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HOUSE BILL 558

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DANICE PICRAUX

AN ACT

RELATING TO CHARITIES; REQUIRING CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUNDRAISERS TO MEET CERTAIN REQUIREMENTS AND STANDARDS OF CONDUCT; PROVIDING FOR INVESTIGATIVE DEMANDS; PRESCRIBING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-22-1 NMSA 1978 (being Laws 1983, Chapter 140, Section 1) is amended to read:

"57-22-1. SHORT TITLE. -- [~~This act~~] Chapter 57, Article 22 NMSA 1978 may be cited as the "Charitable [~~Organizations and~~] Solicitations Act". "

Section 2. Section 57-22-2 NMSA 1978 (being Laws 1983, Chapter 140, Section 2) is amended to read:

"57-22-2. PURPOSE. -- [~~Whereas charitable organizations~~

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1 ~~which have been granted tax-exempt status are required to serve~~
2 ~~the public interest.]~~ The purpose of the Charitable
3 ~~[Organizations and]~~ Solicitations Act is to authorize the
4 attorney general to monitor, supervise and enforce the
5 charitable purposes of ~~[those]~~ charitable organizations and
6 professional fundraisers operating in this state."

7 Section 3. Section 57-22-3 NMSA 1978 (being Laws 1983,
8 Chapter 140, Section 3) is amended to read:

9 "57-22-3. DEFINITIONS. --As used in the Charitable
10 ~~[Organizations and]~~ Solicitations Act:

11 A. "charitable organization" means ~~[any trust or~~
12 ~~nonprofit corporation which:~~

13 ~~(1) has applied for or has received tax-exempt~~
14 ~~status under Section 501(c)(3) of the Internal Revenue Code; and~~

15 ~~(2) does business in this state or holds~~
16 ~~property in this state for charitable purposes]~~ a person,
17 including all chapters, branches, local offices or affiliates of
18 such person, who solicits for a charitable purpose in or from
19 this state;

20 B. "charitable purpose" means any purpose for which
21 a charitable organization has been established to promote,
22 directly or indirectly, the well-being of the public at large or
23 the benefit of an indefinite number of persons;

24 C. "contribution" means the promise or grant of
25 money or property whether or not for merchandise or rights of

1 any other description when the promise or grant is made in
2 response to a suggestion or representation that the whole or any
3 part of the price, value or amount will be applied to a
4 charitable purpose:

5 [C-] D. "educational institution" means a school,
6 college or other institution with a defined curriculum, student
7 body and faculty, conducting classes on a regular basis;

8 E. "person" means an individual or group,
9 organization, corporation, partnership, association, trust or
10 similar legal entity;

11 F. "professional fundraiser" means a person who for
12 compensation performs for a charitable organization any service
13 in connection with which contributions are solicited in New
14 Mexico by the compensated person or by a compensated person he
15 employs, directly or indirectly, to solicit and who has custody
16 or control of contributions; provided, however, the following
17 persons shall be not considered professional fundraisers:

18 (1) a person who advises another person to make
19 a charitable contribution as long as the person is not
20 compensated by the charitable organization to whom the
21 contribution was made;

22 (2) a board member, officer, salaried employee
23 or volunteer of a charitable organization; and

24 (3) a person employed by a professional
25 fundraiser or a charitable organization;

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1 ~~[D-]~~ G. "religious organization" means ~~[any]~~ a
2 church or group organized for the purpose of divine worship or
3 religious teaching ~~[or other specifically religious activity]~~
4 consistent with Section 501(c)(3) and Section 509(a)(1) or
5 170(b)(1)(A)(i) of the Internal Revenue Code of 1986, as
6 amended; and

7 ~~[E-]~~ H. "solicit" or "solicitation" means ~~[any]~~ a
8 request, plea or appeal, ~~[either]~~ whether direct or indirect,
9 oral or written, or ~~[any]~~ an endeavor to obtain, seek or plead
10 for funds, property, financial assistance or other thing of
11 value, including the promise or grant of ~~[any]~~ money or property
12 ~~[of any kind or value]~~ for a charitable purpose, but excluding:

13 (1) direct grants or allocation of funds
14 received or solicited from any affiliated fundraising
15 organization by a member agency; and

16 (2) unsolicited contributions received from
17 ~~[any]~~ an individual donor, foundation, trust, governmental
18 agency or other source, unless such contributions are received
19 in conjunction with a solicitation drive. "

20 Section 4. Section 57-22-4 NMSA 1978 (being Laws 1983,
21 Chapter 140, Section 4) is amended to read:

22 "57-22-4. APPLICATION OF ACT. --

23 A. The Charitable ~~[Organizations and]~~ Solicitations
24 Act shall not apply to ~~[all charitable organizations except:~~

25 ~~(1)]~~ religious organizations.

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1 B. Exempt only from registration and reporting
2 requirements of the Charitable Solicitations Act are:

3 [~~(2)~~] (1) educational institutions; [and
4 ~~(3)]~~ (2) charitable organizations [which] that
5 do not actually raise or receive contributions in cash, goods or
6 services valued in excess of [~~two thousand five hundred dollars~~
7 ~~(\$2,500)]~~ five thousand dollars (\$5,000) during a twelve-month
8 period; provided such organizations do not use professional
9 fundraisers; and provided further that such organizations submit
10 information as the attorney general may require to substantiate
11 an exemption pursuant to this subsection; and

12 (3) persons soliciting for a named individual
13 or group that has suffered a medical or other catastrophe and:

14 (a) the individual or group is specified
15 by name at the time of solicitation;

16 (b) the purpose for the contribution is
17 clearly stated; and

18 (c) the gross contributions collected,
19 without any deductions for the benefit of the solicitor or any
20 other person, are deposited directly to an account in the name
21 of the beneficiary at a local federally insured financial
22 institution established for that purpose and if the
23 contributions are used for the direct benefit of the named
24 individual or group as beneficiary.

25 [~~B.-]~~ C. The Charitable [Organizations and]

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1 Solicitations Act shall apply to charitable organizations and
2 professional fundraisers regardless of any contrary provisions
3 of any instrument. "

4 Section 5. Section 57-22-5 NMSA 1978 (being Laws 1983,
5 Chapter 140, Section 5) is amended to read:

6 "57-22-5. ATTORNEY GENERAL TO MAINTAIN REGISTER OF
7 CHARITABLE ORGANIZATIONS AS PUBLIC RECORD. --The attorney general
8 shall establish and maintain a register of all documents filed
9 by charitable organizations in accordance with the Charitable
10 [~~Organizations and~~] Solicitations Act. The register shall be
11 open to public inspection except that the attorney general may
12 withhold from public inspection documents or information
13 obtained in the course of an investigation undertaken pursuant
14 to the provisions of that act or which otherwise may be withheld
15 from public inspection by law. "

16 Section 6. Section 57-22-6 NMSA 1978 (being Laws 1983,
17 Chapter 140, Section 6, as amended) is amended to read:

18 "57-22-6. FILING OF REQUIRED DOCUMENTS. --

19 [~~A. Every Charitable organization shall file with~~
20 ~~the office of the attorney general within six months of the~~
21 ~~effective date of the Charitable Organizations and Solicitations~~
22 ~~Act or within six months of the date on which the charitable~~
23 ~~organization becomes subject to the Charitable Organizations and~~
24 ~~Solicitations Act. whichever shall occur first:~~

25 (1) ~~an initial registration to be submitted on~~

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1 ~~the form provided for that purpose by the attorney general; and~~

2 ~~(2) A copy of the articles of incorporation or~~
3 ~~other instrument creating the charitable organization and~~
4 ~~defining its purpose, powers and duties.~~

5 ~~B. In addition to the documents required in~~
6 ~~Subsection A of this section, every charitable organization~~
7 ~~shall file, within seventy-five days of the close of the fiscal~~
8 ~~year first following registration and of each fiscal year~~
9 ~~thereafter, an annual report, under oath, on the form provided~~
10 ~~by the attorney general for that purpose.]~~

11 A. A charitable organization that intends to solicit
12 in New Mexico or have contributions solicited in New Mexico on
13 its behalf by other charitable organizations or a professional
14 fundraiser shall register with the attorney general on a form
15 provided by the attorney general at least thirty days prior to
16 conducting a solicitation. A copy of the articles of
17 incorporation, and certificate of authority if a foreign
18 corporation, or the instrument creating a charitable trust and
19 defining its purpose, powers and duties shall be included with
20 the registration form.

