

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/29/01 H4/9/01*

# A Bill

HOUSE BILL 2295

5 By: Representative Gillespie  
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## For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE LAW  
10 CONCERNING SOLICITATION OF CONTRIBUTIONS; AND FOR  
11 OTHER PURPOSES.  
12

### Subtitle

14 TO AMEND VARIOUS PROVISIONS OF THE LAW  
15 CONCERNING SOLICITATION OF  
16 CONTRIBUTIONS.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code 4-28-402 is amended to read as follows:

22 4-28-402. Registration of charitable organizations prior to  
23 solicitation.

24 (a)(1) No charitable organization, in or out of the state, shall  
25 solicit contributions from persons in this state by any means whatsoever until  
26 the charitable organization has:

27 (A) Registered with the Attorney General; and

28 (B) Provided certain information concerning the  
29 solicitation, as required by this subchapter, on forms to be provided by the  
30 Attorney General, and has filed the information with the Attorney General.

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

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

- 1           (1) The identity of the charitable organization by or for whom  
2 the solicitation is to be conducted;
- 3           (2) The address of the charitable organization;
- 4           (3) The purpose for which the contributions solicited are to be  
5 used;
- 6           (4) The individual or officer who will have custody of the  
7 contributions;
- 8           (5) The individuals responsible for the distribution of the  
9 contributions;
- 10          (6) The period of time during which the promotion is to be  
11 conducted;
- 12          (7) A description of the method or methods of solicitation, in  
13 such detail as may from time to time be determined by the Attorney General;
- 14          (8) Whether the promotion is to be conducted by voluntary unpaid  
15 solicitors, by paid solicitors, or both;
- 16          (9) If in whole or in part by paid solicitors:
- 17               (A) The name and address of each paid solicitor;
- 18               (B) The basis of payment;
- 19               (C) The nature of the arrangement; and
- 20               (D) A copy of the contract for services; and
- 21          (10) A copy of the appropriate Internal Revenue Service tax-  
22 exempt status form.
- 23          (c) A chapter, branch, or affiliate in this state of a registered  
24 parent organization shall not be required to register provided the parent  
25 organization files a consolidated financial report or tax information form for  
26 itself and the chapter, branch, or affiliate.
- 27          (d)(1) No registration fee shall be required for timely registration.
- 28               (2) Registration is valid for one (1) year from the date the  
29 registration is filed with the Attorney General.
- 30               (3) Once a charitable organization is notified that it shall  
31 register or that its registration has lapsed, the charitable organization  
32 shall have thirty (30) calendar days to comply with the registration  
33 requirements.
- 34               (4) If the charitable organization fails to register, a twenty-  
35 five dollar (\$25.00) late fee shall be assessed.
- 36               (5) The late fee shall accompany the registration forms when

1 submitted to the Attorney General for filing.

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3 SECTION 2. Arkansas Code 4-28-404 is amended to read as follows:

4 4-28-404. Charitable organizations exempted from registration and  
5 financial disclosure requirements.

6 The following charitable organizations shall not be subject to the  
7 filing or reporting requirement provisions of §§ 4-28-402, 4-28-403, and 4-28-  
8 405, provided each such organization shall submit any information as the  
9 Attorney General may require to substantiate an exemption under this section:

10 (1) Religious organizations, i.e., any bona fide, duly constituted  
11 religious entity if the entity satisfies each of the following criteria:

12 (A) The entity is exempt from taxation pursuant to the Internal  
13 Revenue Code; *and*

14 (B) No part of the entity's net income inures to the direct  
15 benefit of any individual;

16 (2) Educational institutions, i.e., any parent-teacher association or  
17 educational institution, the curricula of which in whole or in part are  
18 registered or approved by any state or the United States either directly or by  
19 acceptance of accreditation by an accrediting body;

20 (3) Political candidates and organizations, i.e., any candidate for  
21 national, state, or local elective office or a political party or other  
22 committee required to file information with the Federal Election Commission or  
23 any state election commission or its equivalent agency;

24 (4) Governmental organizations, i.e., any department branch or other  
25 instrumentality of the federal, state, or local governments;

26 (5) Nonprofit hospitals, i.e., any nonprofit hospital licensed by this  
27 state or in any other state; and

28 (6) Any charitable organization which does not intend to solicit and  
29 receive, and does not actually receive, contributions in excess of twenty-five  
30 thousand dollars (\$25,000) during a calendar year:

31 (A) If all of its functions, including its fund-raising  
32 functions, are carried on by persons who are unpaid for their services; and

33 (B) Provided that no part of its assets or income inures to the  
34 benefit of or is paid to any officer or member; ~~and~~

35 ~~(7) Any person who solicits solely for the benefit of organizations~~  
36 ~~described in subdivisions (1) — (6) of this section.~~

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SECTION 3. Arkansas Code 4-28-406 is amended to read as follows:

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

(a) No person shall act as a fund raising counsel until he has first registered with the Attorney General.

