

By Senator Bullard

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1 A bill to be entitled
2 An act relating to the solicitation of funds by
3 nonprofit organizations; amending s. 496.404, F.S.;
4 transferring control of procedures for the
5 solicitation of funds for nonprofit organizations from
6 the Department of Agriculture and Consumer Services to
7 the Department of State; revising the definition of
8 "department" to refer to the Department of State;
9 deleting the term "division" from the list of
10 applicable definitions; amending ss. 316.2045,
11 496.411, and 496.412, F.S.; conforming provisions to
12 changes made by the act; amending s. 496.423, F.S.;
13 requiring that the Department of State submit a copy
14 of an annual report containing certain information to
15 the Secretary of State; amending s. 496.422, F.S.;
16 requiring that the department provide certain
17 materials to organizations seeking to register as
18 nonprofit corporations; amending s. 741.0305, F.S.;
19 conforming a cross-reference; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 496.404, Florida Statutes, is amended to
25 read:

26 496.404 Definitions.—As used in ss. 496.401-496.424:

27 (1) "Charitable organization" means any person who is or
28 holds herself or himself out to be established for any
29 benevolent, educational, philanthropic, humane, scientific,

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30 artistic, patriotic, social welfare or advocacy, public health,
31 environmental conservation, civic, or other eleemosynary
32 purpose, or any person who in any manner employs a charitable
33 appeal as the basis for any solicitation or an appeal that
34 suggests that there is a charitable purpose to any solicitation.
35 It includes a chapter, branch, area office, or similar affiliate
36 soliciting contributions within the state for a charitable
37 organization which has its principal place of business outside
38 the state.

39 (2) "Charitable purpose" means any benevolent,
40 philanthropic, patriotic, educational, humane, scientific,
41 artistic, public health, social welfare or advocacy,
42 environmental conservation, civic, or other eleemosynary
43 objective.

44 (3) "Charitable sales promotion" means an advertising or
45 sales campaign conducted by a commercial co-venturer which
46 represents that the purchase or use of goods or services offered
47 by the commercial co-venturer are to benefit a charitable
48 organization. The provision of advertising services to a
49 charitable organization does not, in itself, constitute a
50 charitable sales promotion.

51 (4) "Commercial co-venturer" means any person who, for
52 profit, regularly and primarily is engaged in trade or commerce
53 other than in connection with solicitation of contributions and
54 who conducts a charitable sales promotion or a sponsor sales
55 promotion.

56 (5) "Contribution" means the promise, pledge, or grant of
57 any money or property, financial assistance, or any other thing
58 of value in response to a solicitation. "Contribution" includes,

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59 in the case of a charitable organization or sponsor offering
60 goods and services to the public, the difference between the
61 direct cost of the goods and services to the charitable
62 organization or sponsor and the price at which the charitable
63 organization or sponsor or any person acting on behalf of the
64 charitable organization or sponsor resells those goods or
65 services to the public. "Contribution" does not include bona
66 fide fees, dues, or assessments paid by members, provided that
67 membership is not conferred solely as consideration for making a
68 contribution in response to a solicitation. "Contribution" also
69 does not include funds obtained by a charitable organization or
70 sponsor pursuant to government grants or contracts, or obtained
71 as an allocation from a United Way organization that is duly
72 registered with the department or received from an organization
73 that is exempt from federal income taxation under s. 501(a) of
74 the Internal Revenue Code and described in s. 501(c) of the
75 Internal Revenue Code that is duly registered with the
76 department.

77 (6) "Department" means the Department of State Agriculture
78 ~~and Consumer Services~~.

79 ~~(7) "Division" means the Division of Consumer Services of~~
80 ~~the Department of Agriculture and Consumer Services.~~

81 (7)~~(8)~~ "Educational institutions" means those institutions
82 and organizations described in s. 212.08(7)(cc)8.a. The term
83 includes private nonprofit organizations, the purpose of which
84 is to raise funds for schools teaching grades kindergarten
85 through grade 12, colleges, and universities, including any
86 nonprofit newspaper of free or paid circulation primarily on
87 university or college campuses which holds a current exemption

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88 from federal income tax under s. 501(c)(3) of the Internal
89 Revenue Code, any educational television or radio network or
90 system established pursuant to s. 1001.25 or s. 1001.26, and any
91 nonprofit television or radio station that is a part of such
92 network or system and that holds a current exemption from
93 federal income tax under s. 501(c)(3) of the Internal Revenue
94 Code. The term also includes a nonprofit educational cable
95 consortium that holds a current exemption from federal income
96 tax under s. 501(c)(3) of the Internal Revenue Code, whose
97 primary purpose is the delivery of educational and instructional
98 cable television programming and whose members are composed
99 exclusively of educational organizations that hold a valid
100 consumer certificate of exemption and that are either an
101 educational institution as defined in this subsection or
102 qualified as a nonprofit organization pursuant to s. 501(c)(3)
103 of the Internal Revenue Code.

