

O.C.G.A. Title 43, Ch. 17

Current through the 2023 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 43 Professions And Businesses (Chs. 1 — 51) > CHAPTER 17 Charitable Solicitations (§§ 43-17-1 — 43-17-23)

CHAPTER 17 Charitable Solicitations

Official Code of Georgia Annotated

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O.C.G.A. § 43-17-1

Current through the 2023 Regular Session of the General Assembly.

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43-17-1. Short title.

This chapter shall be known and may be cited as the “Georgia Charitable Solicitations Act of 1988.”

History

Code 1981, § 43-17-1, enacted by Ga. L. 1988, p. 490, § 1.

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O.C.G.A. § 43-17-2

Current through the 2023 Regular Session of the General Assembly.

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43-17-2. Definitions.

As used in this chapter, the term:

- (1) “Attorney General” means the Attorney General or his or her designee.
- (2) “Charitable organization” means any benevolent, philanthropic, patriotic, or eleemosynary (of, relating to, or supported by charity or alms) person, as that term is defined in this Code section, who solicits or obtains contributions solicited from the general public, any part of which contributions is used for charitable purposes; and any person who or which falsely represents himself, herself, or itself to be a charitable organization as defined by this paragraph. The term charitable organization shall not include a religious organization as defined in paragraph (12) of this Code section.
- (3) “Charitable purpose” means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic, or public interest; and any purpose which is falsely represented to be a charitable purpose as defined by this paragraph.
- (4) “Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.
- (4.1) “Collection receptacle” means an unattended container, located outdoors, for the purpose of collecting donations of clothing, books, personal or household items, or other goods. Such term shall not include containers used for the purpose of collecting monetary donations.
- (5) “Commercial coventurer” means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.
- (6) “Contribution” means the promise or grant of any money or property of any kind or value.
- (7) “Educational institution” means an entity organized and operated exclusively for educational purposes and which either:
 - (A) Maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on; or
 - (B) Is accredited by a nationally recognized, independent higher education accreditation body.
- (8) “Executive officer” means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person’s business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization, whether incorporated or unincorporated.
- (9) “Fundraising counsel” means any person, other than a paid solicitor required to register under this chapter, who plans, advises, consults, or prepares material for a solicitation of charitable contributions within, into, or from this state and who does not either:

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(A) Solicit such contributions or employ, procure, engage, direct, or supervise any compensated person to solicit such contributions; or

(B) Have custody or control of contributions.

A natural person who is a volunteer, employee, or salaried officer of a charitable organization is not a fundraising counsel with respect to the charitable organization of which he or she is a volunteer, individual, or officer. An attorney, accountant, investment counselor, or banker who, solely incidental to his or her profession, renders professional services to a charitable organization, paid solicitor, or fundraising counsel or advises a person to make a charitable contribution is not a fundraising counsel as a result of such advice.

(10) “General public” or “public,” with respect to a charitable organization, means any person in the State of Georgia without a membership in or other bona fide relationship with such charitable organization.

(11) “Membership” or “member” means a status by which, for the payment of fees, dues, assessments, and other similar payments, an organization provides services to the payor and confers on the payor a bona fide right, privilege, professional standing, honor, or other direct benefit other than the right to vote, elect officers, or hold offices. The term “membership” or “member” shall not be construed to apply to a person on whom an organization confers a membership solely as a consideration for making a contribution.

(12)

(A) “Paid solicitor” means a person:

(i) Other than a commercial coventurer who, for compensation, performs for a charitable organization any service in connection with which contributions are, or will be, solicited within or from this state by such person or by any compensated person he or she employs, procures, engages, or contracts with, directly or indirectly, to so solicit;

(ii) Who would be a fundraising counsel but for the fact that such person at any time has custody of contributions from a solicitation as defined by this chapter; or

(iii) Who services a collection receptacle which purports, either through language appearing on the receptacle itself or otherwise, to be collecting items for the purpose of benefiting a charitable purpose or one or more entities espousing a charitable purpose.

(B) A “paid solicitor” shall not mean:

(i) A bona fide officer, employee, or volunteer of a charitable organization or commercial coventurer with respect to contributions solicited for that charitable organization;

(ii) An attorney, investment counselor, accountant, or banker who, solely incidental to his or her profession, advises a person to make a charitable contribution or who holds funds subject to an escrow or trust agreement;

(iii) A person who removes or delivers donations placed in a collection receptacle for a fixed fee and who does not otherwise directly or indirectly receive any of the proceeds of the sale of such donations or derive any other benefit from such activity; or

(iv) A charitable organization registered with the Secretary of State which operates collection receptacles or a religious organization which operates collection receptacles.

(13) “Person” means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, or any unincorporated organization.

(14) “Religious organization” means an entity which:

(A) Conducts regular worship services; or

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(B) Is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

(15) “Solicitation,” “solicitation of funds,” or “solicit” means the request or acceptance directly or indirectly of money, credit, property, financial assistance, or any other thing of value to be used for any charitable purpose; and such act shall be a consumer act or practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.”

(16) “Solicitor agent” means any person, other than a paid solicitor or commercial coventurer, who or which solicits charitable contributions for compensation. The term “solicitor agent” shall not include, with respect to a particular charitable organization which is either registered or exempt from registration under this chapter, any person who is a charitable organization itself or a bona fide officer, employee, or volunteer of such charitable organization which is either registered or exempt from registration under this chapter and who is neither supervised by, nor whose activities are directed by, any paid solicitor or its agent.

(17) “State” means any state, territory, or possession of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands.

History

Code 1981, § 43-17-2, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 34; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1657, § 1; Ga. L. 2008, p. 683, § 1/HB 1104; Ga. L. 2010, p. 559, §§ 1, 2/HB 863; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1088, § 29/SB 148; Ga. L. 2018, p. 191, § 1/HB 475.

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O.C.G.A. § 43-17-3

Current through the 2023 Regular Session of the General Assembly.

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43-17-3. Registration of paid solicitors; renewal; financial statements; denial of registration; amendments; contracts; solicitation notices; accounting; deposit of contributions; records.

(a) No paid solicitor shall solicit contributions for a charitable purpose in or from this state or on behalf of a charitable organization, unless such paid solicitor is a registered paid solicitor pursuant to this Code section. No paid solicitor shall solicit contributions in person unless such paid solicitor has been qualified for such means of solicitation by the Secretary of State.

(b) A fundraising counsel who at any time has custody of contributions from a solicitation for a charitable purpose must be registered as a paid solicitor and comply with the provisions of this Code section.

(c)

(1) A paid solicitor shall be registered with the Secretary of State prior to engaging in any solicitation. A registration shall expire on December 31 of the year in which the registration became effective and may be renewed for additional one-year periods upon application and the payment of the appropriate fee.

(2) An application for registration as a paid solicitor may be made by any person and shall be accompanied by the registration fee set forth in subsection (d) of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state;

(C) The form of business organization; the date of organization of the applicant; and if the business entity is a corporation or limited partnership, the date it qualified to do business in Georgia;

(D) The names and business addresses of all general partners, limited partners, directors, affiliates, or executive officers of the applicant; if the applicant is a limited liability company, the names and business addresses of all members of the limited liability company; a statement of the limitations, if any, of the liability of any general partner, limited partner, director, member, affiliate, or executive officer; and a statement setting forth in chronological order the occupational activities of each such general partner, limited partner, director, member, affiliate, or executive officer during the preceding ten years;

(E) A brief description of the general character of the business conducted or proposed to be conducted by the applicant;

(F) A list of any other states in which the applicant is registered as a paid solicitor and, if registration of the applicant as a paid solicitor has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

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(G) Whether the applicant or any general partner, limited partner, director, member, affiliate, or executive officer of such applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

(H) Whether the applicant or any general partner, limited partner, director, member, affiliate, or executive officer of such applicant has ever been subject to an order, consent order, or any other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts and practices law of any state and, if so, all pertinent information with respect to such order or proceedings; and

(I) Written consent by each control person of the paid solicitor, as described by rule of the Secretary of State, to a criminal background investigation for the purpose of verification by the Secretary of State of information provided in the application.

(3) If the paid solicitor will have physical possession or legal control over any contributions collected by it in or from this state, the applicant shall attach to the application for registration as a paid solicitor a financial statement for the fiscal year of the applicant which ended within one year prior to the date of filing unless the fiscal year of the applicant has ended within 90 days prior to the date of filing, in which case the financial statement may be dated as of the end of the fiscal year preceding such last fiscal year. Such financial statement shall be prepared in accordance with generally accepted accounting principles.

(4) Within 15 business days after an applicant has fully complied with this subsection, the Secretary of State shall examine each paid solicitor's registration application, solicitation notice, and contract to determine whether the applicable requirements of this chapter relating to the same are satisfied and shall register such applicant as a paid solicitor unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant as a paid solicitor, he or she shall immediately notify the applicant of such registration. In the event the Secretary of State has not notified the applicant of deficiencies or grounds for denial of the application within such period, the applicant may conduct himself or herself in a manner as if registered until and unless such applicant is so notified.