21 ~~[C.]~~ B. The attorney general may make such rules and
22 regulations, in accordance with the State Rules Act, as are
23 necessary for the proper administration of this section,
24 including ~~[but not limited to]:~~

25 (1) requirements for filing additional

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1 information; and

2 (2) provisions for suspending the filing of
3 reports where it is determined that such reports are no longer
4 necessary for the protection of the public interest.

5 ~~[D. This section shall not apply to any local~~
6 ~~affiliate of a statewide or national organization for which all~~
7 ~~local fundraising expenses are paid by the parent organization~~
8 ~~if the parent organization files a report required by this~~
9 ~~section.~~

10 E.] C. In addition to any other reporting
11 requirements pursuant to the Charitable ~~[Organizations and]~~
12 Solicitations Act, every charitable organization ~~[to which that~~
13 ~~act applies and]~~ that has received tax-exempt status under
14 Section 501(c)(3) of the federal Internal Revenue Code of 1986,
15 as amended, and is required to file a form 990 ~~[or]~~, 990EZ or
16 990PF pursuant to the Internal Revenue Code of 1986, as amended,
17 shall file that form and the accompanying schedule A annually
18 with the office of the attorney general up to five months and
19 fifteen days following the close of the charitable
20 organization's fiscal year. Extensions of time for filing may
21 be allowed at the discretion of the attorney general for good
22 cause shown. Such forms shall be public records and available
23 for public inspection. Organizations that do not file a form
24 990, 990EZ or 990PF pursuant to the Internal Revenue Code of
25 1986, as amended, shall file an annual report, under oath, on

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1 the form provided by the attorney general for that purpose. The
2 financial report of a charitable organization that received
3 contributions in excess of three hundred thousand dollars
4 (\$300,000) shall be audited by an independent certified public
5 accountant. The financial report of a charitable organization
6 that receives contributions in excess of one hundred thousand
7 dollars (\$100,000) but less than three hundred thousand dollars
8 (\$300,000) shall be reviewed or audited by an independent
9 certified public accountant. Audits shall be performed in
10 accordance with the statement on auditing standards of the
11 American institute of certified public accountants, and reviews
12 shall be performed in accordance with the statement on standards
13 for accounting and review services of the American institute of
14 certified public accountants. Such audits and reviews shall be
15 filed with the attorney general's office.

16 D. The attorney general shall notify each charitable
17 organization required to register pursuant to Subsection B of
18 this section within thirty days of its receipt of the
19 registration form of any deficiencies in the registration;
20 otherwise it is deemed approved as filed. No charitable
21 organization required to be registered pursuant to Subsection B
22 of this section shall solicit prior to registration.

23 E. A charitable organization that fails to register
24 with the attorney general or properly renew its registration
25 annually may be assessed a late filing fee of one hundred

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1 dollars (\$100). "

2 Section 7. Section 57-22-7 NMSA 1978 (being Laws 1983,
3 Chapter 140, Section 7) is amended to read:

4 "57-22-7. RESTRICTION ON USE OF FACT OF FILING IN
5 SOLICITATION. --No solicitation [~~of funds~~] for charitable
6 purposes shall use the fact or requirement of registration or of
7 the filing of any report with the attorney general pursuant to
8 the Charitable [~~Organizations and~~] Solicitations Act with the
9 intent to cause or in a manner tending to cause any person to
10 believe that [~~such~~] the solicitation, the manner in which it is
11 conducted, its purposes, any use to which the proceeds will be
12 applied or the person or organization conducting it have been or
13 will be in any way endorsed, sanctioned or approved by the
14 attorney general or any governmental agency or office. "