104 (8)~~(9)~~ "Emergency service employee" means any employee who
105 is a firefighter, as defined in s. 633.30, or ambulance driver,
106 emergency medical technician, or paramedic, as defined in s.
107 401.23.

108 (9)~~(10)~~ "Federated fundraising organization" means a
109 federation of independent charitable organizations that ~~which~~
110 have voluntarily joined together, including, but not limited to,
111 a united way or community chest, for purposes of raising and
112 distributing contributions for and among themselves and where
113 membership does not confer operating authority and control of
114 the individual organization upon the federated group
115 organization.

116 (10)~~(11)~~ "Fundraising costs" means those costs incurred in

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117 inducing others to make contributions to a charitable
118 organization or sponsor for which the contributors will receive
119 no direct economic benefit. Fundraising costs include, but are
120 not limited to, salaries, rent, acquiring and obtaining mailing
121 lists, printing, mailing, and all direct and indirect costs of
122 soliciting, as well as the cost of unsolicited merchandise sent
123 to encourage contributions.

124 (11)~~(12)~~ "Law enforcement officer" means any person who is
125 elected, appointed, or employed by any municipality or the state
126 or any political subdivision thereof and:

127 (a) Who is vested with authority to bear arms and make
128 arrests and whose primary responsibility is the prevention and
129 detection of crime or the enforcement of the criminal, traffic,
130 or highway laws of the state; or

131 (b) Whose responsibility includes supervision, protection,
132 care, custody, or control of inmates within a correctional
133 institution.

134 (12)~~(13)~~ "Membership" means the relationship of a person to
135 an organization which ~~that~~ entitles her or him to the
136 privileges, professional standing, honors, or other direct
137 benefit of the organization in addition to the right to vote,
138 elect officers, and hold office in the organization.

139 (13)~~(14)~~ "Owner" means any person who has a direct or
140 indirect interest in any professional fundraising consultant or
141 professional solicitor.

142 (14)~~(15)~~ "Parent organization" means that part of a
143 charitable organization or sponsor which coordinates,
144 supervises, or exercises control over policy, fundraising, and
145 expenditures or assists or advises one or more of the

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146 organization's chapters, branches, or affiliates in this state.

147 (15)~~(16)~~ "Person" means any individual, organization,
148 trust, foundation, group, association, entity, partnership,
149 corporation, society, or any combination of them.

150 (16)~~(17)~~ "Professional fundraising consultant" means any
151 person who is retained by a charitable organization or sponsor
152 for a fixed fee or rate under a written agreement to plan,
153 manage, conduct, carry on, advise, consult, or prepare material
154 for a solicitation of contributions in this state, but who does
155 not solicit contributions or employ, procure, or engage any
156 compensated person to solicit contributions and who does not at
157 any time have custody or control of contributions. A bona fide
158 volunteer or bona fide employee or salaried officer of a
159 charitable organization or sponsor maintaining a permanent
160 establishment in this state is not a professional fundraising
161 consultant. An attorney, investment counselor, or banker who
162 advises an individual, corporation, or association to make a
163 charitable contribution is not a professional fundraising
164 consultant as the result of such advice.

165 (17)~~(18)~~ "Professional solicitor" means any person who, for
166 compensation, performs for a charitable organization or sponsor
167 any service in connection with which contributions are or will
168 be solicited in this state by the compensated person or by any
169 person it employs, procures, or otherwise engages, directly or
170 indirectly, to solicit contributions, or a person who plans,
171 conducts, manages, carries on, advises, consults, whether
172 directly or indirectly, in connection with the solicitation of
173 contributions for or on behalf of a charitable organization or
174 sponsor, but who does not qualify as a professional fundraising

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175 consultant. A bona fide volunteer or bona fide employee or
176 salaried officer of a charitable organization or sponsor
177 maintaining a permanent establishment in this state is not a
178 professional solicitor. An attorney, investment counselor, or
179 banker who advises an individual, corporation, or association to
180 make a charitable contribution is not a professional solicitor
181 as the result of such advice.

182 (18)~~(19)~~ "Religious institution" means any church,
183 ecclesiastical or denominational organization, or established
184 physical place for worship in this state at which nonprofit
185 religious services and activities are regularly conducted and
186 carried on, and includes those bona fide religious groups that
187 ~~which~~ do not maintain specific places of worship. "Religious
188 institution" also includes any separate group or corporation
189 that ~~which~~ forms an integral part of a religious institution
190 which is exempt from federal income tax under the provisions of
191 s. 501(c)(3) of the Internal Revenue Code, and which is not
192 primarily supported by funds solicited outside its own
193 membership or congregation.

