

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 959

Short Title: Receptacles Used to Solicit.

(Public)

Sponsors: Representatives McCombs; Allred, Hill, Kiser, Mitchell, and Owens.

Referred to: Judiciary II, if favorable, Appropriations.

April 16, 1997

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE CHARITABLE ORGANIZATIONS THAT SOLICIT FUNDS
2 BY OFFERING PRODUCTS FOR SALE IN RECEPTACLES TO PLACE A
3 DISCLOSURE LABEL ON THE RECEPTACLES, TO ESTABLISH CERTAIN
4 PROHIBITED ACTS WITH RESPECT TO THIS TYPE OF SOLICITATION, AND
5 TO ESTABLISH APPROPRIATE PENALTIES FOR VIOLATIONS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. The General Statutes are amended by adding a new Chapter to read:

9 **"Chapter 131G.**

10 **"Soliciting Funds by Offering Products for Sale in Receptacles.**

11 **"§ 131G-1. Definitions.**

12 The following definitions apply in this Chapter:

13 (1) 'Charitable' has the same meaning as set forth in G.S. 131F-2.

14 (2) 'Charitable organization' has the same meaning as set forth in G.S.
15 131F-2.

16 (3) 'Receptacle' means a box, carton, package, receptacle, canister, jar,
17 dispenser, or machine.

18 **"§ 131G-2. Disclosure label required on receptacles used to solicit funds.**

19 (a) Any charitable organization that solicits contributions by offering a product for
20 sale or distribution for a charitable purpose in a public place when the product is in a

1 receptacle used by that charitable organization or its agent, whether paid or not paid, shall
2 place a printed or typed notice affixed to that receptacle that is legible, easily readable,
3 conspicuously placed, and accessible to the public. This notice shall contain information
4 that informs the public of all of the following:

5 (1) The name of the charitable organization, the purpose for which it is
6 organized, the name under which it intends to solicit contributions, and
7 the purpose for which the contributions will be used.

8 (2) The name and either the address or telephone number of a representative
9 to whom inquiries could be addressed under subsection (b) of this
10 section.

11 (3) A statement indicating what entity maintains, services, and collects from
12 the receptacle.

13 (b) The charitable organization shall disclose, upon request, the source from which
14 a written financial statement may be obtained. This source shall provide, within 14 days
15 after the request, a financial statement that is in writing, that addresses the immediate past
16 fiscal year, and that states: the purpose for which funds are raised, the total amount of all
17 contributions raised, the total costs and expenses incurred in raising contributions, the
18 total amount of contributions dedicated to the stated purpose or disbursed for the stated
19 purpose, and whether the services of another person or organization have been contracted
20 to conduct solicitation activities.

21 **"§ 131G-3. Prohibited acts.**

22 It is unlawful for any person to:

23 (1) Violate or fail to comply with the requirements of G.S. 131G-2.

24 (2) Knowingly provide false or misleading information on the notice on the
25 receptacle or in response to any request or investigation by the
26 Department of Human Resources or the Attorney General.

27 (3) Make misrepresentations or misleading statements to the effect that any
28 other person sponsors or endorses the solicitation, approves of its
29 purpose, or is connected therewith when that person has not given
30 written consent to the use of that person's name.

31 (4) Represent that a contribution is for or on behalf of a charitable
32 organization, or to use any emblem, device, or printed matter belonging
33 to or associated with a charitable organization, without first being
34 authorized in writing to do so by the charitable organization.

35 (5) Use a name, symbol, emblem, device, service mark, or statement so
36 closely related or similar to that used by another charitable organization
37 that the use would mislead the public.

38 (6) Employ any device or scheme to defraud or to obtain a contribution by
39 means of any deception, false pretense misrepresentation, or false
40 promise.

41 (7) Fail to provide complete and timely payment to a charitable
42 organization of the proceeds from the sale of products used to solicit
43 funds.

1 (8) Fail to apply contributions in a manner substantially consistent with the
2 solicitation.

3 **"§ 131G-4. Violation as deceptive or unfair trade practice.**

4 Any person who commits an act or practice that violates any provision of this Chapter
5 engages in an unfair trade practice in violation of G.S. 75-1.1.

6 **"§ 131G-5. Criminal penalties.**

7 Except as otherwise provided in this Chapter and in addition to any administrative or
8 civil penalties, any person who willfully and knowingly violates a provision of this
9 Chapter commits a Class 1 misdemeanor.

10 **"§ 131G-6. Enforcement.**

11 (a) Investigation. – The Department of Human Resources may conduct an
12 investigation of any person whenever there is an allegation or appearance, either upon
13 complaint or otherwise, that a violation of this Chapter or of any order issued pursuant to
14 this Chapter has occurred or is about to occur.

