

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

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House of Representatives, February 2, 1976

Reported by Mrs. Clark from the Committee on Business Legislation pursuant to House Paper 1711. Printed under Joint Rule No. 3.

EDWIN H. PERT, Clerk

(Filed under Joint Rule 3 pursuant to House Paper 1711)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Charitable Solicitations.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 9 MRSA c. 385 is enacted to read:

CHAPTER 385

CHARITABLE SOLICITATIONS ACT

§ 5001. Short title

This Act shall be known and may be cited as the "Charitable Solicitations Act."

§ 5002. Legislative intent

It is the intent of the Legislature to require registration of charitable organizations, professional fund-raising counsels and professional solicitors. The purpose of such registration is to compile a source of information that citizens may use to learn about persons or organizations which solicit contributions from them and that the Legislature may use to assist in determining whether further regulation of charitable solicitations may be necessary.

§ 5003. Definitions

As used in this Act, unless the context specifically indicates otherwise, the following words shall have the following meanings:

C. Charitable organization. "Charitable organization" means an organization which is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization and which solicits, accepts or obtains contributions from the public for charitable purposes. A chapter, branch, area office or similar affiliate or any person soliciting contributions within the State for a charitable organization which has its principal place of business outside the State shall be deemed a charitable organization for the purposes of this Act.

2. Charitable purpose. "Charitable purpose" means any charitable, benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary purpose.

3. Contribution. "Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay. This definition does not include:

A. Payments by members of an organization for membership fees, dues, fines or assessments, or for services rendered to individual members, if membership in such organization confers a bona fide right, privilege, professional standing, honor or other direct benefits, other than the right to vote, elect officers or hold offices; or

B. Money or property received from any governmental authority.

4. Federated fund-raising organization. "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund, United Way or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

5. Parent organization. "Parent organization" means that part of a charitable organization which coordinates, supervises or exercises control over policy, fund-raising and expenditures, or assists or advises one or more chapters, branches or affiliates in the State.

6. Person. "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

7. Professional fund-raising counsel. "Professional fund-raising counsel" means any person who, for a flat fixed fee under a written agreement or for a fee computed under a written agreement on the basis of funds to be raised or actually raised, plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for or on behalf of any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the State shall not be deemed to be a professional fund-raising counsel unless that person's salary or other compensation is computed on the basis of funds to be raised or actually raised or unless that person performs the same or similar services for a charitable organization

other than that of which he is an officer or employee. No attorney, investment counselor or banker who advises any person to make a contribution to a charitable organization shall be deemed, as the result of such advice, to be a professional fund-raising counsel.

8. Professional solicitor. "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for or on behalf of a charitable organization, whether such solicitation is performed personally or through the professional solicitor's agents, servants or employees or through agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this chapter. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the State shall not be deemed to be a professional solicitor unless such person performs the same or similar services for a charitable organization other than that of which he is an officer or employee. No attorney, investment counselor or banker who advises any person to make a contribution to a charitable organization shall be deemed, as the result of such advice, to be a professional solicitor.

9. Solicit and solicitation. "Solicit and solicitation" means the request directly or indirectly for money, credit, property, financial assistance or other thing or things of value on the plea or representation that such money, credit, property, financial assistance or other thing or things of value will be used for charitable purposes as those purposes are defined in this section. These words shall also mean and include the following methods of securing such money, credit, property, financial assistance or other thing or things of value:

- A. Any oral or written request;
- B. The making of any request to a Maine newspaper, periodical, broadcast facility licensed in this State or news service to publish, disseminate or broadcast a solicitation or to publicize a solicitation or an intention to solicit;
- C. Any oral or written request made personally or by telephone or telegraph concerning a local appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
- D. The distribution, circulation, posting or publishing of any handbill, written advertisement or other local publication which directly or by implication seeks to obtain public support;
- E. The sale of, offer or attempt to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in connection with which any appeal is made for any charitable purpose, or

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

“Solicitation” as defined herein shall be deemed to have taken place when the request is made, whether or not the person making the solicitation receives any contribution in response.