194 (19)~~(20)~~ "Solicitation" means a request, directly or
195 indirectly, for money, property, financial assistance, or any
196 other thing of value on the plea or representation that such
197 money, property, financial assistance, or other thing of value
198 or a portion of it will be used for a charitable or sponsor
199 purpose or will benefit a charitable organization or sponsor.
200 "Solicitation" includes, but is not limited to, the following
201 methods of requesting or securing the promise, pledge, or grant
202 of money, property, financial assistance, or any other thing of
203 value:

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204 (a) Any oral or written request;

205 (b) Making any announcement to the press, on radio or
206 television, by telephone or telegraph, or by any other
207 communication device concerning an appeal or campaign by or for
208 any charitable organization or sponsor or for any charitable or
209 sponsor purpose;

210 (c) Distributing, circulating, posting, or publishing any
211 handbill, written advertisement, or other publication that
212 directly or by implication seeks to obtain any contribution; or

213 (d) Selling or offering or attempting to sell any
214 advertisement, advertising space, book, card, coupon, chance,
215 device, magazine, membership, merchandise, subscription,
216 sponsorship, flower, admission, ticket, food, or other service
217 or tangible good, item, or thing of value, or any right of any
218 description in connection with which any appeal is made for any
219 charitable organization or sponsor or charitable or sponsor
220 purpose, or when the name of any charitable organization or
221 sponsor is used or referred to in any such appeal as an
222 inducement or reason for making the sale or when, in connection
223 with the sale or offer or attempt to sell, any statement is made
224 that all or part of the proceeds from the sale will be used for
225 any charitable or sponsor purpose or will benefit any charitable
226 organization or sponsor.

227

228 A solicitation is considered as having taken place whether or
229 not the person making the solicitation receives any
230 contribution. A solicitation does not occur when a person
231 applies for a grant or an award to the government or to an
232 organization that is exempt from federal income taxation under

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233 s. 501(a) of the Internal Revenue Code and described in s.
234 501(c) of the Internal Revenue Code and is duly registered with
235 the department.

236 (20)~~(21)~~ "Sponsor" means a group or person which is or
237 holds itself out to be soliciting contributions by the use of
238 any name which implies that the group or person is in any way
239 affiliated with or organized for the benefit of emergency
240 service employees or law enforcement officers and which is not a
241 charitable organization. The term includes a chapter, branch, or
242 affiliate that ~~which~~ has its principal place of business outside
243 the state, if such chapter, branch, or affiliate solicits or
244 holds itself out to be soliciting contributions in this state.

245 (21)~~(22)~~ "Sponsor purpose" means any program or endeavor
246 performed to benefit emergency service employees or law
247 enforcement officers.

248 (22)~~(23)~~ "Sponsor sales promotion" means an advertising or
249 sales campaign conducted by a commercial co-venturer who
250 represents that the purchase or use of goods or services offered
251 by the commercial co-venturer will be used for a sponsor purpose
252 or donated to a sponsor. The provision of advertising services
253 to a sponsor does not, in itself, constitute a sponsor sales
254 promotion.

255 Section 2. Paragraph (a) of subsection (3) of section
256 316.2045, Florida Statutes, is amended to read:

257 316.2045 Obstruction of public streets, highways, and
258 roads.—

259 (3) Permits for the use of any street, road, or right-of-
260 way not maintained by the state may be issued by the appropriate
261 local government. An organization that is qualified under s.

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262 501(c)(3) of the Internal Revenue Code and registered under
263 chapter 496, or a person or organization acting on behalf of
264 that organization, is exempt from local requirements for a
265 permit issued under this subsection for charitable solicitation
266 activities on or along streets or roads that are not maintained
267 by the state under the following conditions:

268 (a) The organization, or the person or organization acting
269 on behalf of the organization, must provide all of the following
270 to the local government:

271 1. No fewer than 14 calendar days prior to the proposed
272 solicitation, the name and address of the person or organization
273 that will perform the solicitation and the name and address of
274 the organization that will receive funds from the solicitation.

275 2. For review and comment, a plan for the safety of all
276 persons participating in the solicitation, as well as the
277 motoring public, at the locations where the solicitation will
278 take place.

279 3. Specific details of the location or locations of the
280 proposed solicitation and the hours during which the
281 solicitation activities will occur.

282 4. Proof of commercial general liability insurance against
283 claims for bodily injury and property damage occurring on
284 streets, roads, or rights-of-way or arising from the solicitor's
285 activities or use of the streets, roads, or rights-of-way by the
286 solicitor or the solicitor's agents, contractors, or employees.
287 The insurance shall have a limit of not less than \$1 million per
288 occurrence for the general aggregate. The certificate of
289 insurance shall name the local government as an additional
290 insured and shall be filed with the local government no later

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291 than 72 hours before the date of the solicitation.

