

CHAPTER 920

H.B. No. 712

AN ACT

relating to solicitation by public safety organizations, public safety publications, and certain independent promoters; providing criminal and civil penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. DEFINITIONS. In this Act:

- (1) "Independent promoter" means a person conducting an independent promotion.
- (2) "Independent promotion" means an appeal for a donation or the sale of tickets or advertising by a person that is not affiliated with a public safety organization in the name of public safety or in a name or cause associated with public safety.

(3) “Law enforcement personnel” means employees of government law enforcement agencies who are commissioned peace officers.

(4) “Person” includes an individual, corporation, organization, business trust, partnership, association, and any other legal entity.

(5) “Public safety organization” means a nongovernmental organization that uses in its name, in a publication of the organization, in a solicitation for contributions to the organization, for membership in the organization, or to purchase advertising in a publication of the organization, or in a solicitation to purchase products or tickets to an event sponsored by or for the benefit of the organization by a solicitor, the term “officer,” “peace officer,” “police officer,” “police,” “law enforcement,” “reserve officer,” “deputy,” “deputy sheriff,” “constable,” “deputy constable,” “fireman,” “fire fighter,” “volunteer fireman,” “emergency medical service provider,” “civilian employee,” or any other term in a manner that reasonably implies that the organization is composed of law enforcement or public safety personnel or that a contribution, purchase, or membership will benefit public safety personnel.

(6) “Public safety personnel” means employees or volunteers of a public safety organization, including fire fighters, emergency medical service providers, or civilian employees of a public safety organization.

(7) “Public safety publication” means a nongovernmental publication with a name that includes the term “officer,” “peace officer,” “police officer,” “police,” “law enforcement,” “reserve officer,” “deputy,” “deputy sheriff,” “constable,” “deputy constable,” “fireman,” “fire fighter,” “volunteer fireman,” “emergency medical service provider,” “civilian employee,” or any other term in a manner that reasonably implies that the publication is published by or benefits public safety.

(8) “Solicitor” means a person who contracts for or receives monetary compensation for providing solicitation services on behalf of a public safety organization, independent promoter, or public safety publication and who solicits:

(A) contributions in person, by telephone, by electronic media, or by mail;

(B) membership in a public safety organization from individuals who are not employed by a public safety agency of the United States, this state, or a political subdivision of this state;

(C) the purchase of advertising; or

(D) the purchase of goods, services, or tickets to an event sponsored by or for the benefit of a public safety organization or for the cause of public safety.

**SECTION 2. REGISTRATION REQUIRED.** (a) A public safety organization, independent promoter, or public safety publication may not solicit unless the public safety organization, independent promoter, or public safety publication has filed a registration statement as required by Section 4 of this Act and has paid a registration fee as required by Section 5 of this Act.

(b) A public safety organization, independent promoter, or public safety publication may not use a solicitor unless the solicitor has filed a registration statement and paid the registration fee as required by Section 6 of this Act and has filed and maintains a bond as required by Section 7 of this Act.

(c) A person may not act as solicitor for a public safety organization, independent promoter, or public safety publication unless the person has filed a registration statement as required by Section 6 of this Act and has filed and maintains a bond as required by Section 7 of this Act.

**SECTION 3. ELIGIBILITY.** (a) A public safety organization is eligible to register under Section 4 of this Act and use a solicitor if the organization is a bona fide membership organization that consists of members:

(1) who are individuals;

(2) of whom at least five percent or 500 members, whichever is less, are employed as law enforcement personnel or public safety personnel by a public safety agency of the United States, this state, or a political subdivision of this state; and

(3) who signed written membership agreements with the organization and paid an annual membership fee of not less than \$10 a member.

(b) An independent promoter is eligible to register under Section 4 of this Act and use a solicitor if a full disclosure is made in accordance with this Act.

**SECTION 4. REGISTRATION STATEMENT FOR PUBLIC SAFETY ORGANIZATION, INDEPENDENT PROMOTER, AND PUBLIC SAFETY PUBLICATION.** (a) Before beginning solicitations a public safety organization, independent promoter, or public safety publication must have on file with the secretary of state for public disclosure a registration statement signed by two of its officers or directors and if the organization, promoter, or publication is not a resident of this state, must have on file with the secretary of state an irrevocable written consent appointing the secretary of state as agent for service of process on the organization, promoter, or publication for any action pertaining to a violation of this Act. The registration statement must disclose:

(1) the name, street address, and telephone number of the solicitors that are to solicit on behalf of the registering entity, if any;

(2) the name, street address, and telephone number of each public safety organization, public safety publication, or fund on behalf of which all or part of the contributions will be used, or if there is no organization, publication, or fund, a statement describing the manner in which the contributions will be used;

(3) a statement of whether the registering entity or fund for which the contributions are to be solicited has a charitable tax exemption under both federal and state law;

