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SENATE BILL 333

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

DEDE FELDMAN

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO CHARITIES; AMENDING THE NMSA 1978; REQUIRING
REGISTRATION, REPORTING AND STANDARDS OF CONDUCT FOR
CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUNDRAISERS.

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
which have been granted tax-exempt status are required to
serve the public interest~~] The purpose of the Charitable

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1 ~~[Organizations and]~~ Solicitations Act is to authorize the
2 attorney general to monitor, supervise and enforce the
3 charitable purposes of ~~[those]~~ charitable organizations and
4 regulate professional fundraisers operating in this state."

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

7 "57-22-3. DEFINITIONS. --As used in the Charitable
8 ~~[Organizations and]~~ Solicitations Act:

9 A. "charitable organization" means ~~[any trust or~~
10 ~~nonprofit corporation which:~~

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

14 (2) ~~does business in this state or holds~~
15 ~~property in this state for charitable purposes]~~ any entity
16 that has been granted exemption from the federal income tax by
17 the United States commissioner of internal revenue as an
18 organization described in Sections 501(c)(3) and 501(c)(4) of
19 the Internal Revenue Code of 1986, as amended, or identifies
20 itself to the public as having a charitable purpose;

21 B. "charitable purpose" means ~~[any purpose for~~
22 ~~which a charitable organization has been established to~~
23 ~~promote, directly or indirectly, the well-being of the public-~~
24 ~~at large or the benefit of an indefinite number of persons]~~ a
25 benevolent, social welfare, scientific, educational,

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1 environmental, philanthropic, humane, patriotic, public
2 health, civic or other eleemosynary objective or an activity
3 conducted in support of or in the name of law enforcement
4 officers, firefighters or other persons who protect public
5 safety;

6 C. "contribution" means the promise, grant or
7 pledge of any money, credit or property of any kind or value
8 provided to a charitable organization in response to a
9 solicitation, but does not include program service revenue or
10 bona fide membership fees, dues or assessments; provided that
11 bona fide membership fees, dues or assessments do not include
12 contributions made in exchange for membership in a charitable
13 organization unless membership confers rights and benefits in
14 addition to receiving literature of the charitable
15 organization;

16 [~~C.~~] D. "educational institution" means: [a]

17 (1) an entity organized and operated
18 primarily as a school, college or other instructional
19 institution with a defined curriculum, student body and
20 faculty, conducting classes on a regular basis; and

21 (2) auxiliary entities, including parent-
22 teacher organizations, booster and support clubs that support,
23 encourage or promote a school, college or other instructional
24 institution and its defined curriculum, student body, faculty,
25 facilities or activities;

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1 E. "professional fundraiser" means a person that
2 solicits or employs or directs others to solicit contributions
3 from the public on behalf of a charitable organization in
4 exchange for compensation and has custody or control of the
5 contributions; provided that "professional fundraiser" does
6 not include a director, officer, bona fide employee or
7 salaried officer, volunteer, attorney, accountant or
8 investment counselor of a charitable organization;

9 F. "professional fundraising counsel" means a
10 person that provides services or employs or directs others to
11 provide services for compensation to a charitable organization
12 in the solicitation of contributions, including managing or
13 preparing materials to be used in conjunction with any
14 solicitation provided that the person does not:

15 (1) directly solicit contributions; or

16 (2) receive, have access to or control any
17 contribution received in response to the solicitation;
18 provided further that "professional fundraising counsel" does
19 not include a director, officer, bona fide employee or
20 salaried officer, volunteer, attorney, accountant or
21 investment counselor of a charitable organization;

22 ~~[D.]~~ G. "religious organization" means [any church
23 or group organized for the purpose of divine worship,
24 religious teaching or other specifically religious activity;
25 and] a church, organization or group organized for the purpose

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1 of divine worship or religious teaching or other specific
2 religious activity or any other organization that is formed in
3 association with or to primarily encourage, support or promote
4 the work, worship, fellowship or teachings of the church,
5 organization or group; and

