

HOUSE BILL No. 2707

By Committee on Judiciary

2-7

1 AN ACT concerning charitable organizations; relating to registration;
2 transfer from secretary of state to the attorney general; amending
3 K.S.A. 17-1763, 17-1764, 17-1765, 17-1769, 17-1771, 17-1772 and 46-
4 236 and K.S.A. 2017 Supp. 17-1762 and repealing the existing
5 sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. There is hereby created the attorney general
9 charitable organizations fee fund. The attorney general shall remit all
10 moneys received by or for it from fees, charges or penalties collected
11 pursuant to the charitable organizations and solicitations act, K.S.A. 17-
12 1759 et seq., and amendments thereto. Upon receipt of each such
13 remittance, the state treasurer shall deposit the entire amount in the state
14 treasury to the credit of the attorney general charitable organizations fee
15 fund. All expenditures from the attorney general charitable organizations
16 fee fund shall be for the operation of oversight and management of the
17 charitable organizations and solicitations act.

18 Sec. 2. K.S.A. 2017 Supp. 17-1762 is hereby amended to read as
19 follows: 17-1762. The following persons shall not be required to register
20 with the ~~secretary of state~~ *attorney general*:

21 (a) State educational institutions under the control and supervision of
22 the state board of regents, unified school districts, educational interlocals,
23 educational cooperatives, area vocational-technical schools, all educational
24 institutions that are accredited by a regional accrediting association or by
25 an organization affiliated with the national commission of accrediting, any
26 foundation having an established identity with any of the aforementioned
27 educational institutions, any other educational institution confining its
28 solicitation of contributions to the student body, alumni, faculty and
29 trustees of such institution, and their families, or a library established
30 under the laws of this state, provided that the annual financial report of
31 such institution or library shall be filed with the attorney general;

32 (b) fraternal, patriotic, social, educational, alumni organizations and
33 historical societies when solicitation of contributions is confined to their
34 membership. This exemption shall be extended to any subsidiary of a
35 parent or superior organization exempted by this subsection where such
36 solicitation is confined to the membership of the subsidiary, parent or

1 superior organization;

2 (c) persons requesting any contributions for the relief or benefit of
3 any individual, specified by name at the time of the solicitation, if the
4 contributions collected are turned over to the named beneficiary, first
5 deducting reasonable expenses for costs of banquets, or social gatherings,
6 if any, provided all fund raising functions are carried on by persons who
7 are unpaid, directly or indirectly, for such services;

8 (d) any charitable organization which does not intend to solicit and
9 receive and does not actually receive contributions in excess of \$10,000
10 during such organization's tax period, as defined by K.S.A. 17-7501, and
11 amendments thereto, if all of such organization's fund-raising functions are
12 carried on by persons who are unpaid for such services. However, if the
13 gross contributions received by such charitable organization during any
14 such tax period is in excess of \$10,000, such organization, within 30 days
15 after the end of such tax period, shall register with the ~~secretary of state~~
16 *attorney general* as provided in K.S.A. 17-1763, and amendments thereto;

17 (e) any incorporated community chest, united fund, united way or any
18 charitable organization receiving an allocation from an incorporated
19 community chest, united fund or united way;

20 (f) a bona fide organization of volunteer firemen, or a bona fide
21 auxiliary or affiliate of such organization, if all fund-raising activities are
22 carried on by members of such organization or an affiliate thereof and such
23 members receive no compensation, directly or indirectly, therefor;

24 (g) any charitable organization operating a nursery for infants
25 awaiting adoption if all fund-raising activities are carried on by members
26 of such an organization or an affiliate thereof and such members receive
27 no compensation, directly or indirectly, therefor;

28 (h) any corporation established by the federal congress that is
29 required by federal law to submit annual reports of such corporation's
30 activities to congress containing itemized accounts of all receipts and
31 expenditures after being duly audited by the department of defense or
32 other federal department;

33 (i) any girls' club which is affiliated with the girls' club of America, a
34 corporation chartered by congress, if such an affiliate properly files the
35 reports required by the girls' club of America and that the girls' club of
36 America files with the government of the United States the reports
37 required by such federal charter;

38 (j) any boys' club which is affiliated with the boys' club of America, a
39 corporation chartered by congress, if such an affiliate properly files the
40 reports required by the boys' club of America and that the boys' club of
41 America files with the government of the United States the reports
42 required by such federal charter;

43 (k) any corporation, trust or organization incorporated or established

1 for religious purposes, or established for charitable, hospital or educational
2 purposes and engaged in effectuating one or more of such purposes, that is
3 affiliated with, operated by or supervised or controlled by a corporation,
4 trust or organization incorporated or established for religious purposes, or
5 to any other religious agency or organization which serves religion by the
6 preservation of religious rights and freedom from persecution or prejudice
7 or by fostering religion, including the moral and ethical aspects of a
8 particular religious faith;

