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Indicates New Matter

COMMITTEE REPORT

May 13, 2009

**S. 652**

Introduced by Senators Knotts, Elliott, Ford and Campbell

S. Printed 5/13/09--S. [SEC 5/14/09 1:00 PM]

Read the first time March 31, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 652) to amend the Code of Laws of South Carolina, 1976, by adding Section 33‑56‑75 so as to require professional fundraising counsel, professional solicitors and commercial, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting the following:

/ SECTION 1. Chapter 56, Title 33 of the 1976 Code is amended by adding:

"Section 33-56-75. (A) A list that is provided by the charitable organization of the names, postal addresses, telephone numbers, e-mail addresses, and the dates and amounts of each donation of each contributor to a solicitation campaign organized pursuant to this chapter conducted by a professional fundraising counsel or professional solicitor shall be the property of the charitable organization for which the solicitation campaign is conducted. The professional fundraising counsel or professional solicitor must maintain this list throughout the duration of the solicitation campaign until the list is transferred to the charitable organization pursuant to subsection (B).

(B) If the contributions are received by a professional fundraising counsel or professional solicitor, his agent or subcontractor, then the professional fundraising counsel or professional solicitor shall deliver the list of contributors that has been provided by the charitable organization, including the names, postal addresses, telephone numbers, e-mail addresses, and dates and amounts of donations, to the charitable organization within ninety days after the solicitation campaign has been completed, or within ninety days after each anniversary of a solicitation campaign that lasted for more than one year.

(C) A professional fundraising counsel or professional solicitor shall not:

(1) withhold from the charitable organization the list referenced in subsection (A);

(2) restrict any use by the charitable organization of the list referenced in subsection (A);

(3) transfer possession or control of the list referenced in subsection (A) to any person other than the charitable organization that owns the list;

(4) permit the use of the list referenced in subsection (A) by any person not so authorized by the charitable organization; or

(5) use the list referenced in subsection (A) for the benefit of any person other than the owner of the list, without the explicit written consent of the charitable organization that owns this list.

(D)(1) If a professional fundraising counsel or a professional solicitor violates a provision of this section, the Secretary of State must notify the professional fundraising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to the last known address of the violator. If the violation is not remedied within fifteen days after the formal notification or receipt of the notice, the Secretary of State may assess an administrative fine of one hundred dollars for each day of noncompliance, not to exceed a maximum fine of twenty-five thousand dollars for each violation.

(2) A person who is assessed an administrative fine pursuant to this section shall, within thirty days from receipt of certified or registered notice from the Secretary of State, pay the assessed fine or request a contested case hearing before the Administrative Law Court. If no fine is remitted or no contested case is requested, then the Secretary of State may suspend the registration of the person and is authorized to request an injunction against the person in the Administrative Law Court to prohibit the person from engaging in further charitable solicitation activities in this State. The decision of the Administrative Law Court may be appealed as provided in Section 1-23-610.”

SECTION 2. Section 33-56-160 of the 1976 Code is amended to read:

“Section 33-56-160. (A) The first two hundred thousand dollars in administrative fine revenue received pursuant to this chapter in a fiscal year, not including such fine revenues collected pursuant to Section 33-56-75, may be retained by the Secretary of State to offset the expenses of enforcing this chapter. All administrative fines collected pursuant to this chapter in excess of two hundred thousand dollars in a fiscal year, not including such fine revenues collected pursuant to Section 33-56-75, must be transmitted to the State Treasurer and deposited in the state general fund. All fees collected pursuant to this chapter must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the state general fund and used by the Secretary of State for the purpose of administering the provisions of this chapter.

(B) All administrative fines collected pursuant to Section 33-56-75 in a fiscal year must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the state general fund. The revenue collected from these fines must be directed to the Secretary of State for the purpose of administering the provisions of that section.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend the title to conform.

JOHN M. KNOTTS, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Depending on the number of complaints filed the Secretary of State’s Office estimates it would require 1.50 new FTEs for 0.50 of an Attorney III and 1.00 Administrative Assistant at an annual cost to the general fund of $95,000 for salary, fringe benefits and other operating expenses. There would also be a first year non-recurring cost to the general fund of $30,000 for changes to the existing computer system.

*Approved By:*

Harry Bell

Office of State Budget

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT** 1/

We expect the bill, as amended, would raise penalty revenue allocated to earmarked funds of the Secretary of State (SOS) by $13,000, and also raise departmental revenue within the state general fund by $13,000 in FY 2009-10.