6 ~~[E.] H. "solicit" or "solicitation" means [any~~
7 ~~request or appeal, either oral or written, or any endeavor to~~
8 ~~obtain, seek or plead for funds, property, financial~~
9 ~~assistance or other thing of value, including the promise or~~
10 ~~grant of any money or property of any kind or value for a~~
11 ~~charitable purpose, but excluding]~~ any public communication
12 requesting a contribution or offering an opportunity to
13 participate in a game of chance, raffle or similar event with
14 the representation that the contribution or participation will
15 support a charitable purpose, and includes:

16 (1) any verbal request made in person or by
17 telephone, radio, television, electronic communication or
18 other media;

19 (2) any written or published request mailed,
20 sent, delivered, circulated, distributed, posted in a public
21 place, advertised or communicated through any medium to the
22 public;

23 (3) any sale or attempt to sell a good or
24 service; and

25 (4) any invitation to attend an assembly,

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1 event, exhibition, performance or social gathering of any
2 kind.

3 A contribution is not required for a solicitation to have
4 occurred and "solicit" or solicitation" does not include [(1)]
5 direct grants or allocation of funds received or solicited
6 from any affiliated [~~fund-raising~~] fundraising organization by
7 a member agency [~~and (2)~~] or unsolicited contributions
8 received from any individual donor, foundation, trust,
9 governmental agency or other source, unless such contributions
10 are received in conjunction with a solicitation drive."

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

13 "57-22-4. APPLICATION OF ACT. --

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

17 (1)] a religious [organizations]
18 organization, even if it is a charitable organization.

19 B. Exempt from the registration and reporting
20 requirements of the Charitable Solicitations Act are:

21 [(2)] (1) educational institutions and
22 organizations defined in Section 6-5A-1 NMSA 1978;

23 [(3)] (2) a charitable [organizations which
24 ~~do] organization that does not actually raise or receive
25 contributions in cash, goods or services valued in excess of~~

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1 ~~[two thousand five hundred dollars (\$2,500)]~~ five thousand
2 dollars (\$5,000) during a twelve-month period; provided that
3 the organization does not use a professional fundraiser and
4 submits information required by the attorney general to
5 qualify for the exemption available pursuant to this
6 subsection; and

7 (3) persons soliciting for an individual or
8 group that has suffered a medical or other catastrophe and:

9 (a) the individual or group is
10 identified by name at the time of the solicitation;

11 (b) the purpose for the solicited
12 contribution is clearly stated; and

13 (c) the gross contributions collected,
14 without any deductions for or by the solicitor or any other
15 person, are deposited directly to an account in the name of
16 the individual or group in a local federally insured financial
17 institution established for that sole purpose and solely used
18 for the direct benefit of the named individual or group as
19 beneficiary.

20 ~~[B.]~~ C. The Charitable ~~[Organizations and]~~
21 Solicitations Act shall apply to charitable organizations and
22 professional fundraisers regardless of any contrary provisions
23 of any instrument. "

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

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1 "57-22-5. ATTORNEY GENERAL TO MAINTAIN REGISTER OF
2 CHARITABLE ORGANIZATIONS AS PUBLIC RECORD. --The attorney
3 general shall establish and maintain a register of all
4 documents filed by charitable organizations in accordance with
5 the Charitable [~~Organizations and~~] Solicitations Act. The
6 register shall be open to public inspection except that the
7 attorney general may withhold from public inspection documents
8 or information obtained in the course of an investigation
9 undertaken pursuant to the provisions of that act or [~~which~~]
10 that otherwise may be withheld from public inspection by law. "

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

13 "57-22-6. FILING OF REQUIRED DOCUMENTS. --

14 ~~[A. Every charitable organization shall file with~~
15 ~~the office of the attorney general within six months of the~~
16 ~~effective date of the Charitable Organizations and~~
17 ~~Solicitations Act or within six months of the date on which~~
18 ~~the charitable organization becomes subject to the Charitable~~
19 ~~Organizations and Solicitations Act, whichever shall occur~~
20 ~~first.~~