15 Section 8. Section 57-22-8 NMSA 1978 (being Laws 1983,
16 Chapter 140, Section 8) is amended to read:

17 "57-22-8. DISCLOSURE OF FUNDRAISING COSTS. --

18 A. All charitable organizations subject to the
19 Charitable [~~Organizations and~~] Solicitations Act shall disclose
20 upon request the percentage of the funds solicited [~~which~~] that
21 are spent on the costs of fundraising. For purposes of this
22 section, costs of fundraising shall include all money directly
23 expended on fundraising and that portion of all administrative
24 expenses and salaries of the charitable organization
25 attributable to fundraising activities.

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1 B. Whenever a solicitation [~~of funds~~] on behalf of a
2 charitable organization subject to the Charitable [~~Organizations~~
3 ~~and~~] Solicitations Act is undertaken by a professional
4 fundraiser, the professional fundraiser [~~must~~] shall disclose
5 that fact to prospective contributors. [~~For purposes of this~~
6 ~~section, a professional fundraiser shall mean any individual,~~
7 ~~corporation, association or other entity employed or retained~~
8 ~~or otherwise compensated by or on behalf of a charitable or~~
9 ~~organization to solicit funds.]"~~

10 Section 9. Section 57-22-9 NMSA 1978 (being Laws 1983,
11 Chapter 140, Section 9) is amended to read:

12 "57-22-9. AUTHORITY OF THE ATTORNEY GENERAL. --

13 A. The attorney general [~~is authorized~~] may, on
14 behalf of the state, [~~to~~] examine and investigate any charitable
15 organization subject to the Charitable [~~Organizations and~~]
16 Solicitations Act to ascertain the conditions of its affairs and
17 to what extent, if at all, it fails to comply with the trusts
18 [~~which~~] that it has assumed or if it has departed from the
19 purposes for which it [~~is~~] was formed. In the case of such
20 failure or departure, the attorney general may institute, in the
21 name of the state, the proceedings necessary to correct the
22 noncompliance or departure by any remedy available under the
23 common law.

24 B. The attorney general [~~is authorized~~] may, in the
25 name of the state, [~~to initiate appropriate proceedings to~~

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1 ~~enjoin the solicitation of funds by any charitable organization~~
2 ~~which] seek injunctive relief, civil penalties, financial~~
3 ~~accounting or restitution in the district court or other court~~
4 ~~of competent jurisdiction from any person who has failed to~~
5 ~~comply with the registration, filing or disclosure provisions of~~
6 ~~the Charitable [~~Organizations and~~] Solicitations Act or [~~which~~~~
7 ~~that has [~~filed any false or misleading report or has made any~~~~
8 ~~false or misleading disclosure] otherwise violated the~~
9 ~~provisions of that act.~~

10 C. The attorney general [~~is authorized~~] may, in the
11 name of the state, [~~to~~] initiate appropriate proceedings to seek
12 compliance with the provisions of the Charitable [~~Organizations~~
13 ~~and~~] Solicitations Act and with any rules and regulations duly
14 promulgated by the attorney general [~~thereunder~~] pursuant to
15 that act. The attorney general may promulgate rules and
16 regulations for the proper administration of that act.

17 D. Nothing in this section shall be construed to
18 preclude [~~any~~] a person or group [~~or~~] of persons from asserting
19 [~~any~~] a private cause of action [~~they~~] it might have against a
20 charitable organization or professional fundraiser. "

21 Section 10. Section 57-22-10 NMSA 1978 (being Laws 1983,
22 Chapter 140, Section 10) is amended to read:

23 "57-22-10. STANDARD OF CARE. -- All officers, directors,
24 managers, trustees, professional fundraisers or other persons
25 having access to the [~~funds~~] money of a charitable organization

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1 intended for use for charitable purposes shall be held to the
2 standard of care defined for fiduciary trustees under common
3 law. "