(5) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at his or her business address and to any charitable organization who proposes to employ such applicant.

(6) Every registration under this Code section shall expire on December 31 of each year. The registration of a paid solicitor must be renewed each year by the submission of a renewal application containing the information required in an application for registration, except to the extent that the Secretary of State by rule does not require the resubmission of such information which has previously been included in an application or renewal application previously filed; by the payment of the proper registration fee; and, if it would be required in the event of an initial application, by the filing of a financial statement as of a date within one year prior to the date of filing unless the fiscal year of the applicant has ended within 90 days prior to the date of filing, in which case the financial statement may be dated as of the end of the preceding fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles.

(7) The registration of a paid solicitor shall be amended within 30 days to reflect a change of name, address, principals, state of incorporation, or other changes which materially affect the business of the paid solicitor. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

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(d) The fee for the initial registration of a paid solicitor shall be \$250.00. The fee to amend the registration shall be \$15.00. The annual renewal fee for a paid solicitor registration shall be \$100.00.

(e)

(1) There shall be a contract between a paid solicitor and a charitable organization which shall be in writing, shall clearly state the respective obligations of the paid solicitor and the charitable organization, and shall state the amount of compensation that the paid solicitor will receive. Such compensation shall be stated as a fixed amount, as an amount to be derived from a formula, or as a percentage of the gross revenue derived from the solicitation campaign, subject to and in accordance with the provisions of paragraphs (2), (3), and (4) of this subsection.

(2) If the compensation of the paid solicitor is contingent upon the number of contributions or the amount of revenue received from the solicitation campaign, the stated amount shall be expressed as a fixed percentage of the gross revenue.

(3) If the compensation of the paid solicitor is not contingent upon the number of contributions or the amount of revenue received, the stated amount shall be a reasonable estimate, expressed as a percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all the relevant facts known to the paid solicitor regarding the solicitation to be conducted as well as the past performance of solicitations conducted by the paid solicitor.

(4) The compensation description required by this subsection shall exclude any amount which the charitable organization is to pay as expenses of the solicitation campaign, including the cost of merchandise or services sold or events staged. The contract shall clearly describe who shall pay such expenses, how they will be paid, and whether such payment is contingent upon any event or fact, including, but not limited to, the amount of funds raised through the solicitation campaign. If any portion of the expenses are paid separately by the charitable organization apart from the other fees paid to the paid solicitor, the contract shall include a reasonable estimate of such expenses.

(f) Prior to the commencement of each solicitation campaign the paid solicitor shall file with the Secretary of State a completed "solicitation notice" on forms prescribed by the Secretary of State. The Secretary of State may provide that said filing be made, in whole or in part, through electronic means. The solicitation notice shall include a copy of the contract described in subsection (e) of this Code section, the projected dates when soliciting will commence and terminate, the location and telephone number from which the solicitation will be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the paid solicitor will at any time have custody of contributions, and a full and fair description of the charitable program for which the solicitation campaign is being carried out.

(g) Within 90 days after a solicitation campaign has been completed, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the paid solicitor shall account to the charitable organization with whom it has contracted and to the Secretary of State for all contributions collected and expenses paid. The accounting shall be in the form of a written report, submitted to the charitable organization and to the Secretary of State, shall be retained by the charitable organization for three years, and shall contain the following information:

(1) The total gross receipts;

(2) A description of how the gross receipts were distributed, including an itemized list of all expenses, commissions, and other costs of the fundraising campaign and the net amount paid to the charitable organization for its charitable purposes after payment of all fundraising expenses, commissions, and other costs;

(3) The signature of the charitable organization acknowledging its agreement with the accuracy of the report, or a statement from the paid solicitor stating the reasons why such signature has not been

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obtained within the prescribed period, including a summary of any communications from the charitable organization contesting the accuracy of the report;

(4) With respect to any contributions other than monetary donations and securities, including, but not limited to, boats, motor vehicles, clothing, shoes, books, appliances, and other household items received as a result of solicitations by a paid solicitor:

(A) The names and addresses of any persons to whom such contributions were delivered by the paid solicitor, by the charitable organization whose name was used in connection with the solicitation, or by their agents; provided, however, that this subparagraph shall not require the names and addresses of donees or retail purchasers of consumer products which are delivered to a charitable organization to be given away or sold at retail by the charitable organization with the proceeds of such sales being used to further the stated charitable purpose of the organization;

(B) The total consideration, if any, received by the paid solicitor, by the charitable organization, or by their agents from such persons for such contributions; and

(C) The manner in which such consideration was calculated; and

(5) Such other information as the Secretary of State by rule may require.

(h) Each monetary contribution received by the paid solicitor shall, in its entirety and within three business days of its receipt, be deposited in an account at a federally insured financial institution. The account shall be in the name of the charitable organization with whom the paid solicitor has contracted and the charitable organization shall have sole control of all withdrawals from the account.

(i)

(1) The paid solicitor shall maintain during each solicitation campaign and for not less than three years after its completion, the following records:

(A) The name and, if known to the paid solicitor, the address of each person pledging to contribute together with the date and amount of the pledge;

(B) The name and residence address of each employee, agent, or other person, however styled, involved in the solicitation;

(C) A record of all contributions at any time in the custody of the paid solicitor;

(D) A record of all expenses incurred by the paid solicitor for which the charitable organization is liable for payment;

(E) The location and account number of all accounts in which the paid solicitor has deposited revenue from the solicitation campaign; and

(F) Such other records as may be prescribed by the Secretary of State by rule and regulation.

(2) If the paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall also maintain for the same period as specified in paragraph (1) of this subsection:

(A) The name and address of those contributors donating tickets and the number of tickets donated by each contributor; and

(B) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

(3) All records of such paid solicitor are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent he or she reasonably deems necessary for investigative or law enforcement purposes.

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(j) Not later than 90 days following the end of each solicitation campaign, the paid solicitor shall provide to the charitable organization, at no cost, a copy of all records described in subsection (i) of this Code section. In the event any such campaign exceeds six months in length, such records shall be provided, in addition, not less than 30 days following the end of each six-month period.

History

Code 1981, § 43-17-3, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 35; Ga. L. 1996, p. 1261, §§ 1, 2; Ga. L. 2000, p. 1657, § 2; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2008, p. 683, § 2/HB 1104; Ga. L. 2010, p. 559, § 3/HB 863.

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O.C.G.A. § 43-17-3.1

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43-17-3.1. Registration as a solicitor agent; application; denial; renewal; amendments; fees.

(a) No solicitor agent shall solicit contributions on behalf of a charitable organization within or from this state, unless such solicitor agent is a registered solicitor agent pursuant to this Code section and is affiliated through employment or as an independent contractor pursuant to a written agreement with a paid solicitor or charitable organization which is either registered or exempt from registration. No solicitor agent shall solicit contributions in person unless such solicitor agent has been qualified for such means of solicitation by the Secretary of State.

(b)

(1) A solicitor agent shall register with the Secretary of State prior to engaging in any solicitation. Each registration shall expire on December 31 of each year and may be renewed for additional one-year periods upon application and the payment of the fee.

(2) Applications for registration may be made by any person and shall be accompanied by the registration fee set forth in subsection (c) of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of each place of business of the applicant;

(C) The name and address of the paid solicitor or charitable organization with which the solicitor agent will be affiliated by employment or as an independent contractor;

(D) If the solicitor agent is to be an independent contractor, a copy of the contract setting forth the terms and conditions thereof;

(E) A list of any other states in which the applicant is registered as a paid solicitor agent and, if any registration of the applicant under the charitable solicitation law of any state has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

(F) Whether the applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

(G) Whether the applicant has ever been subject to an order, consent order, or any other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts and practices law of any state and, if so, all pertinent information with respect to such order or proceedings;

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(H) Whether the applicant seeks to be qualified to contact contributors and potential contributors in person, as distinguished from mail, telephonic, or electronic contact; and

(I) With respect to applicants who seek to be qualified to contact contributors or potential contributors in person, written consent to a criminal background investigation for the purpose of verification by the Secretary of State of information provided in the application.

(3) Except as provided in paragraph (7) of this subsection, within 15 business days after an applicant has fully complied with this subsection, the Secretary of State shall register such applicant as a solicitor agent unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant, he or she shall immediately notify the applicant of such registration. In the event the Secretary of State has not notified the applicant of deficiencies or grounds for denial of the application within such period, the applicant may conduct itself in a manner as if registered until and unless it is so notified.

(4) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at his or her business address and to any charitable organization or paid solicitor who proposes to employ such applicant.

(5) Every registration under this Code section shall expire on December 31 of each year. The registration of a solicitor agent must be renewed each year by the submission of a renewal application containing the information required in an application for registration, except to the extent that the Secretary of State by rule does not require the resubmission of such information which has previously been included in an application or renewal application previously filed, and by the payment of the proper registration fee.

(6) The registration of a solicitor agent shall be promptly amended to reflect a change of name or address or other changes in the information previously provided to the Secretary of State. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(7) With respect to applicants for solicitor agent seeking to be qualified to solicit in person, the applicant shall not be qualified to so solicit until the Secretary of State affirmatively notifies the applicant that he or she has been so qualified.