21 ~~(1) an initial registration to be submitted~~
22 ~~on the form provided for that purpose by the attorney general;~~
23 ~~and~~

24 ~~(2) a copy of the articles of incorporation~~
25 ~~or other instrument creating the charitable organization and~~

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1 ~~defining its purpose, powers and duties.~~

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

8 A. A charitable organization subject to the
9 Charitable Solicitations Act's registration and reporting
10 requirements that intends to solicit or have another person or
11 a professional fundraiser solicit on its behalf shall, before
12 it may solicit or have solicitations made on its behalf in
13 this state:

14 (1) register with the attorney general on a
15 form provided by the attorney general;

16 (2) provide a copy of its articles of
17 incorporation, articles of association and certificate of
18 authority if a foreign corporation, or the instrument creating
19 a charitable trust and defining its purpose, powers and duties
20 with its registration filing; and

21 (3) correct any deficiencies in its
22 registration filing after notification by the attorney general
23 of deficiencies, if any.

24 ~~[C.]~~ B. The attorney general shall notify each
25 charitable organization required to register within ten

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1 business days of his receipt of the registration form of any
2 deficiencies in the registration and may make [such] rules
3 [and regulations] in accordance with the State Rules Act as
4 are necessary for the proper administration of this section,
5 including [but not limited to]:

6 (1) requirements for filing additional
7 information, including disclosure of professional fundraising
8 counsel retained by the charitable organization; and

9 (2) provisions for suspending the filing of
10 reports [where] or granting an exemption from the registration
11 and reporting requirements of this section for a charitable
12 organization subject to audit, registration, charter or other
13 requirements of a statewide, regional or national association
14 and if it is determined that such reports [are no longer] or
15 registration is not necessary for the protection of the public
16 interest.

17 ~~[D.— This section shall not apply to any local~~
18 ~~affiliate of a statewide or national organization for which~~
19 ~~all local fundraising expenses are paid by the parent~~
20 ~~organization if the parent organization files a report~~
21 ~~required by this section.—~~

22 E.] C. In addition to any other reporting
23 requirements pursuant to the Charitable [~~Organizations and~~
24 Solicitations Act, every charitable organization [~~to which~~
25 ~~that act applies and~~] that has received tax-exempt status

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1 ~~[under]~~ pursuant to Section 501(c)(3) or 501(c)(4) of the
2 federal Internal Revenue Code of 1986, as amended, and is
3 required to file a form 990 ~~[or]~~, 990EZ or 990PF pursuant to
4 the Internal Revenue Code of 1986, as amended, shall file that
5 form and the accompanying schedule A annually with the office
6 of the attorney general up to six months following the close
7 of the charitable organization's fiscal year. Extensions of
8 time for filing may be allowed at the discretion of the
9 attorney general for good cause shown. Such forms shall be
10 public records and available for public inspection.

11 Organizations that do not file a form 990, 990EZ or 990PF
12 pursuant to the Internal Revenue Code of 1986, as amended,
13 shall file an annual report, under oath, on the form provided
14 by the attorney general for that purpose. The financial
15 report of a charitable organization that received total
16 revenue in excess of five hundred thousand dollars (\$500,000)
17 shall be audited by an independent certified public
18 accountant. Audits shall be performed in accordance with
19 acceptable accounting and auditing standards.