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

(c) Each contract between fund-raising counsel and a charitable organization shall be in writing and shall be filed by fund-raising counsel with the Attorney General prior to the performance by fund-raising counsel of any material services pursuant to the contract.

~~(c)~~(d) Registrations are for a period of one (1) year and may be renewed upon the filing of a new application and the tendering of the fee previously prescribed for registration.

SECTION 4. Arkansas Code 4-28-407(a), concerning paid solicitors, is amended to read as follows:

(a)(1) No person shall act as a paid solicitor unless he has first registered with the Attorney General.

(2) Applications for registration shall be in writing, in the form prescribed by the Attorney General, and shall be accompanied by a fee in the amount of two hundred dollars (\$200) at the time of registration.

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

(4) There shall be, in addition to the annual registration fee, a late fee of ten dollars (\$10.00) per month for every month a paid solicitor is not registered, for new registration or renewal, as required by this subchapter.

SECTION 5. Arkansas Code 4-28-408(a), concerning commercial coventurers, is amended to read as follows:

(a)(1) Every charitable organization subject to the registration requirements of this subchapter, which agrees to permit a charitable sales promotion to be conducted in its behalf, shall obtain a written agreement from the commercial coventurer.

1           (2) The commercial coventurer shall register with the Attorney  
2 General and file a copy of the agreement with the Attorney General, at least  
3 fifteen (15) calendar days prior to the commencement within this state of the  
4 any charitable sales promotion within this state.

5           ~~(2)~~(3) An authorized representative of the charitable  
6 organization and the commercial coventurer shall sign the agreement and the  
7 terms of the agreement shall include at a minimum the following:

8                   (A) The goods or services to be offered to the public;

9                   (B) The geographic area where, and the starting and final  
10 date when, such offering is to be made;

11                  (C) The manner in which the name of the charitable  
12 organization is to be used, including any representation to be made to the  
13 public as to the amount or percent per unit of goods or service purchased or  
14 used that is to benefit the charitable organization;

15                  (D) A provision for an accounting on a per unit basis to be  
16 given by the commercial coventurer to the charitable organization and the date  
17 on which it is to be made; and

18                  (E)(i) The date when and the manner in which the benefit is  
19 to be conferred on the charitable organization.

20                                 (ii) This date may not be more than ninety (90)  
21 calendar days after the final date the offer is extended to the public by the  
22 commercial coventurer.

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24           SECTION 6. Arkansas Code 4-28-412 is amended to read as follows:

25           4-28-412. Prohibited acts.

26           It shall be a violation of this section for:

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

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

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

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

1 (5) Any person to knowingly either use the name of a charitable  
2 organization or display any emblem, device, or printed matter belonging to or  
3 associated with a charitable organization without the express written  
4 permission of the charitable organization;

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

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

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

13 (9) Any person to fail to substantially comply with the requirements of  
14 this subchapter;

15 (10) Any charitable organization to use the services of an unregistered  
16 paid solicitor who is required to register pursuant to this subchapter; ~~and~~

17 (11) Any paid solicitor to solicit contributions from citizens or  
18 entities located in this state ~~of~~ on behalf of an unregistered charitable  
19 organization; and

20 (12) Any person, either as an individual or as agent, officer, or  
21 employee of a charitable organization to sell or otherwise furnish for a  
22 consideration to any other person or organization any list of solicited  
23 contributors unless solicited contributors on the list have been informed of  
24 their option to be deleted from the list and the charitable organization has  
25 procedures in place to delete the names of contributors who ask to be deleted.

26 SECTION 7. Arkansas Code 4-28-415 is amended to read as follows:

27 4-28-415. Disposition of fees.

28 (a) All regular registration fees collected by the Attorney General  
29 under this subchapter shall be deposited in the State Treasury and the  
30 Treasurer of State shall credit them as general revenues to the various funds  
31 in the respective amounts to each and to be used for the purposes as provided  
32 in the Revenue Stabilization Law, § 19-5-101 et seq.

33 (b) All late fees collected shall be retained by the Attorney General  
34 for consumer education, staff development, and training, and to offset the  
35 actual costs of registration and fee collection.

36 /s/ Gillespie