(c) The fee for the initial registration of a solicitor agent shall be \$50.00. The fee to amend the registration shall be \$15.00. The annual renewal fee for a solicitor agent shall be \$50.00.

History

Code 1981, § 43-17-3.1, enacted by Ga. L. 2000, p. 1657, § 3; Ga. L. 2008, p. 683, § 3/HB 1104.

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O.C.G.A. § 43-17-4

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43-17-4. Bonding requirements for registered paid solicitors; deposits in lieu of bond.

(a) An applicant for registration as a paid solicitor who will have physical possession or legal control over any contributions collected by it in or from this state on behalf of any charitable organizations shall file with the Secretary of State a bond satisfactory to the Secretary of State in the sum of \$10,000.00 payable to the State of Georgia for the use of all interested persons and conditioned upon the faithful compliance by the principal with any and all provisions of this chapter and any regulations and orders issued by the Secretary of State. Such an applicant for renewal of registration as a paid solicitor shall also file such bond. Except as otherwise provided in subsection (b) of this Code section, the Secretary of State shall not register such an applicant or renew the registration of such an applicant until such bond is filed as provided in this subsection. Any such bond may be canceled by the principal or surety by giving notice to the Secretary of State, but such cancellation shall not affect any cause of action accruing thereon prior to cancellation and such cancellation shall result in automatic cancellation of the principal's registration until a new bond satisfactory to the Secretary of State is filed. Any action on such bond must be brought within two years after accrual of the cause of action. The amount prescribed in this subsection for the bond required of a paid solicitor shall be construed as being the aggregate liability recoverable against such bond, regardless of the number of claimants, and shall not be construed as individual liability.

(b) The requirement for filing of such bond by an applicant for registration or renewal of registration as a paid solicitor shall not be applicable if the applicant for registration or renewal of registration as a paid solicitor has deposited in trust with the Secretary of State:

(1) A certificate of deposit or letter of credit evidencing a deposit with a financial institution satisfactory to the Secretary of State in the amount of \$10,000.00 payable to the applicant and assigned to the Secretary of State;

(2) An irrevocable letter of credit addressed to the Secretary of State in the amount of \$10,000.00, issued by a bank which is a member of the Federal Reserve System and conditioned only upon the rendering of a judgment by a court of competent jurisdiction in which the applicant is found liable for damages under this chapter; or

(3) Obligations of the United States, an agency thereof, or the State of Georgia which mature in not more than two years and which have a market value as of the date of deposit of at least \$10,000.00.

(c) Such deposits shall be held for the benefit of all persons to whom the applicant is liable for damages under this chapter for a period of two years after such applicant's registration has expired or been revoked; provided, however, that such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter. Such deposits shall not be released except upon application to and the written order of the Secretary of State. The Secretary of State shall have no liability for any such release of any deposit or part thereof made by him or her in good faith. The Secretary of State may designate any regularly constituted state depository having trust powers domiciled in this state as a depository to receive and hold any such deposit. Any such deposit

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so held shall be at the expense of the applicant. Such depository shall give to the Secretary of State a proper trust and safekeeping receipt upon which the Secretary of State shall give an official receipt to the applicant. The State of Georgia shall be responsible for the safekeeping and return of all deposits made pursuant to this Code section. So long as the applicant complies with this chapter, the applicant may demand, receive, bring an action for, and recover the income from the securities deposited or may exchange and substitute for the letter of credit or securities deposited or a part thereof, with the approval of the Secretary of State, a letter of credit or securities of the kinds specified in subsection (b) of this Code section of equivalent or greater value. No judgment creditor or other claimant of the applicant shall levy upon any deposit held pursuant to this Code section or upon any part thereof, except as specified in this subsection. Whenever any person shall file an action in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, such person, in order to secure his or her recovery, may give notice to the Secretary of State of such alleged liability and of the amount of damages claimed, after which notice the Secretary of State shall be bound to retain, subject to the order of the Superior Court of Fulton County, as provided in subsection (d) of this Code section, a sufficient amount of the deposit to pay the judgment in the action.

(d) In the event that the applicant prevails in such action and in the event that such deposits have been held by the Secretary of State for a period of at least two years after the applicant's registration has expired or been revoked, then such deposits shall be released to the applicant; provided, however, that such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter. If a judgment is rendered in such action by which it is determined that the applicant is liable for damages under this chapter and the applicant has not paid the judgment within ten days of the date the judgment became final or if the applicant petitions the Supreme Court of the United States to take certiorari jurisdiction over such action and the applicant has not paid the judgment within ten days of the date the Supreme Court of the United States denies certiorari jurisdiction or within ten days of the date the Supreme Court of the United States affirms the judgment, then such person may petition the Superior Court of Fulton County for an order directing the Secretary of State to reduce such deposit or a portion thereof sufficient to pay the judgment to cash or its equivalent and to pay such judgment to the extent the judgment may be satisfied with the proceeds of the deposit. If there shall remain any residue from the deposit and if at least two years have passed since the expiration or revocation of the applicant's registration, the Secretary of State shall pay such residue to the applicant, taking receipt for the residue, which shall be filed and recorded with the other papers of the case, unless there is pending against the applicant an action (including any direct appeal of such action, an appeal based on a petition for certiorari jurisdiction, or a petition for review), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, in which case the Secretary of State shall hold or dispose of such residue in accordance with the provisions of this subsection relating to the holding or disposing of the entire deposit. If more than one final judgment is rendered against the applicant for violation of this chapter, the judgment creditors shall be paid in full from such deposit or residue thereof, to the extent the deposit or residue is sufficient to pay the judgments, in the order in which the judgment creditors petitioned the Superior Court of Fulton County.

(e) Anything in this Code section to the contrary notwithstanding, the Secretary of State shall comply with any order of a Georgia or United States court of competent jurisdiction to turn over any deposit held by him pursuant to subsection (a) of this Code section or the proceeds from any bond held by him pursuant to subsection (a) of this Code section to a trustee or receiver for the use and sole benefit of persons on whose behalf the Secretary of State holds such deposit or proceeds.

History

43-17-4. Bonding requirements for registered paid solicitors; deposits in lieu of bond.

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O.C.G.A. § 43-17-5

Current through the 2023 Regular Session of the General Assembly.

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43-17-5. Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; records.

(a) It shall be unlawful for any person:

- (1) Wherever located to solicit or accept charitable contributions from any person located in this state;
- (2) While in this state to solicit or accept charitable contributions from any person, wherever located; or
- (3) Wherever located to solicit or accept charitable contributions from any person, wherever located, on behalf of a charitable organization located in this state,

unless the charitable organization on whose behalf such contributions are being solicited or accepted is subject to an effective registration statement under this chapter or exempt from registration pursuant to Code Section 43-17-9.

(b)

(1) Every charitable organization, except those exempt from registration pursuant to Code Section 43-17-9, which intends to solicit in this state or have contributions solicited in this state on its behalf by other charitable organizations, commercial coventurers, or paid solicitors shall, prior to any solicitation, file a registration statement with the Secretary of State upon a form prescribed by the Secretary of State. No charitable organization required to be registered under this Code section shall solicit prior to registration.

(2) A registration statement, which the Secretary of State may require to be in whole or in part an electronic filing, shall be signed by an authorized executive officer of the charitable organization and shall contain the following information:

- (A) The name under which the charitable organization intends to solicit contributions;
- (B) The names and addresses of officers, directors, trustees, and executive personnel and, in the case of a state-wide parent organization, the communities in which the chapters, branches, or affiliates are located and their directors;
- (C) The names and addresses of any fundraising counsel or paid solicitor who acts or will act on behalf of the charitable organization, together with a statement setting forth the terms of the arrangements for salaries, bonuses, commissions, or other remuneration to be paid to the fundraising counsel or paid solicitor;
- (D) The general purposes for which the charitable organization is organized;
- (E) The purposes for which the contributions to be solicited will be used;
- (F) The period of time during which the solicitation will be made;
- (G) The method of solicitation; and
- (H) Such other information as the Secretary of State may require.

43-17-5. Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; reco....