4 Section 11. Section 57-22-11 NMSA 1978 (being Laws 1983,
5 Chapter 140, Section 11) is amended to read:

6 "57-22-11. EXEMPTIONS FROM STATE AND LOCAL TAXATION. --
7 Every officer, agency, board or commission of this state or
8 political subdivision [~~thereof~~] of this state receiving
9 applications for exemption from taxation shall provide to the
10 attorney general copies of all [~~such~~] the applications,
11 supporting documents and official responses. "

12 Section 12. A new section of the Charitable Solicitations
13 Act is enacted to read:

14 "[NEW MATERIAL] CHARITABLE ORGANIZATIONS--INCORPORATION. --
15 A charitable organization, except a charitable trust, soliciting
16 in or from New Mexico shall be incorporated as a nonprofit
17 corporation in accordance with the provisions of the Nonprofit
18 Corporation Act. A charitable organization that is a foreign
19 corporation shall file a copy of its certificate of authority
20 issued by the state corporation commission with the attorney
21 general. "

22 Section 13. A new section of the Charitable Solicitations
23 Act is enacted to read:

24 "[NEW MATERIAL] PROFESSIONAL FUNDRAISERS--REGISTRATION. --

25 A. A professional fundraiser shall not enter into a

1 contract with a charitable organization to solicit for or on
2 behalf of the charitable organization unless the professional
3 fundraiser is registered with the attorney general.

4 Professional fundraisers shall:

5 (1) register with the attorney general on a
6 form provided by the attorney general;

7 (2) file a twenty-five thousand dollar
8 (\$25,000) surety bond on a form provided by the attorney
9 general; and

10 (3) file the written contract between the
11 professional fundraiser and the charitable organization on whose
12 behalf the professional fundraiser intends to conduct a
13 solicitation campaign.

14 B. The contract between the professional fundraiser
15 and the charitable organization shall clearly describe the
16 compensation and authority of the professional fundraiser, the
17 solicitation campaign and the location and telephone number from
18 which the solicitation is to be conducted; list the names and
19 addresses of all employees, agents or other persons who are to
20 solicit during the campaign; include copies of the solicitation
21 literature, including scripts of any written or verbal
22 solicitation; and contain the estimated annual amount of gross
23 and net revenue the charitable organization will receive as a
24 result of the activities outlined in the contract. The
25 charitable organization on whose behalf the professional

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1 fundraiser is acting shall certify that the contract and
2 solicitation materials are true and complete.

3 C. The professional fundraiser shall renew his
4 registration annually.

5 D. Within thirty days after receiving a registration
6 or a renewal of registration pursuant to this section, the
7 attorney general shall notify the professional fundraiser of any
8 deficiencies in the registration, contract or bond; otherwise it
9 is deemed approved as filed.

10 E. A professional fundraiser who fails to register
11 with the attorney general or properly renew his registration
12 annually may be assessed a late filing fee of one hundred
13 dollars (\$100). "

14 Section 14. A new section of the Charitable Solicitations
15 Act is enacted to read:

16 "[NEW MATERIAL] PROFESSIONAL FUNDRAISERS-- BOND. -- A
17 professional fundraiser shall file a surety bond at the time of
18 registration or renewal of registration with the attorney
19 general. The bond shall be approved as to form by the attorney
20 general. The professional fundraiser shall be the principal
21 obligor on the surety bond in the sum of twenty-five thousand
22 dollars (\$25,000) held by one or more responsible sureties. The
23 sureties shall have an aggregate liability of twenty-five
24 thousand dollars (\$25,000). The professional fundraiser shall
25 maintain the surety bond as long as the professional fundraiser

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1 is soliciting contributions from persons in New Mexico and as
2 long as his registration is in effect. The bond, which may be
3 in the form of a rider to a larger blanket liability bond, shall
4 be with a surety company authorized to do business in New
5 Mexico. The surety bond shall be held and firmly bound, jointly
6 and severally, in the name of the state and any person who may
7 have a cause of action against the principal obligor for
8 liabilities arising out of the conduct of business by the
9 principal obligor or arising out of a violation of the
10 Charitable Solicitations Act or regulations adopted pursuant to
11 that act."