§ 5004. Registration of charitable organizations

Every charitable organization, except as otherwise provided in this Act, which intends to solicit contributions within this State, or have funds solicited on its behalf, shall, on a form prescribed by the Secretary of State, at least 30 days prior to any solicitation, file a registration statement with the Secretary of State and shall refile such a statement in each year in which such charitable organization is engaged in solicitation activities. There shall be a fee of \$10 to be paid to the Secretary of State when each such statement is filed or refiled.

A parent organization may file a consolidated registration statement for its affiliates, chapters and branches in this State and shall pay a single fee for such consolidated registration statement. An independent member agency of a federated fund-raising organization shall file an independent registration statement. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this Act. Such statements shall be sworn to or affirmed and shall contain the following information:

1. The name of the organization and the purpose for which it was organized;
2. The principal address of the organization and the address of any offices in this State; or, if the organization does not maintain an office, the name and address of the person having custody of its financial records;
3. The names and addresses of any chapters, branches or affiliates in this State;
4. The place where and the date when the organization was legally established, the form of its organization and a reference to any determination of its tax-exempt status under the United States Internal Revenue Code;
5. The names and addresses of the officers, directors or trustees and the principal salaried executive staff officer;
6. Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;
7. The name and address of any professional fund-raising counsel or professional solicitor who acts or will act on behalf of the charitable organization;

8. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

9. The general purpose or purposes for which the contributions to be solicited shall be used;

10. The name or names under which it intends to solicit contributions;

11. The names of the individuals or officers of the organizations who will have final responsibility for the custody of the contributions;

12. The names of the individuals or officers of the organization responsible for the final distribution of the contributions;

13. The annual compensation paid to the 10 highest paid employees outside the State and the 5 highest paid employees working within the State; and

14. The total value of all contributions, if any, solicited in this State by or on behalf of the organization during the organization's preceding fiscal year and the dates of such fiscal year.

§ 5005. Exemptions

1. The following shall not be required to file registration statements pursuant to section 5004:

A. Organizations which solicit only within the membership of the organization and only by the members thereof.

B. A corporation sole or other religious corporation, trust, society or organization incorporated or established for religious purposes, but only insofar as such corporation, trust, society or organization solicits only within the membership at its meetings or services.

C. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation, when all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary for such individual's use.

D. Charitable organizations which do not intend to solicit and receive and do not actually solicit or receive contributions from the public in excess of \$2,000 during a calendar year or do not receive contributions from more than 10 persons during a calendar year or all of whose functions, including fund-raising activities, are carried on by persons who are unpaid for their services or no part of whose assets or income inures to the benefit of or is paid to any officer or member. If a charitable organization which does not intend to solicit or receive contributions from the public in excess of \$2,000 during a calendar year does actually solicit or receive contributions in excess of such amount, whether or not all such contributions are received during a calendar year, the charitable organization shall, within 30 days after the date the contributions reach \$2,000, register with and report to the Secretary of State as required by this Act.

2. Any charitable organization which claims to be exempt from the registration provisions of this Act and which is about to or does solicit charitable contributions shall submit, annually, to the Secretary of State, on forms to be prescribed by the Secretary of State, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. If exempted, the Secretary of State shall issue, annually, a letter of exemption which may be exhibited to the public. No registration fee shall be required of any exempt organization.

§ 5006. Registration of professional fund-raising counsels and solicitors

No person shall act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to this Act, unless such person has first registered with the Secretary of State. Such registration shall be in writing under oath or affirmation in the form prescribed by the Secretary of State and shall contain such information as the Secretary of State may require. The registration statement by a professional fund-raising counsel shall be accompanied by an annual fee in the sum of \$25. The registration statement by a professional solicitor shall be accompanied by an annual fee in the sum of \$10. A partnership or corporation which is a professional fund-raising counsel or a professional solicitor may register for and pay a single fee on behalf of all its members or officers and its agents and employees. However, the names and addresses of all members or officers and all agents and employees of professional fund-raising counsels and professional solicitors must be listed in the statement. A professional solicitor who, after the date of filing such application for registration, employs any persons to work under his direction must notify the Secretary of State of the names and addresses of such persons within 7 days from the date such persons are employed.

Each registration shall be valid throughout the State for a period of one year and may be renewed for additional periods of one year each upon written application under oath in the form prescribed by the Secretary of State and the payment of the fee prescribed herein.