- (3) There shall be filed with such application an irrevocable written consent of the applicant to the service of process upon the Secretary of State in actions against such applicant in the manner and form provided in Code Section 43-17-18.
- (4) There shall be filed with such application a financial statement of the charitable organization or a consolidated financial statement of the charitable organization and its subsidiaries as of a date within one year prior to the filing of the registration statement. If the charitable organization has received or collected more than \$1 million during its preceding fiscal year, the financial statement shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries prepared in accordance with generally accepted accounting principles as of a date within one year prior to the date of filing unless the last fiscal year of the charitable organization has ended within 90 days prior to the date of filing, in which case such certified financial statement may be as of the end of the fiscal year preceding such last fiscal year. If the charitable organization has received or collected more than \$500,000.00 but not more than \$1 million during its preceding fiscal year, the financial statement shall be reviewed by an independent certified public accountant and such certified public accountant's review report, prepared in accordance with generally accepted accounting principles as of a date within one year prior to the date of filing, shall be filed with the financial statement. If the charitable organization has received or collected any charitable contributions during its preceding fiscal year, the financial statement shall have attached thereto a copy of the Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization Exempt From Income Tax, which the organization filed for the previous taxable year pursuant to the United States Internal Revenue Code. In the event a charitable organization did not file a Form 990 or 990EZ, such charitable organization shall be required to file, with such financial statement, such form as may be prescribed by rule and regulation of the Secretary of State which requires information substantially similar to that required to be provided on Form 990 or 990EZ.
- (5) Every charitable organization registered with the Secretary of State shall file with the Secretary of State copies of any federal or state tax exemption determination letters received after the initial registration within 30 days after receipt and shall file any amendments to its organizational instrument within 30 days after adoption.
- (6) The Secretary of State may waive or extend the time period for the furnishing of any information required by this subsection and may require such additional information as to the previous history, records, or association of the applicant, general partners, limited partners, directors, affiliates, or executive officers or members in the case of a limited liability company as he or she may deem necessary to establish whether or not the applicant should be registered as a charitable organization under this chapter.
- (7) When an applicant has fully complied with this subsection, the Secretary of State shall register such applicant as a charitable organization unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant as a charitable organization, he or she shall immediately notify the applicant of such registration.
- (8) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at its business address and to any paid solicitor who proposes to solicit contributions on behalf of the charitable organization.
- (9) Every registration under this Code section shall be valid for a period of 24 months from its date of effectiveness. The registration must be renewed on or before the expiration date by the submission of a renewal application containing the information required in an application for registration, to the extent that such information has not previously been included in an application or renewal application previously filed, by the payment of the proper fee, and by the filing of financial statements covering the

43-17-5. Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; reco....

periods since the most recent financial statement previously filed. If the charitable organization has received or collected more than \$1 million during either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries. If the charitable organization has received or collected more than \$500,000.00 but not more than \$1 million during either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be reviewed by an independent certified public accountant and such certified public accountant's review report, prepared in accordance with generally accepted accounting principles. If the charitable organization has received or collected any charitable contributions during its preceding two fiscal years, the financial statements shall have attached thereto a copy of the Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization Exempt From Income Tax, which the organization filed for the previous two taxable years pursuant to the United States Internal Revenue Code. In the event a charitable organization did not file a Form 990 or 990EZ, such charitable organization shall be required to file, with such financial statement, such form as may be prescribed by rule and regulation of the Secretary of State which requires information substantially similar to that required to be provided on Form 990 or 990EZ. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if required to be certified, shall be certified by an independent public accountant duly registered and in good standing as such under the laws of the place of his or her residence or principal office.

(10) The registration of a charitable organization shall be amended within 30 days to reflect a change of name, address, principals, state of incorporation, corporate forms (including a merger of two charitable organizations), or other changes which materially affect the business of the charitable organization. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(c) The fee for the initial registration of a charitable organization shall be \$35.00. The fee for renewal of a charitable organization's registration shall be \$20.00.

(d) A charitable organization shall maintain for not less than three years a record of all contributions including, but not limited to, the name and address of each contributor giving \$25.00 or more directly or indirectly to the charitable organization, the date and amount of the contribution, and the location and account number of all bank or other financial institution accounts in which the charitable organization has deposited contributions.

(e) All records of charitable organizations which relate to charitable solicitations or charitable contributions are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent he or she deems reasonably necessary for investigative or law enforcement purposes.

(f) A charitable organization shall maintain for not less than three years at an office located in Georgia or, if it has no office in Georgia, its principal office all records provided to it by any paid solicitor relating to any solicitation campaign. The charitable organization shall notify the Secretary of State of the address of the office at which such records are kept.

History

Code 1981, § 43-17-5, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1991, p. 789, § 1; Ga. L. 1993, p. 123, § 36; Ga. L. 1998, p. 543, § 1; Ga. L. 2000, p. 1657, §§ 5, 6; Ga. L. 2008, p. 683, § 4/HB 1104.

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O.C.G.A. § 43-17-6

Current through the 2023 Regular Session of the General Assembly.

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43-17-6. Agreement for charitable sales promotion; final accounting and records of promotions.

(a) Every charitable organization which agrees to permit a charitable sales promotion to be conducted in its behalf shall obtain, prior to the commencement of the charitable sales promotion within this state, a written agreement from the commercial coventurer which shall be available to the Secretary of State upon request. The agreement shall be signed by an authorized representative of the charitable organization and the commercial coventurer and it shall include, at a minimum, the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering will be made;
- (3) The manner in which the charitable organization's name will be used, including the representation to be made to the public as to the actual or estimated dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization;
- (4) If applicable, the maximum dollar amount that will benefit the charitable organization;
- (5) The estimated number of units of goods or services to be sold or used;
- (6) A provision for a final accounting on a per unit basis to be given by the commercial coventurer to the charitable organization and the date by which it will be made;
- (7) A statement that the charitable sales promotion is subject to the requirements of this chapter; and
- (8) The date by when, and the manner in which, the benefit will be conferred on the charitable organization.

(b) The final accounting for the charitable sales promotion shall be kept by the commercial coventurer for three years after the final accounting date.

(c) All records of charitable organizations and commercial coventurers pertaining to such sales promotion are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

History

Code 1981, § 43-17-6, enacted by Ga. L. 1988, p. 490, § 1.

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43-17-6. Agreement for charitable sales promotion; final accounting and records of promotions.

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O.C.G.A. § 43-17-7

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43-17-7. Denial, suspension, or revocation of registration; other disciplinary actions; financial statements.

(a) The Secretary of State, by order, may deny, suspend, or revoke a registration, limit the fundraising activities that an applicant or registered person may perform in this state, bar an applicant or registered person from association with a paid solicitor or charitable organization, or bar a person who is a partner, officer, director, or employee of, or a member of a limited liability company which is, an applicant or registered person from employment with a paid solicitor or charitable organization if the Secretary of State finds that the order is in the public interest and that the applicant, registered person, or such other person:

(1) Has filed an application for registration with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) Has willfully violated or failed to comply with this chapter, a prior enactment, or a rule promulgated by the Secretary of State under this chapter or a prior enactment;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by a state or federal agency or a court of competent jurisdiction that the person has violated the charitable organizations regulatory act or the unfair and deceptive acts and practices law of any state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Within the last ten years has been convicted of a felony or misdemeanor which the Secretary of State finds:

(A) Involves the solicitation or acceptance of charitable contributions or the making of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of solicitation of contributions for a charitable organization;

(C) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(D) Involves murder or rape; or

(E) Involves assault or battery if such person proposes to be engaged in counseling, advising, housing, or sheltering individuals;

(5) Is permanently or temporarily enjoined by a court of competent jurisdiction from acting as a charitable organization, paid solicitor, or as an affiliated person or employee of such;

(6) Is the subject of an order of the Secretary of State denying, suspending, or revoking the person's registration as a charitable organization or paid solicitor;

(7) Has violated a law or any rule or regulation of this state, any other state, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which law or rule

43-17-7. Denial, suspension, or revocation of registration; other disciplinary actions; financial statements.

or regulation relates to or in part regulates charitable organizations or paid solicitors regulated under this chapter, when the charitable organization or paid solicitor knows or should know that such action is in violation of such law, rule, or regulation;

(8) Has failed to pay the proper filing fee within 30 days after being notified by the Secretary of State of a deficiency, but the Secretary of State may provide for the reinstatement of the registration or the suspension of a fine or penalty at such time as the deficiency is corrected; or

(9) Has failed to comply with a subpoena or order issued by the Secretary of State.

(b) The Secretary of State may not begin a proceeding solely on the basis of a fact or transaction known to the Secretary of State when the registration became effective unless the proceeding is begun within 90 days after effectiveness of the registration.

(c) If the Secretary of State finds that an applicant or registered person is no longer in existence; has ceased to do business as a paid solicitor or charitable organization; is adjudicated mentally incompetent or subjected to the control of a committee, conservator, or guardian; or cannot be located after reasonable search, the Secretary of State, by order, may deny the application or revoke the registration.

(d) The Secretary of State may at any time require a charitable organization or paid solicitor to file with him a financial statement showing its financial condition as of the most recent practicable date, but such financial statement need not be certified.

History

Code 1981, § 43-17-7, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 37; Ga. L. 2000, p. 1657, § 7; Ga. L. 2008, p. 683, § 5/HB 1104.

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O.C.G.A. § 43-17-8

Current through the 2023 Regular Session of the General Assembly.

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43-17-8. Disclosures required.