9 (l) the boy scouts of America and the girl scouts of America,
10 including any regional or local organization affiliated therewith;

11 (m) the young men's christian association and the young women's
12 christian association, including any regional or local organization affiliated
13 therewith;

14 (n) any licensed medical care facility which is organized as a
15 nonprofit corporation under the laws of this state;

16 (o) any licensed community mental health center or licensed mental
17 health clinic;

18 (p) any licensed community center for people with intellectual
19 disability and its affiliates as determined by the Kansas department for
20 aging and disability services;

21 (q) any charitable organization of employees of a corporation whose
22 principal gifts are made to an incorporated community chest, united fund
23 or united way, and whose solicitation is limited to such employees;

24 (r) any community foundation or community trust to which
25 deductible contributions can be made by individuals, corporations, public
26 charities and private foundations, as well as other charitable organizations
27 and governmental agencies for the overall purposes of the foundation or to
28 particular charitable and endowment funds established under agreement
29 with the foundation or trust for the charitable benefit of the people of a
30 specific geographic area and which is a nonprofit organization exempt
31 from federal income taxation pursuant to section 501(a) of the internal
32 revenue code of 1986, as in effect on the effective date of this act, by
33 reason of qualification under section 501(c)(3) of the internal revenue code
34 of 1986, as in effect on the effective date of this act, and which is deemed
35 a publicly supported organization and not a private foundation within the
36 meaning of section 509(a)(1) of the internal revenue code of 1986, as in
37 effect on the effective date of this act;

38 (s) any charitable organization which does not intend to or does not
39 actually solicit or receive contributions from more than 100 persons;

40 (t) any charitable organization the funds of which are used to support
41 an activity of a municipality of this state; and

42 (u) the junior league, including any local community organization
43 affiliated therewith.

1 Sec. 3. K.S.A. 17-1763 is hereby amended to read as follows: 17-
2 1763. (a) Except for charitable organizations exempt under K.S.A. 17-
3 1762, and amendments thereto, no charitable organization shall solicit
4 funds in this state, nor employ a professional fund raiser to solicit funds in
5 this state, for any charitable purpose, unless such organization has filed
6 ~~with the office of the secretary of state of the state of Kansas~~; a registered
7 statement *with the attorney general* prior to solicitation.

8 (b) ~~The secretary of state~~ *attorney general* shall prescribe registration
9 forms ~~which~~ *that* shall be signed and sworn to by two authorized officers
10 of the organization, including the chief fiscal officer, and ~~which~~ *that* shall
11 include the following information about such organization's activities in
12 this state:

13 (1) The name of the organization and the name or names under which
14 it intends to solicit;

15 (2) the purpose for which such organization was organized;

16 (3) the principal mailing address and street address of the
17 organization and the mailing addresses and street addresses of any offices
18 in this state;

19 (4) the names and mailing addresses and street addresses of any
20 subsidiary or subordinate chapters, branches or affiliates in this state;

21 (5) the place where and the date when the organization was legally
22 established, the form in which such organization is organized and a
23 reference to any determination of such organization's tax-exempt status, if
24 any, under the federal internal revenue code of 1986;

25 (6) the names and mailing addresses and street addresses of the
26 officers, directors, trustees and principal salaried employees of the
27 organization;

28 (7) the name and mailing address and street address of the person
29 having custody of such organization's financial records;

30 (8) the names of the individuals or officers of the organization who
31 will have responsibility for the custody of the contributions;

32 (9) the names of the individuals or officers of the organization who
33 will have responsibility for the distribution of the contributions;

34 (10) the names of the individuals or officers of the organization who
35 will have responsibility for the conduct of solicitation activities;

36 (11) the general purposes for which the organization intends to solicit
37 contributions;

38 (12) a statement indicating whether the organization intends to solicit
39 contributions directly or have such solicitation done on such organization's
40 behalf by others and naming any professional fund raiser the organization
41 intends to use;

42 (13) a statement indicating whether the organization is authorized by
43 any other governmental authority to solicit contributions and whether such

1 organization is or has ever been enjoined by any court from soliciting
2 contributions;

3 (14) the cost of fund raising incurred or anticipated to be incurred by
4 the organization, including a statement of such costs as a percentage of
5 contributions received; and

6 (15) a copy of the federal income tax return of the charitable
7 organization, if the charitable organization is required to file such;
8 otherwise a financial statement covering complete disclosure of the fiscal
9 activities of the organization during the preceding year. The financial
10 statement shall be submitted on forms approved by the ~~secretary of state~~
11 *attorney general*, signed and sworn by at least two authorized officers of
12 the organization, including the chief fiscal officer. Such financial statement
13 shall include a balance sheet and statement of income and expense, clearly
14 setting forth the following: Gross receipts and gross income from all
15 sources, broken down into total receipts and income from each separate
16 solicitation project or source; cost of administration; cost of solicitation;
17 cost of programs designed to inform or educate the public; funds or
18 properties transferred out of this state, with explanation as to recipient and
19 purpose; and total net amount disbursed or dedicated for each major
20 purpose, charitable or otherwise.