15 (b) Subpoena Power. – The Department may issue and serve subpoenas and
16 subpoenas duces tecum to compel the attendance of witnesses and the production of all
17 books, accounts, records, and other documents and materials relevant to an examination
18 or investigation. The Department, or its duly authorized representative, may administer
19 oaths and affirmations to any person.

20 (c) Court Action. – In the event of substantial noncompliance with a subpoena or
21 subpoena duces tecum issued or caused to be issued by the Department, the Department
22 may petition the superior court of the county in which the person subpoenaed resides or
23 has the principal place of business for an order requiring the subpoenaed person to appear
24 and testify and to produce any books, accounts, records, and other documents as are
25 specified in the subpoena duces tecum. The court may grant injunctive relief restraining
26 the person from collecting contributions and any other relief, including the restraint by
27 injunction or appointment of a receiver, or any transfer, pledge, assignment, or other
28 disposition of the person's assets, or any concealment, alteration, destruction, or other
29 disposition of subpoenaed books, accounts, records, or other documents and materials as
30 the court deems appropriate, until the person or organization has fully complied with the
31 subpoena or subpoena duces tecum and the Department has completed its investigation or
32 examination. Costs incurred by the Department to obtain an order granting, in whole or
33 in part, a petition for enforcement of a subpoena or subpoena duces tecum shall be taxed
34 against the subpoenaed person and failure to comply with the order shall be contempt of
35 court.

36 (d) Violations. – The Department may enter an order imposing one or more of the
37 penalties set forth in subsection (e) of this section if the Department finds that a
38 charitable organization, or its officers, agents, directors, or employees have engaged in
39 any of the prohibited acts set forth in G.S. 131G-3.

40 (e) Penalties. – The Department of Human Resources may enter an order that does
41 either or both of the following:

1 (1) Imposes an administrative penalty not to exceed one thousand dollars
2 (\$1,000) for each act or omission that constitutes a violation of this
3 Chapter or of an order issued pursuant to this Chapter.

4 (2) Issues a cease and desist order that directs that the person cease and
5 desist specified fund-raising activities.

6 (f) Procedures. – Except as otherwise provided in this section, the administrative
7 proceedings that could result in the entry of an order imposing any of the penalties
8 specified in subsection (e) of this section are governed by Chapter 150B of the General
9 Statutes.

10 (g) Disposition of Penalties. – Penalties collected by the Department of Human
11 Resources under subsection (e) of this section shall be credited to the General Fund as
12 nontax revenue.

13 **"§ 131G-7. Civil remedies and enforcement.**

14 (a) Civil Remedies. – In addition to other remedies, the Attorney General may
15 bring a civil action in superior court to enforce this Chapter. Upon a finding that any
16 person has violated this Chapter, a court may issue any necessary order or enter a
17 judgment, including a temporary or permanent injunction, a declaratory judgment, the
18 appointment of a master or receiver, the sequestration of assets, the distribution of
19 contributions in accordance with the charitable purpose expressed in the notice on the
20 receptacle, the reimbursement of the Department of Human Resources for attorneys' fees
21 and costs, including investigative costs, and any other equitable relief the court finds
22 appropriate. Upon a finding that any person has violated any provision of this Chapter, a
23 court may enter an order imposing a civil penalty in an amount not to exceed ten
24 thousand dollars (\$10,000) per violation.

25 (b) Attorney General. – The Attorney General may conduct any investigation
26 necessary to bring a civil action under this section, including administering oaths and
27 affirmations, subpoenaing witnesses or material, and collecting evidence.

28 (c) Voluntary Compliance. – The Attorney General may terminate an investigation
29 or an action upon acceptance of a person's written assurance of voluntary compliance
30 with this Chapter. Acceptance of an assurance may be conditioned on commitment to
31 reimburse donors or to take other appropriate corrective action. An assurance is not
32 evidence of a prior violation of any of this Chapter. Unless an assurance has been
33 rescinded by agreement of the parties or voided by a court for good cause, subsequent
34 failure to comply with the terms of an assurance is prima facie evidence of a violation of
35 this Chapter.

36 **"§ 131G-8. Exemptions.**

37 This Chapter does not apply to any charitable organization that generates less than
38 five hundred dollars (\$500.00) per calendar year from all sources for any charitable
39 purpose or purposes combined. No charitable organization shall be liable under this act
40 to place a disclosure label on any receptacle that generates less than one hundred dollars
41 (\$100.00) gross per year."

42 Section 2. This act becomes effective January 1, 1998.