~~association, partnership, corporation, or any combination of them;~~

30 ~~(5) "Promotion" means, for each charitable organization~~  
31 ~~represented, each and every fundraising drive or campaign for which~~  
32 ~~contributions are solicited. Similar or identical promotions on behalf of~~  
33 ~~different charitable organizations constitute separate and distinct~~  
34 ~~promotions; and~~

35 ~~(6) "Solicitation" means each request for a contribution.~~

36

1           ~~17-41-102. Exemptions.~~

2           ~~This chapter shall not apply to any solicitation made by or on behalf of~~  
3 ~~any church, missionary, or religious organization, or to any solicitation~~  
4 ~~directed to persons outside this state, excepting the provisions of § 17-41-~~  
5 ~~103(b).~~

6  
7           ~~17-41-103. Penalties - Injunction.~~

8           ~~(a) Any professional fund raiser violating a provision of this chapter~~  
9 ~~shall be guilty of a Class A misdemeanor.~~

10          ~~(b) In connection with any promotion, any person employing any device,~~  
11 ~~scheme, or artifice to defraud or obtaining money or property by means of any~~  
12 ~~false pretense, misrepresentation, or promise which the actor does not intend~~  
13 ~~to perform shall be guilty of a Class D felony for each promotion.~~

14          ~~(c) Upon complaint of any person or other information coming to the~~  
15 ~~attention of the prosecuting attorney or Attorney General, the prosecuting~~  
16 ~~attorney or Attorney General may institute an action in the proper court to~~  
17 ~~enjoin a professional fund raiser or professional solicitor from violating any~~  
18 ~~provision of this chapter.~~

19  
20          ~~17-41-104. Fund raisers - Registration and renewal.~~

21          ~~(a) No person shall act as a professional fund raiser for any~~  
22 ~~charitable organization until he has first registered with the Attorney~~  
23 ~~General.~~

24          ~~(b) Applications for registration shall be in writing, under oath, in~~  
25 ~~the form prescribed by the Attorney General, and shall be accompanied by an~~  
26 ~~annual fee in the sum of one hundred dollars (\$100).~~

27          ~~(c) At the time of making application, the applicant shall file with,~~  
28 ~~and have approved by, the Attorney General a bond in which the applicant shall~~  
29 ~~be the principal in the sum of ten thousand dollars (\$10,000), with one (1) or~~  
30 ~~more sureties whose liability in the aggregate as sureties will at least equal~~  
31 ~~that sum.~~

32          ~~(d) The bond shall run to the Attorney General for the use of the state~~  
33 ~~and to any person, including a charitable organization, who may have a cause~~  
34 ~~of action against the principal of the bond for any deceptive trade practice,~~  
35 ~~malfeasance, or misfeasance of the principal or any professional solicitor~~  
36 ~~employed by him in the conduct of a solicitation. However, the aggregate~~

1 ~~liability of the surety to the state and to all such persons, including~~  
2 ~~charitable organizations, shall, in no event, exceed the sum of the bond.~~

3 ~~(e) Registration, when effected, shall be for a period of one (1) year~~  
4 ~~and may be renewed upon the filing of the bond and fee prescribed herein for~~  
5 ~~additional one-year periods.~~

6  
7 ~~17-41-105. Solicitors - Registration and renewal.~~

8 ~~(a) Every professional solicitor must be employed in a principal-agent~~  
9 ~~relationship by a professional fund raiser registered pursuant to this~~  
10 ~~chapter, and shall, within seventy-two (72) hours after accepting such~~  
11 ~~employment, register with the Attorney General.~~

12 ~~(b) Application for registration shall be in writing under oath in the~~  
13 ~~form prescribed by the Attorney General and shall be accompanied by a fee in~~  
14 ~~the sum of ten dollars (\$10.00).~~

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

18  
19 ~~17-41-106. Nonresident fund raisers and solicitors - Service of process.~~