12 Section 15. A new section of the Charitable Solicitations
13 Act is enacted to read:

14 "[NEW MATERIAL] GENERAL PROVISIONS-- CHARITABLE
15 ORGANIZATIONS-- PROFESSIONAL FUNDRAISERS. --

16 A. A charitable organization shall not use the name
17 or likeness of any person in solicitation literature without
18 express written consent of the person; provided that the
19 publication of the names of previous contributors for the
20 purpose of acknowledging contributions shall not require the
21 express written consent of such contributors.

22 B. A charitable organization shall not use a name,
23 symbol or statement so closely related or similar to that used
24 by another charitable organization or governmental agency that
25 the use of such name, symbol or statement would tend to confuse

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1 or mislead the public.

2 C. A charitable organization shall not state or
3 suggest, directly or indirectly, orally or in writing, that
4 registration with the attorney general constitutes approval or
5 endorsement by the state or the attorney general.

6 D. A charitable organization shall not use or employ
7 fraud; false pretense; false promise; misrepresentation;
8 misleading statements, name, mark or identification; or unfair
9 or deceptive practice, method or device in connection with a
10 solicitation, including any statements, actions or omissions
11 designed or intended to confuse or mislead a person to believe
12 that the organization is another organization or related to
13 another organization or to believe that contributions being
14 solicited are or will be used for purposes and programs
15 conducted within New Mexico or for persons located within New
16 Mexico when that is not the case; or to otherwise represent
17 purposes and uses of the solicited contributions that are not
18 within the charitable purpose of the charitable organization.

19 E. Within sixty days after the completion of
20 services or activities outlined in the contract, the
21 professional fundraiser shall account in writing to the
22 charitable organization for all contributions received and all
23 expenses incurred under the contract. The charitable
24 organization shall keep each accounting of contributions and
25 expenses for three years and make it available to the attorney

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1 general upon request.

2 F. All contributions of money received by the
3 professional fundraiser shall be deposited in an account at a
4 federally insured financial institution within two days after
5 receipt. The account shall be established and maintained in the
6 name of the charitable organization. Disbursements from the
7 account shall be made upon warrants signed by the professional
8 fundraiser and an authorized representative of the charitable
9 organization.

10 G. The professional fundraiser shall record and
11 maintain the following information for three years after the
12 solicitation:

13 (1) the name and address of each person
14 contributing to the charitable organization and the date and
15 amount of the contribution;

16 (2) the name and residence address of each
17 employee, agent or other person involved in the solicitation;

18 (3) the script or other instructional
19 information provided by the charitable organization or
20 professional fundraiser to employees or agents conducting
21 solicitations;

22 (4) a record of expenses incurred by the
23 professional fundraiser that the charitable organization is
24 required to pay; and

25 (5) the name and address of each financial

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1 institution and the account number of each account in which the
2 professional fundraiser deposits contributions.

3 H. The professional fundraiser shall make the
4 information required in Subsection G of this section available
5 for inspection to the attorney general upon request.

6 I. The professional fundraiser and all employees of
7 the professional fundraiser shall disclose the following to
8 prospective contributors:

9 (1) the name of the charitable organization
10 whenever a solicitation is made on behalf of the charitable
11 organization; and

12 (2) the fact that the money is being solicited
13 by or through a professional fundraiser.

14 J. Every professional fundraiser and charitable
15 organization shall have a registered agent in New Mexico or
16 shall file a consent to service of process with the attorney
17 general. The consent to service shall be in the form prescribed
18 by the attorney general, shall be irrevocable and shall provide
19 that actions arising out of or founded upon the solicitation of
20 charitable contributions in violation of the Charitable
21 Solicitations Act may be commenced against the person executing
22 such consent in any court of competent jurisdiction and proper
23 venue within New Mexico by the service of process or pleadings
24 upon the attorney general. Service of process or pleadings in
25 any such action against a person who has filed a consent to

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1 service with the attorney general shall, if made on the attorney
2 general, be by duplicate copies, one of which shall be filed in
3 the office of the attorney general, and the other shall be
4 immediately forwarded by the attorney general by registered or
5 certified mail to the person against whom the process or
6 pleadings are directed at his latest address on file in the
7 office of the attorney general."