(a) Every charitable organization, paid solicitor, or solicitor agent required to be registered under this Code section, at the time of any solicitation that occurs in or from this state, shall include the following disclosures:

- (1) The name and location of the paid solicitor and solicitor agent, if any;
- (2) The name and location of the charitable organization for which the solicitation is being made;
- (3) That the following information will be sent upon request:
 - (A) A full and fair description of the charitable program for which the solicitation campaign is being carried out and, if different, a full and fair description of the programs and activities of the charitable organization on whose behalf the solicitation is being carried out; and
 - (B) A financial statement or summary which shall be consistent with the financial statement required to be filed with the Secretary of State pursuant to Code Section 43-17-5; and
- (4) If made by a solicitor agent or paid solicitor, that the solicitation is being made by a paid solicitor on behalf of the charitable organization and not by a volunteer and inform the person being solicited that the contract disclosing the financial arrangements between the paid solicitor and the charity is on file with and available from the Secretary of State.

(b) This Code section shall not apply to charitable solicitations subject to and in compliance with the provisions of Code Section 43-17-8.1.

History

Code 1981, § 43-17-8, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1657, § 8; Ga. L. 2008, p. 683, § 6/HB 1104; Ga. L. 2010, p. 559, § 4/HB 863.

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O.C.G.A. § 43-17-8.1

Current through the 2023 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 43 Professions And Businesses (Chs. 1 — 51) > CHAPTER 17 Charitable Solicitations (§§ 43-17-1 — 43-17-23)

43-17-8.1. Requirements for use of collection receptacles for donations; penalty.

(a) When any person makes a solicitation to the public by encouraging donations into a collection receptacle, the provisions of this Code section shall apply to such solicitations.

(b) If the collection receptacle is owned or operated entirely by a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, the receptacle shall contain the following information in boldface letters at least two inches high on the front of the collection receptacle and directly underneath the deposit door stating:

(1) The name, address, website, if any, and telephone number of the charitable organization or religious organization that owns or operates the collection receptacle, from which persons may obtain additional information about the religious or charitable organization, including the address of its principal office and its telephone number; and

(2) Whether or not the charitable organization or religious organization is registered with the Secretary of State and, if it is registered, a statement that additional information may be obtained from the Secretary of State, including the charitable or religious purpose for which the charitable organization or religious organization exists.

(c) If the collection receptacle is owned or operated entirely or in part by any entity other than a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, then the following shall apply:

(1) In the case where any of the items collected are to be sold and none of the proceeds of such sale are to be paid over or otherwise given to a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any person to collect donations of goods or tangible items in such collection receptacle unless the collection receptacle displays the following statement: "DONATIONS ARE NOT FOR THE BENEFIT OF ANY CHARITABLE OR RELIGIOUS ORGANIZATION." The name, address, website, if any, and telephone number of the operator of the collection receptacle shall also be provided; and

(2) In the case where any of the items collected are to be sold and some or all of the proceeds from such sale are to be paid over or otherwise given to one or more charitable organizations exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any person to collect donations of goods or tangible items in a collection receptacle unless the collection receptacle displays the following statement: "THIS COLLECTION BOX IS OPERATED BY [NAME OF OPERATOR]. THE ITEMS DEPOSITED IN THIS BOX WILL BE SOLD, AND A PORTION OF THE PROCEEDS WILL BE PAID TO [NAME OF CHARITABLE ORGANIZATION OR RELIGIOUS ORGANIZATION]. FURTHER INFORMATION ABOUT THESE PAYMENTS CAN BE OBTAINED FROM [NAME OF OPERATOR] AT [ADDRESS, WEBSITE, IF ANY, AND TELEPHONE NUMBER OF THE OPERATOR] AND [ADDRESS, WEBSITE, IF ANY, AND TELEPHONE NUMBER OF THE CHARITABLE ORGANIZATION OR RELIGIOUS

43-17-8.1. Requirements for use of collection receptacles for donations; penalty.

ORGANIZATION]. IN ADDITION, FURTHER INFORMATION ABOUT THE CHARITABLE ORGANIZATION MAY BE OBTAINED FROM THE SECRETARY OF STATE.”

The statements and all information required by paragraphs (1) and (2) of this subsection shall be prominently displayed in boldface letters at least two inches high located on the front of the collection receptacle and directly underneath the deposit door.

(d) The Secretary of State may by rule specify additional contact information required to be disclosed pursuant to subsections (b) and (c) of this Code section.

(e)

(1) A person placing and operating any collection receptacle on property in which such person has no ownership or leasehold interest shall, prior to such placement and operation, obtain notarized, written permission from all owners of such property, a property management service, or all holders of a leasehold interest in such property to place and operate such collection receptacle on such property. Copies of such notarized, written permission shall be maintained by the person placing and operating such collection receptacle and provided to every owner or leaseholder of such property at any time upon request by any such owner or leaseholder. If such permission is obtained from such property owner or owners, the person placing and operating the collection receptacle shall provide written notification to any leaseholders, tenants, or other occupants of such property of the consent of such property owner or owners to such placement and operation. The notarized, written permission required by this subsection shall include the signature of the person placing and operating the collection receptacle, or such person’s authorized agent, and of all owners or leaseholders of the property, as applicable.

(2) A person with an existing collection receptacle located on property in which such person has no ownership or leasehold interest shall have until December 31, 2018, to comply with the requirements of this subsection.

(f)

(1) Any owner or leaseholder of property on which a collection receptacle is placed and operated in conformance with subsection (e) of this Code section may demand removal of such collection receptacle in writing by United States mail, return receipt requested, or statutory overnight delivery to the address listed on the collection receptacle pursuant to this Code section. Such owner or leaseholder shall also send a copy of any such demand to the office of the Secretary of State. The person placing the collection receptacle shall remove the collection receptacle as well as any contents left in and around the collection receptacle within 30 days of the date such demand is either deposited in the United States mail, return receipt requested, or received by statutory overnight delivery.

(2) If the person placing and operating the collection receptacle on another’s property fails to remove such collection receptacle as required by paragraph (1) of this subsection, any owner or any leaseholder of such property shall have the immediate right to take possession of, remove, and dispose of such collection receptacle and its contents without incurring any civil or criminal liability for such actions. Any expenses incurred in such removal and disposal by such owner or leaseholder shall be invoiced to, and paid by, the person who placed and operated such collection receptacle on such property. The owner or leaseholder may also request that law enforcement personnel take possession of, remove, and dispose of such collection receptacle and the contents thereof. If law enforcement personnel, in their discretion, honor such request, they will be immune from any civil or criminal liability for such actions.

(g) Any owner or any leaseholder of the property may demand immediate removal of a collection receptacle if the person who placed and operated the collection receptacle on the property fails to comply with subsection (e) of this Code section.

(h) The person placing and operating the collection receptacle shall maintain such receptacle in a structurally sound, clean, and sanitary condition and regularly empty such receptacle at least every two

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weeks. Such person shall also be responsible for ensuring that no donations are present on the ground area surrounding the collection receptacle for a time period exceeding 48 hours.

(i) Any owner or leaseholder of property who incurs expenses in removing or disposing of any collection receptacle or its contents following the expiration of the period referred to in paragraph (1) of subsection (f) of this Code section, or as a result of any violation of this Code section, may bring a civil action to recover actual damages. The action shall be brought in a court of competent jurisdiction in the county in which the collection receptacle was located, in the county in which the person who placed and operated the collection receptacle conducts, transacts, or has transacted business, or, if such person cannot be found in any of the foregoing locations, in the county in which such receptacle is located.

(j) Any violation of this Code section shall constitute a misdemeanor.

History

Code 1981, § 43-17-8.1, enacted by Ga. L. 2010, p. 559, § 5/HB 863; Ga. L. 2018, p. 191, § 2/HB 475.

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O.C.G.A. § 43-17-8.2

Current through the 2023 Regular Session of the General Assembly.

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43-17-8.2. Requirement for orderly, clean, and sanitary receptacles; notice; penalty for violations.

(a) Notwithstanding any other provision of law to the contrary, any local governing authority which has collection receptacles located within its geographical boundaries shall be authorized to issue written notices of violations to both the property owner and the paid solicitor responsible for each collection receptacle at any time the immediate area surrounding such collection receptacle is not maintained in an orderly, clean, and sanitary manner. Notice shall be promptly sent to the property owner and the paid solicitor, with a copy to the charitable organization. The notice shall provide for a ten-day period from the date of the notice to remediate the violation and clean and maintain the area around such collection receptacle.

(b)

(1) If the property owner, paid solicitor, or charitable organization responsible for the operation of a collection receptacle fails to comply with the notice in accordance with subsection (a) of this Code section three times in any calendar year, or, if the governing authority finds that the area surrounding such collection receptacle is a nuisance, the local governing authority shall be authorized to petition the superior court to issue an order requiring the removal of such collection receptacle from the geographical boundaries of the jurisdiction for a period of not less than three years.

(2) The relief imposed by the superior court shall require the immediate removal of such collection receptacle at the cost of the property owner or paid solicitor responsible for it, or, alternatively, the charitable organization for which such collection receptacle was placed and the imposition of court costs.

(3) If a collection receptacle is not removed within 30 days of the superior court's order, the local governing authority shall be authorized to remove such collection receptacle and seek reimbursement from the property owner, paid solicitor, or charitable organization for court costs and fees related to the removal of such collection receptacle.