(4) the name and public safety agency or former agency of each active and retired public safety officer who serves on the board of directors or governing body of the registering entity, if any;

(5) the number of members and the percentage of members who are active and retired public safety officers of the United States, this state, or a political subdivision of this state, as determined on December 31 of the year preceding the year in which the registration is made and for which the contributions are solicited, if the registering entity is a public safety organization;

(6) the name of the local chapter, lodge, association, or group of licensed public safety officers of the public safety organization for which contributions are to be solicited, if the registering entity is a public safety organization;

(7) a copy of the most recent tax or informational return filed with the Internal Revenue Service by the registering entity;

(8) the amount of funds collected during the previous year by the registering entity through solicitations of nonmembers of the public safety organization for which the funds were collected and the amount of funds that are paid as expenses to maintain the solicitation operation;

(9) if known or projected, the amount of funds expected to be collected during the year of filing by the registering entity through solicitations of nonmembers described by Subdivision (8) of this subsection;

(10) a copy of any contract or agreement between the registering entity and a solicitor; and

(11) if the registering entity is a public safety publication, information on:

(A) the total number of copies of each issue of the publication to be printed;

(B) the frequency of the publication; and

(C) the date and circulation of the most recent issue of the publication.

(b) A public safety organization, independent promoter, or public safety publication that has filed a registration statement under Subsection (a) of this section and that continues to make solicitations through a solicitor shall file an updated statement with the secretary of state on or before January 15 of each year during which a solicitation will occur.

(c) A public safety organization, independent promoter, or public safety publication that has filed a registration statement under Subsection (a) of this section shall file an updated

statement with the secretary of state within 30 days after the date of a change of street address, phone number, or name.

**SECTION 5. REGISTRATION FEE FOR PUBLIC SAFETY ORGANIZATION, INDEPENDENT PROMOTER, OR PUBLIC SAFETY PUBLICATION.** (a) Except as provided by Subsection (b) of this section, a public safety organization or independent promoter that registers under Section 4 of this Act shall pay an annual \$250 registration fee to the secretary of state.

(b) A public safety organization that is composed of members who are volunteer fire fighters for a local political subdivision and that solicits only in the area of the fire fighters' jurisdiction is not required to pay a registration fee to register under Section 4 of this Act. This subsection does not apply to a statewide association of volunteer fire fighters.

**SECTION 6. SOLICITOR REGISTRATION STATEMENT AND FEE.** (a) Before beginning solicitations for a public safety organization, independent promoter, or public safety publication, a solicitor must have on file with the secretary of state for public disclosure a registration statement containing:

- (1) the name, street and mailing address, and telephone number of the solicitor;
- (2) the name, street and mailing address, and telephone number of each public safety organization, independent promoter, or public safety publication on whose behalf the solicitor solicits or will solicit in this state; and
- (3) if the solicitor is not a resident of this state, an irrevocable written consent appointing the secretary of state as agent for service of process on the solicitor for any action pertaining to a violation of this Act.

(b) The registration statement required by Subsection (a) of this section must be accompanied by a registration fee in the amount of \$500 and a bond as required by Section 7 of this Act.

(c) A solicitor that has filed a registration statement under Subsection (a) of this section shall file an updated statement and renewal fee in the amount of \$500 with the secretary of state on or before January 15 of each year during which the solicitor will solicit on behalf of a public safety organization, independent promoter, or public safety publication.

(d) A solicitor that has filed a registration statement under Subsection (a) of this section shall file an updated statement with the secretary of state within 30 days after the date of a change of street address, mailing address, phone number, or name.

**SECTION 7. SOLICITOR BOND.** (a) A solicitor shall post a surety bond with the secretary of state in the amount of \$10,000 issued by a surety company authorized to do business in this state.

(b) The bond must be payable to the state and conditioned on compliance with this Act.

**SECTION 8. DISCLOSURE REQUIRED.** A disclosure shall be given to each resident, orally or in writing, before the resident delivers any consideration to a public safety organization, independent promoter, public safety publication, or solicitor. The disclosure, if given in writing, must be in contrasting eight-point type or larger. A disclosure must include:

- (1) the name of the public safety organization as registered under Section 4 of this Act, if a public safety organization is involved;
- (2) an express statement that the promotion is independent of affiliation with any public safety organization, if an independent promoter is involved;
- (3) the name of the solicitor, if one has been employed as part of the solicitation;
- (4) a general statement as to how the net funds received will be used; and
- (5) the name, street address, and statewide hotline number by which a resident may obtain additional information on the public safety organization, independent promoter, public safety publication, or solicitor from the secretary of state.