8 Section 16. A new section of the Charitable Solicitations
9 Act is enacted to read:

10 "[NEW MATERIAL] INVESTIGATIVE DEMAND--CIVIL PENALTY.--

11 A. Whenever the attorney general has reason to
12 believe that any person may be in possession, custody or control
13 of information or documentary material, including an original or
14 copy of any book, record, report, memorandum, paper,
15 communication, tabulation, chart, photograph, mechanical
16 transcription or other tangible document or recording, that the
17 attorney general believes to be relevant to the subject matter
18 of an investigation of a probable violation of the Charitable
19 Solicitations Act, the attorney general may, prior to the
20 institution of a civil proceeding, execute in writing and cause
21 to be served upon the person a civil investigative demand. The
22 demand shall require the person to answer interrogatories or to
23 produce documentary material and permit the inspection and
24 copying of the material. The demand of the attorney general
25 shall not be a matter of public record and shall not be

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1 published by him except by order of the court.

2 B. Each demand shall:

3 (1) state the general subject matter of the
4 investigation;

5 (2) describe with reasonable certainty the
6 information or documentary material to be provided;

7 (3) identify the time period within which the
8 information or documentary material is to be provided, which in
9 no case shall be less than ten days after the date of service of
10 the demand; and

11 (4) state the date on which any documentary
12 material shall be made available for inspection and copying.

13 C. No demand shall:

14 (1) contain any requirement that would be
15 unreasonable or improper if contained in a subpoena duces tecum
16 issued by a court of the state;

17 (2) require the disclosure of any documentary
18 material that would be privileged or that for any other reason
19 would not be required by a subpoena duces tecum issued by a
20 court of the state; or

21 (3) require the removal of any documentary
22 material from the custody of the person upon whom the demand is
23 served except in accordance with the provisions of Subsection E
24 of this section.

25 D. Service of the demand may be made by:

1 (1) delivering a duly executed copy of the
2 demand to the person to be served or, if the person is not a
3 natural person, to the registered or statutory agent for the
4 person to be served;

5 (2) delivering a duly executed copy of the
6 demand to the principal place of business in New Mexico of the
7 person to be served; or

8 (3) mailing by registered or certified mail a
9 duly executed copy of the demand addressed to the person to be
10 served at his principal place of business in the state or, if
11 the person has no place of business in the state, to his
12 principal place of business.

13 E. Documentary material demanded pursuant to
14 Subsection A of this section shall be produced for inspection
15 and copying during normal business hours at the principal place
16 of business of the person served or may be inspected and copied
17 at such other times and places as may be agreed upon by the
18 person served and the attorney general.

19 F. No documentary material or copies of the
20 documentary material produced pursuant to a demand shall be
21 produced for inspection or copying by anyone other than an
22 authorized employee of the attorney general, nor shall the
23 contents of the documentary material be disclosed to anyone
24 other than an authorized employee of the attorney general or in
25 court in an action relating to a violation of the Charitable

1 Solicitations Act. The district court in the county in which
2 the person resides or has his principal place of business or is
3 about to perform or is performing the practice that is alleged
4 to be unlawful under the Charitable Solicitations Act may order
5 documentary material to be produced for inspection or copying by
6 someone other than an authorized employee of the attorney
7 general.

8 G. At any time before the return date of the demand,
9 a petition to set aside the demand, modify the demand or extend
10 the return date on the demand may be filed in the district court
11 in the county in which the person resides or has his principal
12 place of business or is about to perform or is performing the
13 practice that is alleged to be unlawful under the Charitable
14 Solicitations Act, and the court upon showing of good cause may
15 set aside the demand, modify it or extend the return date of the
16 demand.

