

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 497
HOUSE BILL 1320

AN ACT TO AMEND G.S. CHAPTER 131C GOVERNING THE SOLICITATION
OF FUNDS FOR CHARITABLE PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131C-1 is amended to read as follows:

"This Chapter shall be known and may be cited as the 'Charitable Solicitations Act'."

Sec. 2. G.S. 131C-3 is amended by adding a new subdivision immediately following subdivision (5) and immediately preceding subdivision (6), to be numbered subdivision (5a), and to read as follows:

"(5a) 'Fund-raising Fees' means the difference determined by subtracting from all monies raised pursuant to all solicitations on behalf of a particular person established for a charitable purpose the amount actually paid to the person established for a charitable purpose."

Sec. 3. Subsection (b) of G.S. 131C-4 is amended to read as follows:

"(b) A person other than a professional solicitor or professional fund-raising counsel may solicit charitable contributions after filing the application until the Department notifies him that the application has been denied and he waives or exhausts his administrative remedies under Article 3 of Chapter 150A."

Sec. 4. G.S. 131C-6 is amended to read as follows:

"Any person who acts as professional fund-raising counsel or professional solicitor shall apply for and obtain an annual license from the Department, and shall not act as a professional fund-raising counsel or professional solicitor until after obtaining such license. A person who is authorized to act on behalf of a licensed professional fund-raising counsel or a licensed professional solicitor is not required to obtain a license under this section."

Sec. 5. G.S. 131C-10 is amended to read as follows:

"An applicant under G.S. 131C-6 shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of twenty thousand dollars (\$20,000) with one or more sureties satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The bond shall run to the State for the use of said bond for any penalties and to any person who may have a cause of action against the obligor of the bond for any losses resulting from the obligor's conduct of any and all activities subject to this Chapter or arising out of a violation of this Chapter or any rule of the Commission."

Sec. 6. G.S. 131C-14 is amended by adding, after the text of subsection (b), the following:

"(c) If under any contract between a professional fund-raising counsel or professional solicitor and a person established for a charitable purpose there is a possibility that such person might ultimately receive less than fifty percent (50%) of the gross receipts of a solicitation, then that fact must be specifically and prominently disclosed to such person in the written contract and orally before execution of the contract, by the professional fund-raising counsel or professional solicitor."

Sec. 7. G.S. 131C-16 is amended by replacing the present catch line with the following:

"Disclosures upon request."

Sec. 8. Chapter 131C of the General Statutes is amended by adding a new section immediately following G.S. 131C-16 and immediately preceding G.S. 131C-17, to be numbered G.S. 131C-16.1, and to read as follows:

"§ **131C-16.1. Mandatory disclosures.**—During any solicitation and before requesting or appealing either directly or indirectly for any charitable contribution a professional solicitor shall disclose to the person solicited:

- (1) His name; and
- (2) The name of the professional solicitor or professional fund-raising counsel by whom he is employed and the address of his employer; and
- (3) The average of the percentage of gross receipts actually paid to the persons established for a charitable purpose by the professional fund-raising counsel or professional solicitor conducting the solicitation for all charitable sales promotions conducted in this State by that professional fund-raising counsel or professional solicitor for the past 12 months, or for all completed charitable sales promotions where the professional fund-raising counsel or professional solicitor has been soliciting funds for less than 12 months."

Sec. 9. Chapter 131C of the General Statutes is amended by adding a new section immediately following G.S. 131C-17 and immediately preceding G.S. 131C-18, to be numbered G.S. 131C-17.1, and to read as follows:

"§ **131C-17.1. Employment of agents regulated.**—(a) No professional solicitor or professional fund-raising counsel shall solicit charitable contributions through the efforts, either direct or indirect, of an independent contractor or any other person who is not the employee of the professional solicitor or professional fund-raising counsel.

(b) A professional solicitor or professional fund-raising counsel is responsible and liable for the acts of his employees in the solicitation, either direct or indirect, of charitable contributions. For purposes of this subsection, a professional solicitor or professional fund-raising counsel is deemed to be the employer of all persons acting under his license."

Sec. 10. Chapter 131C of the General Statutes is amended by adding a new section immediately following G.S. 131C-17.1 if passed by the General Assembly, and immediately preceding G.S. 131C-18, to be numbered G.S. 131C-17.2, and to read as follows:

"§131C-17.2. Excessive and unreasonable fund-raising fees prohibited.—(a) No professional fund-raising counsel or professional solicitor who contracts to raise funds for a person established for a charitable purpose may charge such person established for a charitable purpose an excessive and unreasonable fund-raising fee for raising such funds.