21 (c) A charitable organization that received contributions in excess of
22 \$500,000 during the organization's most recently completed fiscal year
23 shall file, in addition to the federal income tax returns or the statement
24 required by subsection (b), an audited financial statement for the charitable
25 organization's most recently completed fiscal year, prepared in accordance
26 with generally accepted accounting principles, and the opinion of an
27 independent certified public accountant on the financial statement.

28 (d) Upon receipt of any such registration, the ~~secretary of state~~
29 *attorney general* shall issue a charitable solicitation license and
30 identification number. All certificates of registration and identification
31 numbers issued to charitable organizations shall expire on the last day of
32 the sixth month following the month in which the fiscal year of the
33 charitable organization ends.

34 (e) Every charitable organization required to register with the
35 ~~secretary of state~~ *attorney general* shall pay a fee of \$20 with each
36 registration.

37 (f) (1) The ~~secretary of state~~ *attorney general* may adopt rules and
38 regulations necessary for the administration of this act.

39 (2) *All rules and regulations, orders, directives and standards of the*
40 *secretary of state relating to charitable organizations, which rules and*
41 *regulations, orders, directives and standards were in existence*
42 *immediately preceding the effective date of this act, shall continue to be*
43 *effective and shall be deemed to be the rules and regulations, orders,*

1 *directives and standards of the attorney general until amended, revoked or*
2 *nullified pursuant to law.*

3 Sec. 4. K.S.A. 17-1764 is hereby amended to read as follows: 17-
4 1764. No person shall act as a professional fund raiser for a charitable
5 organization or for any religious organization as described in ~~subsection~~
6 ~~(k)~~ of K.S.A. 17-1762(k), and amendments thereto, before such person has
7 registered with the ~~secretary of state~~ *attorney general* or after the
8 expiration or cancellation of such registration or any renewal of such
9 registration. Applications for registration and reregistration shall be in
10 writing and under oath in the form prescribed by the ~~secretary of state~~
11 *attorney general*. Registration or reregistration shall be in effect for a
12 period of one year, or a part thereof, expiring on June 30, and may be
13 renewed upon written application, under oath, in the form prescribed by
14 the ~~secretary of state~~ *attorney general* for additional one year periods.
15 Every professional fund raiser required to register pursuant to this act shall
16 file an annual written report with the ~~secretary of state~~ *attorney general*
17 containing such information as the ~~secretary~~ *attorney general* may require
18 by rule and regulation pursuant to K.S.A. 17-1763, and amendments
19 thereto.

20 Sec. 5. K.S.A. 17-1765 is hereby amended to read as follows: 17-
21 1765. No person shall act as a professional solicitor in the employ of a
22 professional fund raiser before such person has registered with the
23 ~~secretary of state~~ *attorney general* or after the expiration or cancellation of
24 such registration or any renewal of such registration. Application for
25 registration or reregistration shall be in writing, under oath and in the form
26 prescribed by the ~~secretary of state~~ *attorney general*. Upon receipt of any
27 such registration, the ~~secretary of state~~ *attorney general* shall issue a
28 professional solicitor's license and identification number. Such registration
29 or reregistration shall be in effect for a period of one year, or a part thereof,
30 expiring on June 30, and may be renewed upon written application, under
31 oath, in the form prescribed by the ~~secretary of state~~ *attorney general* for
32 an additional one-year period.

33 Sec. 6. K.S.A. 17-1769 is hereby amended to read as follows: 17-
34 1769. The following acts and practices are hereby declared unlawful as
35 applied to the planning, conduct or execution of any solicitation or
36 charitable purpose:

37 (a) Operating in violation of, or failing to comply with, any of the
38 requirements of this act;

39 (b) utilizing any deceptive acts or practices whether or not any person
40 has in fact been misled. Deceptive acts or practices include, but are not
41 limited to, the following:

42 (1) The intentional use in any solicitation of exaggeration, innuendo
43 or ambiguity as to a material fact; and

1 (2) the intentional failure to state a material fact, or the intentional
2 concealment, suppression or omission of a material fact in any solicitation;

3 (c) utilizing any unconscionable acts or practices. An unconscionable
4 act or practice violates this act whether it occurs before, during or after the
5 solicitation.

6 (1) The unconscionability of an act or practice is a question for the
7 court.