A professional fund-raising counsel or a professional solicitor is not exempt from this section by reason of acting for a charitable organization which is exempted under section 5005.

§ 5007. Contracts to be filed

A copy of every contract or written agreement between a charitable organization, whether or not such organization is exempted under section 5005, and a professional fund-raising counsel or a professional solicitor, which contract or agreement sets forth the terms of the arrangements for salaries, bonuses, commissions or other remuneration to be paid to the professional fund-raising counsel or professional solicitor, shall be filed with the Secretary of State within 10 days after such contract or written agreement is concluded.

§ 5008. Telephone solicitations

No person may make a telephone call to any person in this State to solicit contributions for any charitable organization in this State without disclosing,

at the onset of the call, the name of the charitable organization, the purpose for which contributions are being solicited, the nature of the caller's relationship with the charitable organization and the municipality from which the call originates.

§ 5009. Annual report by Secretary of State

The Secretary of State shall make an annual report to the Governor and to the Legislature on the activities of charitable organizations within this State, based on the information which this Act requires to be filed with the Secretary of State.

§ 5010. Fees

The aggregate of fees provided by this Act is appropriated for the use of the Secretary of State for the administration and enforcement of this Act. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal year.

§ 5011. Enforcement

Any charitable organization which is required to register under this Act and which has solicited contributions without having been registered shall pay to the Secretary of State a late registration fee of \$25. If such charitable organization does not apply for registration within 10 days after being requested to register by the Secretary of State, the charitable organization shall immediately either register as required under this Act or cease soliciting contributions in this State. Any charitable organization which continues to solicit contributions 10 days or more after having been requested to register by the Secretary of State without having registered as required under this Act or any person who acts as a professional fund-raising counsel or professional solicitor for a charitable organization without having registered as required under this Act may be enjoined from carrying on further activities within this State. The Attorney General shall represent the Secretary of State in such action.

§ 5012. Municipal ordinances

Every charitable organization and every professional solicitor shall comply with all municipal ordinances applying to soliciting for or on behalf of charitable organizations which do not conflict with this Act.

§ 5013. Out-of-state organizations

Any charitable organization, professional fund-raising counsel or professional solicitor having its principal place of business without the State or organized under and by virtue of the laws of a foreign state, which solicits contributions from the people in this State, or acts on behalf of a charitable organization in this State, shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel or professional solicitor, or to any partner, principal, officer or director thereof, in any action or proceeding brought by the Attorney General under this chapter.

Sec. 2. 22 MRSA c. 853, as amended by PL 1973, c. 436, §§ 1-4, is repealed.

FISCAL NOTE

The fees required under this bill would result in additional revenue to the Secretary of State, to be dedicated to the administration of the law. It is uncertain, however, how many organizations and persons there are in this State that would be required to register under this Act and it is uncertain, therefore, how much revenue the Act would produce. It is also uncertain what the costs of administration would be.

STATEMENT OF FACT

This bill is the result of the Business Legislation Committee's study of charitable solicitations in Maine. The Legislature, in the Regular Session, directed the committee to study this area, as a result of the introduction of L.D. 1794.

This bill is very different in form and intent from L.D. 1794, which called for extensive regulation of such activities, including limitations on the portion of contributions that could be used for fund-raising expenses. In its hearings on this subject, the committee did not discover any evidence that there had been enough abuses in this area to warrant such regulation, but did feel that the public and the Legislature should have more information.

This bill calls for charitable organizations which solicit contributions in this State, with certain limited exemptions, to register with the Secretary of State. The registration statement would include certain basic information, such as the purpose of the organization, the names and addresses of the officers responsible for funds, the highest salaries paid, the total of all contributions in this State in the previous year, and whether or not the organization contracts with professional fund-raisers. Independent professional fund-raisers are required to register separately and must file copies of their agreements with charitable organizations. There are no detailed or burdensome financial reporting requirements.

The exemptions are limited to organizations, including religious organizations, which solicit only from members, to solicitations on behalf of a named individual who receives all contributions without deduction, and to organizations which solicit less than \$2,000 or from 10 or fewer persons or which do not have any paid personnel.

The bill would be funded by fees which would be dedicated to administration by the Secretary of State.

Further background on the bill may be found in the Business Legislation Committee's report on its study.