(b) For purposes of this section a fund-raising fee of twenty percent (20%) or less of the gross receipts of all solicitations on behalf of a particular person established for a charitable purpose is deemed to be reasonable and nonexcessive.

(c) For purposes of this section a fund-raising fee greater than twenty percent (20%) but less than thirty-five percent (35%) of the gross receipts of all solicitations on behalf of a particular person established for a charitable purpose is excessive and unreasonable if the party challenging the fund-raising fee also proves that the solicitation does not involve the dissemination of information, discussion, or advocacy relating to public issues as directed by the person established for a charitable purpose which is to benefit from the solicitation.

(d) For purposes of this Act only, a fund-raising fee of thirty-five percent (35%) or more of the gross receipts of all solicitations on behalf of a particular person established for a charitable purpose may be excessive and unreasonable without further evidence of any other fact by the party challenging the fund-raising fee. The professional fund-raising counsel or professional solicitor may successfully defend the fund-raising fee by proving that the level of the fee charged was necessary:

- (1) Because of the dissemination of information, discussion, or advocacy relating to public issues as directed by the person established for a charitable purpose which is to benefit from the solicitation; or
- (2) Because otherwise ability of the person established for a charitable purpose which is to benefit from the solicitations to raise money or communicate its ideas, opinions, and positions to the public would be significantly diminished.

(e) Where the fund-raising fee charged by a professional fund-raising counsel or a professional solicitor is determined to be excessive and unreasonable, the fact finder making that determination shall then determine a reasonable fee under the circumstances. The difference between the fee charged and the reasonable fee as determined by the fact finder shall be paid by professional fund-raising counsel or professional solicitor to the person established for a charitable purpose which initially was charged the excessive and unreasonable fee."

Sec. 11. G.S. 131C-18 is amended to read as follows:

"The Secretary of Human Resources shall have the power, and it shall be his duty, to investigate, from time to time, the activities of all persons soliciting charitable contributions in this State, which are or may in his opinion be subject to this Chapter, or which have or may have violated the provisions of this Chapter. Such investigation shall be with a view of ascertaining whether this Chapter is being or has been violated by any such person, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to grant or deny an application for licensure, to

revoke a license, to seek an injunction against any person, or to take any other action pursuant to this Chapter."

Sec. 12. Chapter 131C of the General Statutes is amended by adding a new section immediately following G.S. 131C- 21 and immediately preceding G.S. 131C-22, to be numbered G.S. 131C-21.1, and to read as follows:

"§ **131C-21.1. Other remedies.**—(a) The solicitation of charitable contributions by a professional solicitor or professional fund-raising counsel or by an agent, employee, or servant thereof without making the disclosures required by G.S. 131C-16, and G.S. 131C-16.1 shall be considered an unfair or deceptive trade practice, as prohibited by G.S. 75-1.1, and any person solicited, to whom these disclosures were not made, and who made a charitable contribution in response to such solicitation shall have a right of action on account of such injury done under G.S. 75-16 and G.S. 75-16.1 against the offending professional solicitor or professional fund-raising counsel. There is no right of action under this section against a person established for a charitable purpose. In any action under this subsection, the measure of damages shall be the amount of the contribution made by the person solicited.

(b) The Attorney General may bring a civil action as provided in Article 1 of Chapter 75 in order to protect the public from the unfair trade practice or practices described in subsection (a). In prosecuting this civil action, the Attorney General may make use of any and all powers, remedies, and civil penalties provided under Article 1 of Chapter 75.

(c) The Secretary of Human Resources may on his own motion commence a hearing to determine whether a professional solicitor or professional fund-raising counsel has charged a person established for a charitable purpose a fund-raising fee which is excessive and unreasonable. If the Secretary or his designated hearing officer determines the fund-raising fee to be unreasonable and excessive, then it shall determine the extent of a reasonable and nonexcessive fee, and shall order the professional solicitor or professional fund-raising counsel to pay the difference to the person established for a charitable purpose who was charged the excessive and unreasonable fund- raising fee. The Secretary is hereby empowered to issue such orders in connection with these hearings. These hearings shall be governed by the Administrative Procedure Act, Chapter 150A of the General Statutes.

(d) The Secretary of Human Resources may commence the proceedings provided for in subsection (c) where he is requested to do so in writing by the chief executive officer of any person established for a charitable purpose within 60 days after the last payment of money to the person established for a charitable purpose by the professional fund-raising counsel or professional solicitor."

Sec. 13. This act shall become effective 60 days after ratification.

Sec. 14. If any portion of this act is for any reason held to be unconstitutional or otherwise invalid such decision shall not affect the validity of the remainder of the act.

In the General Assembly read three times and ratified, this the 28th day of June, 1985.