8 (2) In determining whether an act or practice is unconscionable, the
9 court shall consider circumstances which the charitable organization or
10 fund raiser knew or had reason to know including, but not limited to, the
11 following:

12 (A) Taking advantage of a person's inability to reasonably protect
13 such person's interests because of the person's physical infirmity,
14 ignorance, illiteracy, inability to understand the language of a solicitation
15 or similar factor; and

16 (B) using undue pressure in soliciting;

17 (d) utilizing any representation that implies the contribution is for or
18 on behalf of a charitable organization or utilizing any emblem, device or
19 printed matter belonging to or associated with a charitable organization,
20 without obtaining authorization in writing from the charitable
21 organization;

22 (e) utilizing a name, symbol or statement so closely related or similar
23 to that used by another charitable organization that the use thereof would
24 tend to confuse or mislead a solicited person, whether or not any person
25 has in fact been misled;

26 (f) misrepresenting or misleading any person in any manner to
27 believe that the person on whose behalf a solicitation or charitable purpose
28 is being conducted is a charitable organization;

29 (g) using donations for purposes other than those stated in an
30 organization's articles of incorporation or current registration statements
31 filed with the ~~secretary of state~~ *attorney general*;

32 (h) using donations for purposes other than those stated in
33 solicitations;

34 (i) using donations for other than charitable purposes;

35 (j) misrepresenting or misleading any person in any matter, to believe
36 that any other person or governmental unit sponsors, endorses or approves
37 such solicitation or charitable purpose when such other person has not
38 given consent in writing to the use of such person's name for these
39 purposes; and

40 (k) utilizing or exploiting the fact of registrations so as to lead any
41 person to believe that such registration in any manner constitutes an
42 endorsement or approval by the state.

43 Sec. 7. K.S.A. 17-1771 is hereby amended to read as follows: 17-

1 1771. Registration under this act shall not be deemed to constitute an
2 endorsement by the state of Kansas of any registering charitable
3 organization, professional fund raiser or professional solicitor. It shall be
4 unlawful for any charitable organization, professional fund raiser or
5 professional solicitor to represent, directly or indirectly, by advertising or
6 any other manner, that such charitable organization, professional fund
7 raiser or professional solicitor has registered or otherwise complied with
8 the provisions of this act, for the purpose of solicitation and collection of
9 funds for charitable purposes. The ~~secretary of state~~ *attorney general* shall
10 cancel the registration of any organization, professional fund raiser or
11 professional solicitor that violates the provisions of this section.

12 Sec. 8. K.S.A. 17-1772 is hereby amended to read as follows: 17-
13 1772. The ~~secretary of state~~ *attorney general* may enter into reciprocal
14 agreements with a like authority of any other state or states for the purpose
15 of exchanging information made available to the ~~secretary of state~~
16 *attorney general* or to such other like authority.

17 Sec. 9. K.S.A. 46-236 is hereby amended to read as follows: 46-236.
18 No state officer or employee, candidate for state office or state officer elect
19 shall solicit any economic opportunity, gift, loan, gratuity, special discount,
20 favor, hospitality, or service from any person known to have a special
21 interest, under circumstances where such officer, employee, candidate or
22 state officer elect knows or should know that a major purpose of the donor
23 in granting the same could be to influence the performance of the official
24 duties or prospective official duties of such officer, employee, candidate or
25 state officer elect.

26 Except when a particular course of official action is to be followed as a
27 condition thereon, this section shall not apply to: (1) Any contribution
28 reported in compliance with the campaign finance act; (2) a commercially
29 reasonable loan or other commercial transaction in the ordinary course of
30 business; (3) any solicitation for the benefit of any charitable organization
31 which is required to file a registration statement with the ~~secretary of state~~
32 *attorney general* pursuant to K.S.A. 17-1761, and amendments thereto, or
33 which is exempted from filing such statement pursuant to K.S.A. 17-1762,
34 and amendments thereto, or for the benefit of any educational institution or
35 such institution's endowment association, if such association has qualified
36 as a nonprofit organization under ~~paragraph (3) of subsection (c) of section~~
37 *501(c)(3)* of the internal revenue code of 1986, as amended; (4) any
38 solicitation for the benefit of any national nonprofit, nonpartisan
39 organization established for the purpose of serving, informing, educating
40 and strengthening state legislatures in all states of the nation; or (5) any
41 solicitation for the benefit of any national, nonprofit organization
42 established for the purpose of serving, informing and educating elected
43 executive branch officials in all states of the nation.

1 Sec. 10. K.S.A. 17-1763, 17-1764, 17-1765, 17-1769, 17-1771, 17-
2 1772 and 46-236 and K.S.A. 2017 Supp. 17-1762 are hereby repealed.

3 Sec. 11. This act shall take effect and be in force from and after its
4 publication in the statute book.