History

Code 1981, § 43-17-8.2, enacted by Ga. L. 2018, p. 191, § 3/HB 475.

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O.C.G.A. § 43-17-9

Current through the 2023 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 43 Professions And Businesses (Chs. 1 — 51) > CHAPTER 17 Charitable Solicitations (§§ 43-17-1 — 43-17-23)

43-17-9. Exemptions.

- (a) The following persons are exempt from the provisions of Code Sections 43-17-5, 43-17-6, and 43-17-8:
- (1) Educational institutions and those organizations, foundations, associations, corporations, charities, and agencies operated, supervised, or controlled by or in connection with a nonprofit educational institution, provided that any such institution or organization is qualified under Section 501(c) of the Internal Revenue Code of 1986, as amended;
 - (2) Business, professional, and trade associations and federations which do not solicit members or funds from the general public;
 - (3) Fraternal, civic, benevolent, patriotic, and social organizations, when solicitation of contributions is carried on by persons without any form of compensation and which solicitation is confined to their membership;
 - (4) Persons requesting any contributions for the relief of any other individual who is specified by name at the time of the solicitation if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary; provided, however, that any such person who collects contributions in excess of \$5,000.00 in order to claim benefit of this exemption shall file with the Secretary of State a written accounting of funds so collected on forms prescribed by the Secretary of State at the end of the first 90 days of solicitation and, thereafter, at the end of every subsequent 90 day period until said solicitation is concluded;
 - (5) Any charitable organization which does not have any agreement with a paid solicitor and whose total revenue from contributions has been less than \$25,000.00 for both the immediately preceding and current calendar years;
 - (6) Any local or state-wide organization of hunters, fishermen, and target shooters which has been recognized as an organization described in Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, as amended, or the corresponding provisions of any future federal revenue law;
 - (7) Any volunteer fire department or rescue service operating in conjunction with a city or county government in this state and which has received less than \$25,000.00 in both the immediately preceding and current calendar years;
 - (8) Religious organizations; or
 - (9) Political parties, candidates for federal or state office, and political action committees required to file financial information with federal or state elections commissions.
- (b) Local community and state-wide organizations affiliated with or acting on behalf of a registered or exempt state-wide or national parent organization by contract or agreement need not register separately with the Secretary of State; provided, however, that all records of such organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The single registration of the state-wide or national parent organization shall be considered all inclusive of all of its chapters, branches, or affiliates and

43-17-9. Exemptions.

individuals, which will be identified by listing the communities in which they are located and their directors, as provided in Code Section 43-17-5.

(c) National charitable organizations having a Georgia affiliate registered under this chapter need not register separately with the Secretary of State; provided, however, that all records of such national organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

(d) Charitable organizations which do not solicit or receive contributions from the general public other than through affiliated organizations registered under this chapter need not register separately with the Secretary of State; provided, however, that all records of such organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

(e) The Secretary of State is authorized to exempt, by rule, regulation, or order, such entities and organizations from the registration provisions of Code Section 43-17-5 as he deems necessary and appropriate in the public interest.

History

Code 1981, § 43-17-9, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 319, § 1; Ga. L. 1996, p. 1261, § 3; Ga. L. 2000, p. 1657, § 9; Ga. L. 2008, p. 683, § 7/HB 1104.

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O.C.G.A. § 43-17-10

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43-17-10. Administration of chapter.

- (a) The administration of this chapter shall be vested in the Secretary of State.
- (b) The Secretary of State is authorized to administer oaths in and to prescribe forms for all matters arising under this chapter. The Secretary of State shall cooperate with the administrators of the charitable solicitation laws of other states with a view to assisting those administrators in the enforcement of such laws and to achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such laws.
- (c) The Secretary of State is authorized to employ examiners, clerks, stenographers, and other employees as the administration of that portion of this chapter vested in him may require. The Secretary of State is also authorized to appoint and employ investigators who shall have, in any case that there is reason to believe a violation of this chapter has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants and arrest warrants.
- (d) The Secretary of State may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, necessary for the administration and enforcement of this chapter. Such rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."
- (e) The Secretary of State or any persons employed by him shall be paid, in addition to their regular compensation, the transportation fare, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of their duties under this chapter.
- (f) The Secretary of State may delegate such of his or her powers and duties under this chapter as he or she desires to a division director in his or her office. Such division director, when duly appointed, shall be the ultimate decision maker in all contested case hearings held pursuant to Code Section 43-17-16 and the "Georgia Administrative Procedure Act."
- (g) The Secretary of State may designate filing depositories for all records required to be filed and maintained under this chapter. Such records may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, word processing, computerization, or other acceptable reproductive methods.
- (h) Except as provided in subsection (i) of this Code section, information and documents filed with or obtained by the Secretary of State are public information and are available for public examination.
- (i) The following information and documents do not constitute public information under subsection (h) of this Code section and shall be confidential:
 - (1) Information or documents obtained by the Secretary of State in connection with an investigation under Code Section 43-17-11; and
 - (2) Any document or record specifically designated as confidential in accordance with this chapter or the rules and regulations promulgated under this chapter.

History

43-17-10. Administration of chapter.

Code 1981, § 43-17-10, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1996, p. 1261, § 4.

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O.C.G.A. § 43-17-11

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43-17-11. Enforcement of chapter; investigations; subpoenas; cooperation with Attorney General, law enforcement, and regulatory agencies.

(a) The Secretary of State, in enforcing this chapter, may:

- (1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order under this chapter or to aid in the enforcement of this chapter;
- (2) Require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated; and
- (3) Publish in print or electronically information concerning any violation of this chapter or any rule, regulation, or order under this chapter.

(b)

(1) For the purpose of conducting any investigation as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such investigation, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses. For such purposes the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for the production of documentary evidence. Such subpoenas may be served by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(2) The Secretary of State may issue and apply to enforce subpoenas in this state at the request of the administrator of the charitable solicitation laws of another state if the activities constituting an alleged violation for which the information is sought would be a violation of this chapter if the activities had occurred in this state.

(c) In case of refusal to obey a subpoena issued under any Code section of this chapter to any person, a superior court of appropriate jurisdiction, upon application by the Secretary of State, may issue to the person an order requiring him to appear before the court to show cause why he should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(d) In addition to any other hearings and investigations which the Secretary of State is authorized or required by this chapter to hold, the Secretary of State is also authorized to hold general investigative hearings on his own motion with respect to any matter under this chapter. A general investigative hearing as provided for in this subsection may be conducted by a person designated by the Secretary of State for that purpose and may, but need not be, transcribed by the Secretary of State or by any other interested party. No formal action may be taken as a result of such investigative hearings, but the Secretary of State

43-17-11. Enforcement of chapter; investigations; subpoenas; cooperation with Attorney General, law enforcement, and regulatory agencies.

may take such action as he deems appropriate, based on the information developed in the hearing and on any other information which he may have.

(e) The Secretary of State may cooperate with the Attorney General in enforcing the provisions of this chapter. Said cooperation includes, but is not limited to, making a joint examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging information and documents; and disclosing information and documents obtained in connection with an investigation. When the Attorney General has initiated a civil or administrative proceeding in connection with a joint investigation under this subsection he or she may publish in print or electronically information concerning any violation of this chapter or Part 2 of Article 15 of Chapter 1 of Title 10, known as the "Fair Business Practices Act of 1975."

(f) To encourage uniform interpretation and administration of this chapter and effective regulation and enforcement, the Secretary of State may cooperate with state law enforcement or regulatory agencies and agencies or administrators of one or more states, Canadian provinces or territories, another country, appropriate federal agencies, any national or international organization of officials or agencies, and any governmental law enforcement or regulatory agency. Such cooperation includes, but is not limited to, making a joint registration examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging personnel; sharing and exchanging information and documents; and disclosing information obtained in connection with an investigation under this Code section to the extent provided in this Code section and if disclosure is for the purpose of a civil, administrative, or criminal investigation or proceeding by a local, state, or federal law enforcement or regulatory agency and the receiving agency presents that, under the applicable law, protections exist to preserve the integrity, confidentiality, and security of the information.

History

Code 1981, § 43-17-11, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2015, p. 1088, § 30/SB 148.

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O.C.G.A. § 43-17-12

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43-17-12. Prohibited acts.