20 D. A charitable organization that fails to
21 register before a solicitation is made or fails to timely file
22 its tax filings with the attorney general pursuant to
23 Subsection C of this section may be assessed a late filing fee
24 of one hundred dollars (\$100). "

25 Section 7. Section 57-22-7 NMSA 1978 (being Laws 1983,

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1 Chapter 140, Section 7) is amended to read:

2 "57-22-7. RESTRICTION ON USE OF FACT OF FILING IN
3 SOLICITATION. -- No solicitation [~~of funds~~] for charitable
4 purposes shall use the fact or requirement of registration or
5 of the filing of any report with the attorney general pursuant
6 to the Charitable [~~Organizations and~~] Solicitations Act with
7 the intent to cause or in a manner tending to cause any person
8 to believe that [~~such~~] the solicitation, the manner in which
9 it is conducted, its purposes, any use to which the proceeds
10 will be applied or the person or organization conducting it
11 [~~have~~] has been or will be in any way endorsed, sanctioned or
12 approved by the attorney general or any governmental agency or
13 office. "

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

16 "57-22-8. DISCLOSURE OF [~~FUND-RAISING~~] FUNDRAISING
17 COSTS. --

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

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1 organization attributable to [~~fund raising~~] fundraising
2 activities.

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

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

14 "57-22-9. AUTHORITY OF THE ATTORNEY GENERAL. --

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

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1 B. The attorney general [~~is authorized~~] may, in
2 the name of the state, [~~to initiate appropriate proceedings to~~
3 ~~enjoin the solicitation of funds by any charitable~~
4 ~~organization which~~] seek injunctive relief, civil penalties,
5 financial accounting or restitution from any person who has
6 failed to comply with the registration, filing or disclosure
7 provisions of the Charitable [~~Organizations and~~] Solicitations
8 Act or [~~which~~] who has [~~filed any false or misleading report~~
9 ~~or has made any false or misleading disclosure~~] otherwise
10 violated the provisions of that act.

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

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

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

24 "57-22-10. STANDARD OF CARE. --All officers, directors,
25 managers, trustees, professional fundraisers or other persons

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1 having access to the [~~unds~~] money of a charitable
2 organization intended for use for charitable purposes shall be
3 held to the standard of care defined for fiduciary trustees
4 under common law. "

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

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

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

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

16 A. Professional fundraisers shall, before entering
17 into a contract with any charitable organization, except a
18 religious organization, to solicit for or on its behalf:

19 (1) register with the attorney general on a
20 form provided by the attorney general;

21 (2) file with the attorney general a surety
22 bond pursuant to the Charitable Solicitations Act; and

23 (3) file with the attorney general a copy of
24 the intended written contract between the professional
25 fundraiser and the charitable organization on whose behalf the

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1 professional fundraiser intends to conduct a solicitation
2 campaign.

3 B. The contract between the professional
4 fundraiser and the charitable organization shall clearly
5 describe the:

6 (1) compensation and authority of the
7 professional fundraiser;

8 (2) solicitation campaign;

9 (3) location and telephone numbers from where
10 solicitations are intended to be conducted;

11 (4) list of names and addresses of all
12 employees, agents or other persons who are to solicit during
13 the campaign;

14 (5) copies of the solicitation literature,
15 including scripts of any written or verbal solicitation; and

16 (6) estimated annual amount of gross and net
17 revenue the charitable organization is projected to receive as
18 a result of the activities outlined in the contract.

19 C. The charitable organization on whose behalf the
20 professional fundraiser is acting shall certify that the
21 contract and solicitation materials filed with the attorney
22 general are true and complete.

23 D. Within ten business days after receiving a
24 registration pursuant to this section, the attorney general
25 shall notify the professional fundraiser of any deficiencies

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1 in the registration, contract or bond; otherwise the filing is
2 deemed approved as filed.