17 H. If after service of the demand the person
18 neglects or refuses to comply with the demand, the attorney
19 general may invoke the aid of the court in the enforcement of
20 the demand. In appropriate cases the court shall issue its
21 order requiring the person to appear and produce the documentary
22 material required in the demand. Upon failure of the person to
23 comply with the court order, the court shall punish the person
24 for contempt of court.

25 I. This section shall not be applicable to criminal

Underscored material = new
[bracketed material] = delete

1 prosecutions.

2 J. In an action brought pursuant to the Charitable
3 Solicitations Act, if the district court or other court of
4 competent jurisdiction finds that a person has violated a
5 provision of that act or regulations promulgated pursuant to
6 that act, the attorney general, upon petition to the district
7 court or other court of competent jurisdiction, may recover, on
8 behalf of the state, a maximum civil penalty of five thousand
9 dollars (\$5,000) per violation. "

10 Section 17. SEVERABILITY. -- If any part or application of
11 the Charitable Solicitations Act is held invalid, the remainder
12 or its application to other situations or persons shall not be
13 affected.

14 Section 18. EFFECTIVE DATE. -- The effective date of the
15 provisions of this act is September 1, 1997.

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State of New Mexico
House of Representatives

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4 **FORTY-THIRD LEGISLATURE**
5 **FIRST SESSION, 1997**
6
7

8 **February 25, 1997**
9

10
11 **Mr. Speaker:**

12 **Your BUSINESS AND INDUSTRY COMMITTEE, to whom has**
13 **been referred**

14
15 **HOUSE BILL 558**

16 **has had it under consideration and reports same with**
17 **recommendation that it DO PASS, amended as follows:**

- 18
- 19 **1. On page 4, line 2, after "church" insert "**
20 **organization".**
 - 21 **2. On page 4, line 3, remove the brackets and line-through.**
 - 22
 - 23 **3. On page 4, strike all of lines 4 and 5 and on line 6,**
24 **strike "amended" and insert in lieu thereof "or any other**

25 **. 114052. 2**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBIC/HB 558

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organization formed primarily to support any such church,
organization or group".

4. On page 5, line 3, after "institutions" insert "and any
organization defined by Section 6-5A-1 NMSA 1978".

5. On page 9, line 3, strike "contributions" and insert in
lieu thereof "total revenue".

6. On page 9, lines 3 and 4, strike "three hundred thousand
dollars (\$300,000)" and insert in lieu thereof "four hundred
thousand dollars (\$400,000)".

7. On page 9, line 6, strike "contributions" and insert in
lieu thereof "total revenue".

8. On page 9, lines 6 and 7, strike "one hundred thousand
dollars (\$100,000)" and insert in lieu thereof "two hundred
thousand dollars (\$200,000)".

9. On page 9, lines 7 and 8, strike "three hundred thousand
dollars (\$300,000)" and insert in lieu thereof "four hundred
thousand dollars (\$400,000)".

10. On page 9, line 17, strike "B" and insert in lieu
thereof "A".

11. On page 9, line 21, strike "B" and insert in lieu

Underscored material = new
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FIRST SESSION, 1997

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thereof "A". ,

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Fred Luna, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Hobbs

Absent: Getty

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Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 10, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 558, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: King, Rios

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HJC/HB 558, a

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 14, 1997

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Mr. President:

10

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

11

12

HOUSE BILL 558, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

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Respectfully submitted,

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Roman M. Maes, III, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HJC/HB 558, a

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, Griego, Robinson

Absent: None

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Underscored material = new
~~[bracketed material] = delete~~

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 19, 1997

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Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 558, as amended

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has had it under consideration and reports same with

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recommendation that it DO PASS.

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Respectfully submitted,

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Fernando R. Macias, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HJC/HB 558, a

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Date _____

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7 The roll call vote was 7 For 0 Against

8 Yes: 7

9 No: 0

10 Excused: Tsosie

11 Absent: None

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