- (a) It shall be unlawful for any person to violate any provision of this chapter or any rule, regulation, subpoena, or order promulgated or issued by the Secretary of State under this chapter.
- (b) It shall be unlawful for any person who is registered as, or making application for registration as, a solicitor agent or paid solicitor or charitable organization or is an affiliate of such registrant or applicant knowingly to make or cause to be made to the Secretary of State or anyone acting on his or her behalf any written or oral statement or statements which the person knows to contain any untrue statement of material fact or to omit to state a material fact that is necessary in order to make any statement or statements made, in light of the circumstances under which they were made, not misleading.
- (c) It shall be unlawful for any person in connection with the planning, conduct, or execution of any charitable solicitation or charitable sales promotion, directly or indirectly:
 - (1) To utilize any representation that implies the contribution is for or on behalf of a charitable organization or to utilize any emblem, device, or printed matter belonging to or associated with a charitable organization, without first being authorized in writing to do so by the charitable organization;
 - (2) To utilize a name, symbol, or statement so closely related or similar to that used by another charitable organization that the use thereof would tend to confuse or mislead a solicited person;
 - (3) To misrepresent to or mislead anyone in any manner to believe that any other person sponsors, endorses, or approves such solicitation or charitable sales promotion when such other person has not given consent in writing to the use of his or her name for these purposes;
 - (4) To utilize or exploit the fact of registration so as to lead any person to believe that such registration in any manner constitutes an endorsement or approval by the state;
 - (5) To represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Secretary of State pursuant to this chapter;
 - (6) To represent that tickets to events will be donated for use by another, unless the paid solicitor shall have commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept;
 - (7) To represent that any part of the contributions received will be given or donated to any other charitable organization unless such organization has consented in writing to the use of its name prior to the solicitation; or
 - (8) To fail to provide to a person who has been solicited for a contribution the information described in Code Section 43-17-8.
- (d) It shall be unlawful for any person in connection with the planning, conduct, or execution of any charitable solicitation or charitable sales promotion, directly or indirectly:
 - (1) To employ a device, scheme, or artifice to defraud;

43-17-12. Prohibited acts.

- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person;
 - (3) To misrepresent or mislead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of such solicitation or charitable sales promotion will be used for charitable purposes if such is not the fact; or
 - (4) To misappropriate, convert, illegally withhold, or fail to account for any charitable contributions solicited by, or on behalf of, any charitable organization required to be registered pursuant to this chapter.
- (e) It shall be unlawful for any paid solicitor to have physical possession or legal control of a contribution collected by it in or from this state on behalf of any charitable organization without having complied with the requirements of paragraph (3) or (6) of subsection (c) of Code Section 43-17-3, as applicable, and Code Section 43-17-4.

History

Code 1981, § 43-17-12, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1996, p. 1261, § 5; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1657, § 10; Ga. L. 2008, p. 683, § 8/HB 1104.

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43-17-13. Penalties; cease and desist orders; injunctions; restitution; appointment and powers of receiver; subpoenas.

(a) Whenever it may appear to the Secretary of State, either upon complaint or otherwise, that any person has engaged in or is engaging in or is about to engage in any act, practice, or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Secretary of State promulgated or issued pursuant to any Code section of this chapter or which is declared to be unlawful under this chapter, the Secretary of State may, at his discretion, act under any or all of the following paragraphs and may:

(1) Impose administrative sanctions as provided in this paragraph:

(A) Subject to notice and opportunity for hearing in accordance with Code Section 43-17-16, unless the right to notice is waived by the person against whom the sanction is imposed, the Secretary of State may:

- (i) Issue a cease and desist order against any person;
- (ii) Censure the person if the person is registered as a paid solicitor;
- (iii) Bar or suspend the person from association with a paid solicitor or charitable organization;
- (iv) Issue an order against a paid solicitor who willfully violates this chapter, imposing a civil penalty up to a maximum of \$2,500.00 for a single violation or up to \$5,000.00 for multiple violations in a single proceeding or a series of related proceedings; or
- (v) Regarding any willful act, practice, or transaction, issue an order imposing a civil penalty up to a maximum of \$250.00 against any person for a single violation or \$500.00 for multiple violations in a single proceeding or a series of related proceedings;

(B) Imposition of the sanctions under this paragraph is limited as follows:

- (i) If the Secretary of State revokes the registration of a charitable organization or paid solicitor or bars a person from association with a charitable organization or paid solicitor under subparagraph (A) of this paragraph, the imposition of that sanction precludes imposition of the sanctions specified in divisions (iv) and (v) of subparagraph (A) of this paragraph; and
- (ii) The imposition by the Secretary of State of one or more sanctions under this paragraph with respect to a specific violation precludes the Secretary of State from later imposing any other sanctions under this paragraph with respect to the violation; or

(C) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (A) of this paragraph, the Secretary of State shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule promulgated under this chapter or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation;

(2) Seek civil sanctions by applying to any superior court of competent jurisdiction in this state, which court:

43-17-13. Penalties; cease and desist orders; injunctions; restitution; appointment and powers of receiver; subpoenas.

(A) Upon a showing by the Secretary of State that a person has violated this chapter, a rule promulgated under this chapter, or an order of the Secretary of State, may enter or grant:

- (i)** A temporary restraining order, permanent or temporary injunction, or a writ of prohibition or mandamus;
- (ii)** A civil penalty up to a maximum of \$2,500.00 for a single violation or up to \$25,000.00 for multiple violations in a single proceeding or a series of related proceedings;
- (iii)** A declaratory judgment;
- (iv)** Restitution to contributors;
- (v)** An order of disgorgement;
- (vi)** The appointment of a receiver, auditor, or conservator for the defendant or the defendant's assets; or
- (vii)** Other relief as the court deems just and equitable;

(B) May, upon a showing by the Secretary of State that the defendant is about to violate this chapter, a rule promulgated under this chapter, or an order of the Secretary of State, issue:

- (i)** A temporary restraining order;
- (ii)** A temporary or permanent injunction;
- (iii)** A writ of prohibition or mandamus; or
- (iv)** Such other relief as the court deems just and equitable; or

(C) In determining the appropriate relief to grant, shall consider enforcement action taken and sanctions imposed by the Secretary of State under paragraph (1) of this subsection in connection with the transaction or transactions constituting a violation of this chapter, a rule promulgated under this chapter, or an order of the Secretary of State; or

(3) Transmit such evidence as may be available concerning such act, practice, or transaction to any district attorney or to the Attorney General, who may, at his individual discretion, institute the necessary criminal proceedings.

(b) In any proceedings for an injunction, the Secretary of State may apply for and be entitled to have issued the court's subpoena requiring:

- (1)** The appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors or the members of a defendant limited liability company; and
- (2)** The production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction.

(c) In any action brought under subsection (a) of this Code section, the court, upon application of the state, may appoint a receiver for the assets of the defendant where it has been established:

- (1)** That the defendant has engaged in a pattern of willful violations of this chapter which has resulted in substantial actual damage to citizens of this state;
- (2)** That the defendant is outside this state or is actually removing or about to remove himself or his property outside the limits of this state or conceals himself or his property; or
- (3)** That the appointment of the receiver is necessary to preserve the assets of the defendant for the benefit of citizens of the state damaged by the defendant's violations of this chapter.

(d) When a receiver is appointed by the court pursuant to this chapter, he shall have the power to bring an action for, collect, receive, and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills,

43-17-13. Penalties; cease and desist orders; injunctions; restitution; appointment and powers of receiver; subpoenas.

notes, and property of every description, derived by any means in violation of this chapter, including property with which such property has been mingled. He shall have the power to sell, convey, and assign the same and to hold and dispose of the proceeds thereof under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(e) In any criminal proceeding either the district attorney or the Attorney General or both may apply for and be entitled to have issued the court's subpoena requiring:

- (1) The appearance forthwith of any defendant or the defendant's agents, employees, partners, officers, or directors or the members of a defendant limited liability company; and
- (2) The production of such documents, books, and records as may appear necessary for the prosecution of such criminal proceedings.

History

Code 1981, § 43-17-13, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 38; Ga. L. 2018, p. 191, § 4/HB 475; Ga. L. 2019, p. 1056, § 43/SB 52.

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O.C.G.A. § 43-17-14

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43-17-14. Recovery of damages; class actions.

(a) Any person who suffers injury or damages as a result of acts or practices in violation of this chapter may bring an action against the charitable organization or paid solicitor engaged in such acts or practices. The person may recover such general damages sustained as a result of such acts or practices. Exemplary damages and attorney's fees may be awarded in cases of intentional violations of this chapter.

(b) Any person entitled to bring an action under this chapter may institute a class action pursuant to Code Section 9-11-23 for the recovery of damages.

History

Code 1981, § 43-17-14, enacted by Ga. L. 1988, p. 490, § 1.

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O.C.G.A. § 43-17-15

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43-17-15. Venue.

For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated under this chapter shall be considered to have been committed in any county in which any act was performed in furtherance of the transaction which violated this chapter, in the county of any violator's principal place of business in this state, in the county of the charitable organization's principal place of business in this state, and in any county in which any violator had control or possession of any proceeds of the violation or any books, records, documents, or other material or objects which were used in furtherance of the violation.

History

Code 1981, § 43-17-15, enacted by Ga. L. 1988, p. 490, § 1.

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O.C.G.A. § 43-17-16

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43-17-16. Hearings; notice; powers and orders of the Secretary of State.

(a) Where the Secretary of State has issued any order forbidding the solicitation or acceptance of contributions under Code Section 43-17-7, he or she shall promptly send to the charitable organization a notice of opportunity for hearing. Before entering an order refusing to register any person under Code Section 43-17-3 or 43-17-5 and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person and if such person is a paid solicitor to the charitable organization who employs or proposes to employ such person, a notice of opportunity for hearing. Hearings shall be conducted pursuant to this Code section by the Secretary of State or a person designated by the Secretary of State.