**SECTION 9. SOLICITATION INFORMATION HOTLINE.** The secretary of state shall establish and operate a toll-free telephone line known as Solicitation Information Hotline. A member of the public may telephone the hotline number to:

(1) obtain information concerning a public safety organization, independent promoter, public safety publication, or solicitor that has filed a registration statement with the secretary of state under this Act; or

(2) report an alleged violation of this Act by a public safety organization, independent promoter, public safety publication, or solicitor.

**SECTION 10. PROHIBITED PRACTICES.** A person may not commit an unfair or deceptive act or practice in the conduct of solicitations for a public safety organization, independent promoter, or public safety publication, including:

(1) using any representation that implies that the contribution is for or on behalf of a public safety agency or a public safety organization, or using any emblem, device, or printed matter belonging to or associated with a public safety agency or organization, unless authorized in writing to do so by the agency or organization;

(2) using a name, symbol, or statement that is similar to that used by a public safety agency or organization in a manner that is intended to confuse or mislead a person being solicited;

(3) knowingly representing or implying that the proceeds of the solicitation are being used for a purpose other than the purpose for which the funds are actually used;

(4) representing or implying that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not;

(5) using or exploiting the fact of filing with the secretary of state in a manner that leads any person to believe that filing in any manner constitutes an endorsement or approval of the state;

(6) knowingly filing incomplete, false, or misleading information in any document required to be filed with the secretary of state under this Act;

(7) soliciting for a public safety organization, independent promoter, public safety publication, or cause by representing that those who respond affirmatively to the solicitation will receive favored treatment by public safety personnel;

(8) collecting a contribution or membership fee solicited at a person's residence by an in-person or telephone solicitation through any means other than payment through the United States mail or parcel post courier; or

(9) soliciting for a public safety organization in a county in which members of the public safety organization do not have jurisdiction.

**SECTION 11. AUDIT POWERS OF ATTORNEY GENERAL.** (a) The attorney general may make a written request for information from a public safety organization, independent promoter, public safety publication, or solicitor for the purpose of auditing or verifying the representations contained in a registration statement required by this Act.

(b) A public safety organization, independent promoter, public safety publication, or solicitor shall provide information requested by the attorney general under Subsection (a) of this section within 10 working days after the date of the attorney general's request.

(c) Willful failure to provide timely information under this section is grounds for bond forfeiture or suspension of registration.

**SECTION 12. CRIMINAL PENALTIES.** (a) A person commits an offense if the person knowingly violates this Act.

(b) An offense under this Act is a Class A misdemeanor.

(c) A corporation or association may be held criminally responsible for conduct by a person acting on its behalf if the person's conduct constitutes an offense under this Act and is done with the knowledge and approval of the corporation or association.

**SECTION 13. ENFORCEMENT AND INJUNCTION.** The attorney general may sue in a district court of Travis County for a violation of this Act to seek a civil penalty and to enjoin a person from violating this Act. The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the suit is filed unless the attorney general intends to request that the court issue a temporary restraining order, in which event notice is not required.

**SECTION 14. CIVIL PENALTIES.** (a) A person who has been found in violation of this Act or any injunction issued under Section 13 of this Act is liable to the state for a civil penalty of not more than \$2,500 for a single violation or cumulatively of not more than \$10,000 for all of the violations. If the violator has filed a bond under this Act, the suit may be brought against the bond.

(b) A public safety organization, independent promoter, or public safety publication that fails to timely file the information required by this Act or that files information required by this Act that is found to contain material misrepresentation may not use a solicitor until it provides or corrects the information.

**SECTION 15. SERVICE ON SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS.** Any service of process or pleading served on the secretary of state as the agent for a nonresident solicitor, public safety organization, independent promoter, or public safety publication must be served on the secretary of state in triplicate. The secretary of state shall file one copy in the secretary of state's office and immediately forward the other copies by certified mail, return receipt requested, to the address of the nonresident, as shown on the nonresident's registration statement. Service on the secretary of state shall be returned in not less than 30 days.

**SECTION 16. LOCAL ORDINANCE.** This Act preempts and supersedes any municipal ordinance applicable to public safety organizations, independent promoters, public safety publications, solicitors, or solicitations pertaining to those persons if those persons are registered under this Act.

**SECTION 17. REPEALER.** Chapter 1054, Acts of the 70th Legislature, Regular Session, 1987 (Article 9023a, Vernon's Texas Civil Statutes), is repealed.

**SECTION 18. TRANSITION.** (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

**SECTION 19. EFFECTIVE DATE.** This Act takes effect September 1, 1993.

**SECTION 20. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 19, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 712 on May 27, 1993, by a non-record vote; the House adopted H.C.R. No. 176 authorizing certain corrections in H.B. No. 712 on May 28, 1993; passed by the Senate, with amendments, on May 25, 1993, by a viva-voce vote; the Senate adopted H.C.R. No. 176 authorizing certain corrections in H.B. No. 712 on May 29, 1993.

Approved June 19, 1993.

Effective Sept. 1, 1993.