**Explanation**

This bill, as amended, establishes ownership of donor list info compiled from fundraising campaigns of applicable charitable organizations in this State. It creates rules to restrict dissemination of pertinent data in these donor lists and provides a civil penalty of $100 for each day of noncompliance, not to exceed $25,000 for each violation, by a professional fundraising counsel, professional solicitor, or commercial co-venturer, as applicable. Currently, the first $200,000 in admin fines collected under Chapter 56 of Title 33 are to be retained as earmarked funds of the SOS, and any excess goes to the state’s general fund. The amendment adds language such that all civil penalties imposed under new Section 33-56-75 would be apportioned at 50% to earmarked funds of the SOS and 50% to the general fund.

The imposition of a penalty is subsequent to administrative due process by the SOS, and may require a decision by an Administrative Law Judge or final action resulting from appeal to state appellate court. As such, we expect revenue in the initial year would come from those parties accepting quick resolution by administrative means. Thus, we expect a first-year scenario of 26 total fines for noncompliance at an average of 10 days per violation to yield $26,000 (26 fines X 10 days X $100). Of this $26,000, equal proceeds of $13,000 would be respectively allocated to earmarked funds of the SOS and to departmental revenue within the state’s general fund in FY 2009-10.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 33‑56‑75 SO AS TO REQUIRE PROFESSIONAL FUNDRAISING COUNSEL, PROFESSIONAL SOLICITORS AND COMMERCIAL CO‑VENTURERS TO MAINTAIN LISTS OF DONORS FROM CAMPAIGNS AND SOLICITATONS CONDUCTED BY THE SOLICITOR; TO PROVIDE THAT THESE LISTS ARE THE PROPERTY OF THE CHARITABLE ORGANIZATION; TO RESTRICT THE USE OF DONOR LISTS BY THE CAMPAIGN SOLICITOR; AND TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 56, Title 33 of the 1976 Code is amended by adding:

“Section 33‑56‑75. (A) A professional fundraising counsel, professional solicitor, or commercial co‑venturer shall maintain a list of donors, including names, addresses, telephone numbers, and donation amounts for each donor who contributed to a campaign or solicitation conducted by the professional fundraising counsel, professional solicitor, or commercial co‑venturer for a charitable organization or the sponsor of a charitable event.

(B) The donor list compiled pursuant to subsection (A) is the property of the charitable organization or the sponsor of the charitable event, and the professional fundraising counsel, professional solicitor, or commercial co‑venturer must give the donor list to the charitable organization or the sponsor of the charitable event within fifteen days of completion of the campaign or solicitation.

(C) A professional fundraising counsel, professional solicitor, or commercial co‑venturer must not restrict the use of the donor list by the charitable organization or sponsor of the charitable event after completion of the campaign or solicitation.

(D) A professional fundraising counsel, professional solicitor, or commercial co‑venturer must not sell, transfer, distribute, or allow the use of a donor list to or by any other charitable organization or sponsor of a charitable event for any purpose other than the purpose specified by the charitable organization or sponsor of the charitable event in the contract.

(E)(1) If a professional fundraising counsel, professional solicitor, or commercial co‑venturer violates any provision of this section, the Secretary of State shall notify the professional fundraising counsel, professional solicitor, or commercial co‑venturer of the violation by registered or certified mail, with return receipt requested, to the last known address of the professional fundraising counsel, professional solicitor, or commercial co‑venturer. If the violation is not remedied within fifteen days after receipt of the notice, the professional fundraising counsel, professional solicitor, or commercial co‑venturer must be fined one hundred dollars for each day of noncompliance, not to exceed twenty five thousand dollars for each violation.

(2) A professional fundraising counsel, professional solicitor, or commercial co‑venturer who has been assessed a fine pursuant to subsection (E)(1) may request a contested case hearing pursuant to the Administrative Procedures Act. If the professional fundraising counsel, professional solicitor, or commercial co‑venturer fails to remit the fine or request a hearing, the Secretary of State may suspend the person’s registration pending final resolution and may seek relief by applying to an administrative law judge for an injunction or other equitable relief to enjoin the person from engaging in further charitable solicitation activities in this State. The decision of the administrative law judge may be appealed as provided for in Section 1‑23‑610.”

SECTION 2. This act takes effect upon approval by the Governor.

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