20 ~~(a) Every nonresident professional fund raiser and professional~~  
21 ~~solicitor shall file with the Attorney General, in addition to the application~~  
22 ~~for registration required by § 17-41-104, an irrevocable written consent on~~  
23 ~~behalf of himself and any nonresident charitable organization for which~~  
24 ~~solicitations are to be made that in suits, proceedings, and actions growing~~  
25 ~~out of the violation of any provision of this chapter, or as a result of any~~  
26 ~~activities conducted within this state, giving rise to a cause of action,~~  
27 ~~service on the Attorney General shall be as valid and binding as if the~~  
28 ~~service had been made on the professional fund raiser, professional solicitor,~~  
29 ~~or charitable organization.~~

30 ~~(b) In case any process or pleading is served upon the Attorney~~  
31 ~~General, it shall be in triplicate. One (1) copy shall be filed in the office~~  
32 ~~of the Attorney General and the other copies immediately forwarded by the~~  
33 ~~Attorney General by registered or certified mail to the principal office or~~  
34 ~~place of business of the nonresident professional fund raiser, professional~~  
35 ~~solicitor, or charitable organization.~~

36 ~~(c) Any service so had on the Attorney General shall be returnable in~~

1 ~~not less than thirty (30) days.~~

2  
3 ~~17-41-107. Documents.~~

4 ~~(a) All contracts, scripts, pamphlets, handouts, and other materials~~  
5 ~~used by professional fund raisers and solicitors shall be in writing, and true~~  
6 ~~and correct copies of all documents used in any promotion shall be kept on~~  
7 ~~file in the offices of the professional fund raiser and in the offices of the~~  
8 ~~charitable organization on whose behalf the promotion is conducted for a~~  
9 ~~period of three (3) years from the date the solicitation of contributions for~~  
10 ~~the promotion commences.~~

11 ~~(b) The documents shall be available for inspection, examination, and~~  
12 ~~copying by the Attorney General and other authorized agencies during usual and~~  
13 ~~customary business hours.~~

14  
15 ~~17-41-108. Disposition of fees.~~

16 ~~All fees collected by the Attorney General under this chapter shall be~~  
17 ~~deposited in the State Treasury, and the Treasurer of State shall credit them,~~  
18 ~~as general revenues, to the various funds in the respective amounts to each~~  
19 ~~and to be used for the purposes as provided in the Revenue Stabilization Law,~~  
20 ~~§ 19-5-101 et seq.~~

21  
22 ~~17-41-109. City regulations.~~

23 ~~Nothing contained in the provisions of §§ 4-28-401 - 4-28-410 or this~~  
24 ~~chapter shall prohibit any city from enacting ordinances regulating a~~  
25 ~~solicitation of contributions within the limits of the city, unless the~~  
26 ~~charitable organization or professional fund raiser subject to the provisions~~  
27 ~~of those sections complies with the filing, reporting, and registration~~  
28 ~~requirements thereof.~~

29  
30 ~~17-41-110. Records.~~

31 ~~(a) Each contract between a charitable organization and a professional~~  
32 ~~fund raiser shall be in writing and shall be filed by the professional fund~~  
33 ~~raiser with the Attorney General at least fifteen (15) days prior to the~~  
34 ~~performance by the professional fund raiser of any material services pursuant~~  
35 ~~to such contract. The contract shall contain such information as will enable~~  
36 ~~the Attorney General to identify the services the professional fund raiser is~~

1 ~~to provide and the manner and amount of his compensation.~~

2 ~~(b) Each contract between a charitable organization and a professional~~  
3 ~~fund raiser shall require delivery of the gross collections of any promotion~~  
4 ~~to the charitable organization or its designated representatives, and shall~~  
5 ~~require delivery of the names and addresses of all persons making~~  
6 ~~contributions and the amounts thereof to the charitable organization.~~

7 ~~(c)(1) Every professional fund raiser subject to the provisions of this~~  
8 ~~subchapter shall keep a full and true record of each promotion, including~~  
9 ~~names and addresses of all persons making contributions and the amounts~~  
10 ~~thereof, in such form as will enable the professional fund raiser accurately~~  
11 ~~to provide the information required by this subchapter. Such information~~  
12 ~~shall be maintained by the professional fund raiser for a minimum of three (3)~~  
13 ~~years after completion of the promotion.~~