3 E. A professional fundraiser who fails to register
4 with the attorney general may be assessed a late registration
5 fee of one hundred dollars (\$100). "

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

8 "[NEW MATERIAL] PROFESSIONAL FUNDRAISERS-- BOND. -- A
9 professional fundraiser shall file a surety bond at the time
10 of the registration with the attorney general in an amount and
11 on a form provided by the attorney general. The professional
12 fundraiser shall maintain the surety bond, or alternative
13 financial assurances approved by the attorney general, as long
14 as the fundraiser solicits in the state. "

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

17 "[NEW MATERIAL] GENERAL PROVISIONS-- CHARITABLE
18 ORGANIZATIONS-- PROFESSIONAL FUNDRAISERS-- DECEPTIVE
19 PRACTICES. --A charitable organization or a professional
20 fundraiser shall not engage in deceptive fundraising
21 practices, meaning any false or misleading verbal or written
22 statement, description or representation of any kind knowingly
23 made in connection with a solicitation and that may, tends to
24 or does deceive or mislead any person and includes:

25 A. using the name or likeness of any person in

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1 solicitation literature without the express written consent of
2 the person; provided that publication of previous
3 contributors' names to acknowledge their contributions shall
4 not require their express written consent;

5 B. using a name, symbol or statement that is so
6 closely related or similar to that used by another charitable
7 organization or governmental agency that the use would tend to
8 confuse or mislead the public; and

9 C. misrepresenting, confusing or misleading any
10 person to reasonably believe incorrectly that the
11 contributions being solicited are or will be used for
12 purposes, persons or programs in the state."

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

15 "[NEW MATERIAL] PROFESSIONAL FUNDRAISER--RECORDS AND
16 REPORTS. --

17 A. At least every six months, the professional
18 fundraiser shall account in writing to the charitable
19 organization for all contributions received and all expenses
20 incurred under his contract. The charitable organization
21 shall maintain a copy of the accounting of contributions and
22 expenses for three years and make it available to the attorney
23 general upon request.

24 B. All contributions of money received by the
25 professional fundraiser shall be deposited in an account at a

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1 federally insured financial institution within two days after
2 receipt. The account shall be established and maintained in
3 the name of the charitable organization. Disbursements from
4 the account shall be made upon warrants signed by the
5 professional fundraiser and an authorized representative of
6 the charitable organization.

7 C. The professional fundraiser shall include the
8 following information in its accounting required by Subsection
9 A of this section to the charitable organization:

10 (1) the name and address of each person
11 contributing to the charitable organization and the date and
12 amount of the contribution;

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

15 (3) the script or other instructional
16 information provided by the charitable organization or
17 professional fundraiser to employees, agents or other persons
18 conducting solicitations;

19 (4) a record of expenses incurred by the
20 professional fundraiser that the charitable organization paid;
21 and

22 (5) the name and address of each financial
23 institution and the account number of each account in which
24 the professional fundraiser deposited contributions received
25 from the solicitation.

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1 D. The professional fundraiser and the employees
2 of the professional fundraiser shall disclose the following in
3 solicitations:

4 (1) the name of the charitable organization;
5 and

6 (2) the fact that the solicitation is made by
7 or through a professional fundraiser.

8 E. Every professional fundraiser and charitable
9 organization shall have either a registered agent in the state
10 or shall file a consent to service of process with the
11 attorney general. The consent to service shall be in the form
12 prescribed by the attorney general and shall be irrevocable."

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

15 "NEW MATERIAL INVESTIGATIVE DEMAND--CIVIL PENALTY. --

16 A. Whenever the attorney general has reason to
17 believe that any person may be in possession, custody or
18 control of information or documentary material, including an
19 original or copy of any book, record, report, memorandum,
20 paper, communication, tabulation, chart, photograph,
21 mechanical transcription or other tangible document or
22 recording, that the attorney general believes to be relevant
23 to the subject matter of an investigation of a probable
24 violation of the Charitable Solicitations Act, the attorney
25 general may, prior to the institution of a civil proceeding,

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1 execute in writing and cause to be served upon the person a
2 civil investigative demand. The demand shall require the
3 person to answer interrogatories or to produce documentary
4 material and permit the inspection and copying of the
5 material. The demand of the attorney general shall not be a
6 matter of public record and shall not be published by him
7 except by order of the court.