292 5. Proof of registration with the Department of State
293 ~~Agriculture and Consumer Services~~ pursuant to s. 496.405 or
294 proof that the soliciting organization is exempt from the
295 registration requirement.

296 Section 3. Subsection (3) of section 496.411, Florida
297 Statutes, is amended to read:

298 496.411 Disclosure requirements and duties of charitable
299 organizations and sponsors.—

300 (3) Every charitable organization or sponsor which is
301 required to register under s. 496.405 must conspicuously display
302 in capital letters the following statement on every printed
303 solicitation, written confirmation, receipt, or reminder of a
304 contribution:

305

306 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
307 INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT
308 ~~DIVISION OF CONSUMER SERVICES~~ BY CALLING TOLL-FREE
309 WITHIN THE STATE. REGISTRATION DOES NOT IMPLY
310 ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE
311 STATE."

312

313 The statement must include a toll-free number for the department
314 which ~~division that~~ can be used to obtain the registration
315 information. When the solicitation consists of more than one
316 piece, the statement must be displayed prominently in the
317 solicitation materials.

318 Section 4. Paragraph (c) of subsection (1) of section
319 496.412, Florida Statutes, is amended to read:

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320 496.412 Disclosure requirements and duties of professional
321 solicitors.-

322 (1) A professional solicitor must comply with and be
323 responsible for complying or causing compliance with the
324 following disclosures:

325 (c) In addition to the information required by paragraph
326 (a), any written confirmation, receipt, or reminder of
327 contribution made pursuant to an oral solicitation and any
328 written solicitation shall conspicuously state in capital
329 letters:

330

331 "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
332 INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT
333 ~~DIVISION OF CONSUMER SERVICES~~ BY CALLING TOLL-FREE
334 WITHIN THE STATE. REGISTRATION DOES NOT IMPLY
335 ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE
336 STATE."

337

338 The statement must include a toll-free number for the department
339 which ~~division that~~ can be used to obtain the registration
340 information. When the solicitation consists of more than one
341 piece, the statement must be displayed prominently in the
342 solicitation materials.

343 Section 5. Subsection (4) of section 496.423, Florida
344 Statutes, is amended to read:

345 496.423 Public information; annual report.-

346 (4) The department shall prepare an annual public report to
347 be submitted to the Governor, the President of the Senate, the
348 Speaker of the House of Representatives, the Secretary of State

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349 ~~Commissioner of Agriculture~~, and the Attorney General
350 summarizing such information filed under ss. 496.401-496.424
351 which the department determines will assist the public in making
352 informed and knowledgeable decisions concerning contributions.
353 The report must include the following:

354 (a) A list of complaints filed for which violations were
355 found to have occurred in each of the following categories:
356 charitable organizations, sponsors, professional solicitors, and
357 professional fundraising consultants.

358 (b) A list of the number of investigations by the
359 department, and enforcement actions commenced under ss. 496.401-
360 496.424 and the disposition of those actions.

361 (c) A list of those charitable organizations and sponsors
362 which have voluntarily submitted an audited financial statement
363 pursuant to s. 496.407 or an audit with an opinion prepared by
364 an independent certified public accountant.

365 Section 6. Section 496.422, Florida Statutes, is amended to
366 read:

367 496.422 Dissemination of notice of the registration and
368 disclosure requirements ~~Duties of the Department of State.~~—The
369 department ~~of State~~ shall include in the materials it sends to
370 persons or organizations seeking to register as nonprofit
371 corporations, pursuant to chapter 617, and include with the
372 annual report notice to be filed with the department ~~of State~~
373 each year, a notice of the registration and disclosure
374 requirements of ss. 496.401-496.424.

375 Section 7. Paragraph (a) of subsection (3) of section
376 741.0305, Florida Statutes, is amended to read:

377 741.0305 Marriage fee reduction for completion of

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378 premarital preparation course.—

379 (3) (a) All individuals electing to participate in a
380 premarital preparation course shall choose from the following
381 list of qualified instructors:

382 1. A psychologist licensed under chapter 490.

383 2. A clinical social worker licensed under chapter 491.

384 3. A marriage and family therapist licensed under chapter
385 491.

386 4. A mental health counselor licensed under chapter 491.

387 5. An official representative of a religious institution
388 which is recognized under s. 496.404(18) ~~s. 496.404(19)~~, if the
389 representative has relevant training.

390 6. Any other provider designated by a judicial circuit,
391 including, but not limited to, school counselors who are
392 certified to offer such courses. Each judicial circuit may
393 establish a roster of area course providers, including those who
394 offer the course on a sliding fee scale or for free.

395 Section 8. This act shall take effect July 1, 2010.

396