14 ~~(2) All records required hereunder, both in the hands of a~~  
15 ~~professional fund raiser or a charitable organization, shall be open to~~  
16 ~~inspection, examination, and copying during usual and customary business hours~~  
17 ~~by the Attorney General or other authorized agencies.~~

18 ~~(d) A professional fund raiser who at any time has custody of~~  
19 ~~contributions from a promotion shall keep such moneys in an account at a bank~~  
20 ~~or other federally insured financial institutions. Such account shall be~~  
21 ~~separate and segregated from the general operating account and all personal~~  
22 ~~funds of the professional fund raiser.~~

23 ~~(e) From and after April 12, 1993, all professional fund raisers shall~~  
24 ~~provide the names and addresses of all persons making contributions and the~~  
25 ~~amounts thereof to the charitable organization for which the funds were~~  
26 ~~solicited.~~

27  
28 ~~17-41-111. Reports.~~

29 ~~For each promotion, within sixty (60) days of the close of such~~  
30 ~~promotion, and on the anniversary of the commencement of a promotion lasting~~  
31 ~~more than one (1) year, every professional fund raiser subject to the~~  
32 ~~provisions of this subchapter who has solicited and received contributions in~~  
33 ~~excess of five hundred dollars (\$500) shall file the following information on~~  
34 ~~forms to be provided by the Attorney General:~~

35 ~~(1) The gross amount of contributions pledged and the amount~~  
36 ~~collected for each promotion undertaken by the professional fund raiser;~~

1           ~~(2) The amount of contributions remitted or to be remitted to~~  
2 ~~each charitable organization or purpose represented; and~~

3           ~~(3) The aggregate amount retained by or paid to the professional~~  
4 ~~fund raiser, including all overhead, expenses, commissions, and any other~~  
5 ~~amounts of whatever description.~~

6  
7           SECTION 19. Arkansas Code § 4-88-110, regarding the solicitation of  
8 funds for charitable organizations, is repealed.

9           ~~4-88-110. Solicitations for charitable organizations.~~

10          ~~(a) It is an unlawful practice for any person to solicit or request~~  
11 ~~contributions or to sell goods, tickets of admission, advertising, or any~~  
12 ~~other thing of value or offer to do the same when any part of the proceeds is~~  
13 ~~pledged to be given to a charitable organization or solicited for a charitable~~  
14 ~~purpose unless:~~

15           ~~(1) The person discloses to each party solicited and to every~~  
16 ~~purchaser, prior to accepting funds, the identity of the person responsible~~  
17 ~~for soliciting the funds and whether any compensation is received for those~~  
18 ~~services;~~

19           ~~(2) Whether soliciting by telephone, by mail, or by any other~~  
20 ~~means, the person clearly and unambiguously discloses to each party and every~~  
21 ~~purchaser, at the time or point of solicitation, his professional status;~~

22           ~~(3) Upon request by a solicited party, the person truthfully and~~  
23 ~~accurately discloses the percentage of funds raised which is being paid to the~~  
24 ~~solicitor and what percentage will be applied to the charitable purpose; and~~

25           ~~(4) Upon request by a solicited party, the person truthfully and~~  
26 ~~accurately discloses the percentages of funds that are to be received by~~  
27 ~~either or both the professional fund raiser and the charitable organization as~~  
28 ~~reflected in the written contract between the professional fund raiser and the~~  
29 ~~charitable organization.~~

30          ~~(b) It is an unlawful practice for any person to solicit contributions~~  
31 ~~of anything of value or to sell or offer to sell tickets of admission,~~  
32 ~~advertising, or any other tangible thing of value upon the representation,~~  
33 ~~direct or by implication, that any part of the funds or other items received~~  
34 ~~shall be given or contributed to any charitable organization when the~~  
35 ~~organization has not agreed or consented in writing to the use of its name~~  
36 ~~prior to the promotion and solicitation.~~