8 B. Each demand shall:

9 (1) state the general subject matter of the
10 investigation;

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

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

17 (4) state the date on which any documentary
18 material shall be available for inspection and copying.

19 C. No demand shall:

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

23 (2) require the disclosure of any documentary
24 material that would be privileged or that for any other reason
25 would not be required by a subpoena duces tecum by a court of

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1 the state; or

2 (3) require the removal of any documentary
3 material from the custody of the person upon which the demand
4 is served except in accordance with the provisions of
5 Subsection E of this section.

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

7 (1) delivering a duly executed copy of the
8 demand to the person to be served or, if the person is not a
9 natural person, to the registered or statutory agent for the
10 person to be served;

11 (2) delivering a duly executed copy of the
12 demand to the principal place of business in New Mexico of the
13 person to be served; or

14 (3) mailing by registered mail or certified
15 mail a duly executed copy of the demand addressed to the
16 person to be served at his principal place of business in the
17 state or, if the person has no place of business in the state,
18 to his principal place of business.

19 E. Documentary material demanded pursuant to
20 Subsection A of this section shall be produced for inspection
21 and copying during normal business hours at the principal
22 place of business of the person served or may be inspected and
23 copied at such other times and places as may be agreed upon by
24 the person served and the attorney general.

25 F. No documentary material or copies of the

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1 documentary material produced pursuant to a demand shall be
2 produced for inspection or copying by anyone other than an
3 authorized employee of the attorney general, nor shall the
4 contents of the documentary material be disclosed to anyone
5 other than an authorized employee of the attorney general or
6 in court in an action relating to a violation of the
7 Charitable Solicitations Act. The district court in the
8 county in which the person resides or has his principal place
9 of business or is about to perform or is performing the
10 practice that is alleged to be unlawful under the Charitable
11 Solicitations Act may order documentary material to be
12 produced for inspection or copying by someone other than an
13 authorized employee of the attorney general.

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

23 H. If after service of the demand the person
24 neglects or refuses to comply with the demand, the attorney
25 general may invoke the aid of the court in the enforcement of

Underscored material = new
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1 the demand. In appropriate cases the court shall issue its
2 order requiring the person to appear and produce the
3 documentary material required in the demand. Upon failure of
4 the person to comply with the court order, the court shall
5 punish the person for contempt of court.

6 I. This section shall not be applicable to
7 criminal prosecutions.

8 J. In an action brought pursuant to the Charitable
9 Solicitations Act, if the court finds that a person has
10 violated a provision of that act or rules promulgated pursuant
11 to that act, the attorney general may recover, on behalf of
12 the state, a maximum civil penalty of five thousand dollars
13 (\$5,000) per violation. "

14 Section 17. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 February 5, 1998
7

8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 333
13

14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 44, and thence referred to
16 the JUDICIARY COMMITTEE.
17

18
19 Respectfully submitted,
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25 _____
Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

S0333CC1

1 FORTY-THIRD LEGISLATURE

SB 333/a

2 SECOND SESSION, 1998

6 February 9, 1998

8 Mr. President:

10 Your JUDICIARY COMMITTEE, to whom has been referred

12 SENATE BILL 333

14 has had it under consideration and reports same with recommendation
15 that it DO PASS, amended as follows:

- 17
- 18 1. On page 2, line 18, strike "and" and insert in lieu thereof
19 "or".
- 20
- 21 2. On page 6, line 4, before "solicitation" insert a quotation
22 mark.
- 23
- 24 3. On page 6, line 18, before the period insert ", or to a
25 professional fundraiser or a professional fundraising council for a

. 121047. 2

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SJC/SB 333

Page 28

religious organization".

4. On page 13, line 25, after "available" insert "by statute or".

5. On page 15, lines 17 and 18, strike ", except a religious organization,".

Respectfully submitted,

. 121047. 2

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SJC/SB 333

Page 29

Cisco McSorley, Vice-Chairman

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

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Payne, Tsosie, Vernon

Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SJC/SB 333

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