(b) Notices of opportunity for hearing shall be served by investigators appointed by the Secretary of State or sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or directed for service to the sheriff of the county where such person resides or is found. Such notice shall state:

- (1) The order which has been issued or which is proposed to be issued;
- (2) The ground for issuing such order or proposed order; and
- (3) That the person to whom such notice is sent will be afforded a hearing upon request if such request is made within ten days after receipt of the notice.

(c) Whenever a person requests a hearing in accordance with this Code section, there shall immediately be set a date, time, and place for such hearing and the person requesting such hearing shall forthwith be notified thereof. Except as provided in subsection (b) of Code Section 43-17-7, the date set for such hearing shall be within 30 days, but not earlier than five days after the request for hearing has been made, unless otherwise agreed to by the charitable organization and the persons requesting the hearing.

(d) For the purpose of conducting any hearing as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such hearing, to require the attendance of witnesses and the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the Secretary of State is authorized, at the request of the person requesting the hearing or upon his or her own initiative, to issue a subpoena for any witness or a subpoena for production of documentary evidence to compel the production of any books, records, or papers. The subpoenas may be served by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(e)

43-17-16. Hearings; notice; powers and orders of the Secretary of State.

- (1) At any hearing conducted under this Code section, a party or any affected person may appear in his or her own behalf or may be represented by an attorney.
- (2) A stenographic record of the testimony and other evidence submitted shall be taken unless the Secretary of State and the persons requesting the hearing shall agree that such a stenographic record of the testimony shall not be taken.
- (3) The Secretary of State shall pass upon the admissibility of such evidence, but a party may at any time make objections to any such rulings thereon; and, if the Secretary of State refuses to admit evidence, the party offering the same shall make a proffer thereof and such proffer shall be made a part of the record of the hearing.

(f)

- (1) In the case of any hearing conducted under this Code section, the Secretary of State may conduct the hearing or may appoint a referee to conduct the hearing who shall have the same powers and authority in conducting the hearing as are granted in this Code section to the Secretary of State.
- (2) The referee shall have been admitted to the practice of law in this state and possess such additional qualifications as the Secretary of State may require.
- (3) In any case where a hearing is conducted by a referee, the referee shall submit to the Secretary of State a written report including the transcript of the testimony and evidence (if such transcript is requested by the Secretary of State), the findings of fact and conclusions of law, and a recommendation of action to be taken by the Secretary of State. Within five days of the time of submission thereof to the Secretary of State, a copy of such written report and recommendations shall be served upon the person who requested the hearing or his or her attorney or other representative of record by registered or certified mail or statutory overnight delivery. That person or his or her attorney, within ten days of service of the copy of such written report and recommendations, may file with the Secretary of State written objections to the report and recommendations which shall be considered by the Secretary of State before a final order is entered.
- (4) No recommendation of the referee shall be approved, modified, or disapproved by the Secretary of State until after ten days after service of such report and recommendations as provided in this subsection.
- (5) The recommendations of the referee may be approved, modified, or disapproved by the Secretary of State. The Secretary of State may direct his or her referee to take additional testimony or to permit the introduction of further documentary evidence.
- (6) In any hearing conducted by a referee, a transcript of testimony, evidence, and objections, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the Secretary of State.
- (7) All recommendations of the referee shall be advisory only and shall not have the effect of an order of the Secretary of State.

(g) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall:

- (1) Set forth his or her findings with respect to the matters involved; and
- (2) Enter an order in accordance with his or her findings.

(h) All orders entered pursuant to Code Sections 43-17-3, 43-17-5, 43-17-7, and 43-17-13 shall be entered pursuant to this Code section, except where:

- (1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order, in which case the order may be

43-17-16. Hearings; notice; powers and orders of the Secretary of State.

effective immediately pending proceedings, which proceedings shall be promptly instituted and determined; or

(2) The order is expressly required by a court order, to be made without the right to a hearing or continuance of any type.

History

Code 1981, § 43-17-16, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2008, p. 683, § 9/HB 1104.

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O.C.G.A. § 43-17-17

Current through the 2023 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 43 Professions And Businesses (Chs. 1 — 51) > CHAPTER 17 Charitable Solicitations (§§ 43-17-1 — 43-17-23)

43-17-17. Appeals by petition for review.

(a) An appeal may be taken from any order of the Secretary of State resulting from a hearing held in accordance with Code Section 43-17-16 by any person adversely affected thereby to the Superior Court of Fulton County by serving the Secretary of State, within 20 days after the date of entry of such order, a copy of the petition for review filed in the Superior Court of Fulton County and signed by the petitioner, stating:

- (1) The order from which the appeal is taken;
- (2) The ground upon which a reversal or modification of the order is sought; and
- (3) A demand for a certified transcript of the record of the order.

(b) Upon receipt of the petition for review, the Secretary of State shall, within ten days thereafter, make, certify, and deliver to the Superior Court of Fulton County a transcript of the record of the order from which the appeal is taken, provided that the appellant shall pay the reasonable costs of such transcript. The petition for review and transcript of the record shall constitute appellant's complaint. The complaint shall thereupon be entered on the trial calendar of the court.

(c) If the order of the Secretary of State shall be reversed, the reviewing court shall by its mandate specifically direct the Secretary of State as to any further action to be taken by the Secretary of State in the matter, including the making and entering of an order or orders in connection therewith and the conditions, limitations, or restrictions to be therein contained.

History

Code 1981, § 43-17-17, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2022, p. 767, § 2-34/HB 916.

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O.C.G.A. § 43-17-18

Current through the 2023 Regular Session of the General Assembly.

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43-17-18. Service of process.

Where a consent to service of process is required under this chapter, such consent to service of process shall be in the form prescribed by the Secretary of State, shall be irrevocable, and shall provide that actions arising out of or founded upon the solicitation of charitable contributions in violation of this chapter may be commenced against the person executing such consent in any court of competent jurisdiction and proper venue within this state by the service of process or pleadings upon the Secretary of State. Service of any such process or pleadings in any such action against a person who has filed a consent to service with the Secretary of State shall, if made on the Secretary of State, be by duplicate copies, one of which shall be filed in the office of the Secretary of State and the other shall immediately be forwarded by the Secretary of State by registered or certified mail or statutory overnight delivery to the persons against whom such process or pleadings are directed at his latest address on file in the office of the Secretary of State.

History

Code 1981, § 43-17-18, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3.

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O.C.G.A. § 43-17-19

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43-17-19. Applicability of “Fair Business Practices Act of 1975.”

Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” Nothing contained in this chapter shall be construed to limit the authority of the Attorney General to take any action under the “Fair Business Practices Act of 1975” regarding unfair and deceptive acts or practices in a solicitation or in solicitations.

History

Code 1981, § 43-17-19, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2015, p. 1088, § 31/SB 148.

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43-17-20. Immunity.

For any action taken or any proceeding had under this chapter or under color of law, the Secretary of State shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

History

Code 1981, § 43-17-20, enacted by Ga. L. 1988, p. 490, § 1.

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43-17-21. Burden of proof on persons claiming exemption or exception; certified copies; certificate of compliance or noncompliance.

- (a) In a civil or administrative proceeding under this chapter, a person claiming an exemption or an exception from a definition has the burden of proving this exemption or exception.
- (b) In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception from a definition is on the person claiming the exemption or exception.
- (c) In any action, civil or criminal, copies, photostatic or otherwise, certified by the Secretary of State of any documents filed in his office and of any of his records shall be admissible with the same effect as the original of such documents or records would have if actually produced.
- (d) In any action, civil or criminal, a certificate signed and sealed by the Secretary of State, stating compliance or noncompliance with this chapter, shall constitute prima-facie evidence of such compliance or noncompliance with this chapter and shall be admissible in any such action.

History

Code 1981, § 43-17-21, enacted by Ga. L. 1988, p. 490, § 1.

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43-17-22. Provisions of chapter govern criminal or civil proceedings.

Any criminal proceeding or civil proceeding, including but not limited to judicial review of all administrative orders, instituted under this chapter shall be governed by the provisions of this chapter as such provisions existed in full force and effect on the date of the alleged commission of the underlying facts or circumstances which constitute evidence of the commission of a crime or violation of this chapter, notwithstanding any subsequent amendment to this chapter, unless the General Assembly shall specifically declare otherwise, except that no civil or criminal proceeding shall be instituted after the lapse of the appropriate period of limitations which was in effect at the time the cause of action arose or the alleged commission of the crime occurred.

History

Code 1981, § 43-17-22, enacted by Ga. L. 1988, p. 490, § 1.

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43-17-23. Violations of chapter.

- (a) Except as provided in subsection (b) of this Code section, any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor.
- (b) Any person who shall willfully violate subsection (d) of Code Section 43-17-12 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not less than one nor more than five years, or both.
- (c) Nothing in this chapter shall limit any statutory or common-law right of the state to punish any person for violation of any law.

History

Code 1981, § 43-17-23, enacted by Ga. L. 1988, p. 490, § 1.

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