



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4315

Introduced 12/27/2005, by Rep. James D. Brosnahan

#### SYNOPSIS AS INTRODUCED:

225 ILCS 460/1	from Ch. 23, par. 5101
225 ILCS 460/8.5 new	
225 ILCS 460/9	from Ch. 23, par. 5109
225 ILCS 460/12	from Ch. 23, par. 5112

Amends the Solicitation for Charity Act. Requires the registration of contributions collection agents in the form and manner prescribed by the Attorney General. Defines "contributions collection agent" as any person who, for compensation or other consideration, collects charitable contributions in the form of property, including without limitation automobiles, motorcycles, and boats, on behalf of a charitable organization or trustee for a charitable purpose and oversees the resale of such property and the distribution of funds collected from the resale of the property to the charitable organization or trustee. Provides that no person may register as a contributions collection agent who has been convicted of any felony or of a misdemeanor involving fiscal wrongdoing, breach of fiduciary duty, or a violation of the Act. Requires contributions collection agents to maintain accurate and detailed records regarding all property collected, which shall be open to inspection at all reasonable times by the Attorney General or his or her duly authorized representative. Makes other changes.

LRB094 15819 RAS 51035 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Solicitation for Charity Act is amended by  
5 changing Sections 1, 9, and 12 and by adding Section 8.5 as  
6 follows:

7 (225 ILCS 460/1) (from Ch. 23, par. 5101)

8 Sec. 1. The following words and phrases as used in this Act  
9 shall have the following meanings unless a different meaning is  
10 required by the context.

11 (a) "Charitable organization" means any ~~any~~ benevolent,  
12 philanthropic, patriotic, or eleemosynary person or one  
13 purporting to be such which solicits and collects funds for  
14 charitable purposes and includes each local, county, or area  
15 division within this State of such charitable organization,  
16 provided such local, county or area division has authority and  
17 discretion to disburse funds or property otherwise than by  
18 transfer to any parent organization.

19 (b) "Contribution" means the ~~the~~ promise or grant of any  
20 money or property of any kind or value, including the promise  
21 to pay, except payments by union members of an organization.  
22 Reference to the dollar amount of "contributions" in this Act  
23 means in the case of promises to pay, or payments for  
24 merchandise or rights of any other description, the value of  
25 the total amount promised to be paid or paid for such  
26 merchandise or rights and not merely that portion of the  
27 purchase price to be applied to a charitable purpose.  
28 Contribution shall not include the proceeds from the sale of  
29 admission tickets by any not-for-profit music or dramatic arts  
30 organization which establishes, by such proof as the Attorney  
31 General may require, that it has received an exemption under  
32 Section 501(c)(3) of the Internal Revenue Code and which is

1 organized and operated for the presentation of live public  
2 performances of musical or theatrical works on a regular basis.  
3 For purposes of this subsection, union member dues and donated  
4 services shall not be deemed contributions.

5 (b-5) "Contributions collection agent" means any person  
6 who, for compensation or other consideration, collects  
7 charitable contributions in the form of property, including  
8 without limitation automobiles, motorcycles, and boats, on  
9 behalf of a charitable organization or trustee for a charitable  
10 purpose and oversees the resale of such property and the  
11 distribution of funds collected from the resale of the property  
12 to the charitable organization or trustee.

13 (c) "Person" means any ~~." Any~~ individual, organization,  
14 group, association, partnership, corporation, trust or any  
15 combination of them.

16 (d) "Professional fund raiser" means any ~~." Any~~ person who  
17 for compensation or other consideration, conducts, manages, or  
18 carries on any solicitation drive or campaign in this State or  
19 from this State or on behalf of a charitable organization  
20 residing within this State for the purpose of soliciting  
21 contributions for or on behalf of any charitable organization  
22 or any other person, or who engages in the business of, or  
23 holds himself out to persons in this State as independently  
24 engaged in the business of soliciting contributions for such  
25 purposes. A bona fide director, officer, employee or unpaid  
26 volunteer of a charitable organization shall not be deemed a  
27 professional fund raiser unless the person is in a management  
28 position and the majority of the individual's salary or other  
29 compensation is computed on a percentage basis of funds to be  
30 raised, or actually raised.

31 (e) "Professional fund raising consultant" means any ~~." Any~~  
32 person who is retained by a charitable organization or trustee  
33 for a fixed fee or rate that is not computed on a percentage of  
34 funds to be raised, or actually raised, under a written  
35 agreement, to only plan, advise, consult, or prepare materials  
36 for a solicitation of contributions in this State, but who does

1 not manage, conduct or carry on a fundraising campaign and who  
2 does not solicit contributions or employ, procure, or engage  
3 any compensated person to solicit contributions and who does  
4 not at any time have custody or control of contributions. A  
5 volunteer, employee or salaried officer of a charitable  
6 organization or trustee maintaining a permanent establishment  
7 or office in this State is not a professional fundraising  
8 consultant. An attorney, investment counselor, or banker who  
9 advises an individual, corporation or association to make a  
10 charitable contribution is not a professional fundraising  
11 consultant as a result of the advice.

12 (f) "Charitable purpose" means any ~~any~~ charitable,  
13 benevolent, philanthropic, patriotic, or eleemosynary purpose.

14 (g) "Charitable Trust" means any relationship whereby  
15 property is held by a person for a charitable purpose.

16 (h) "Education Program Service" means any activity which  
17 provides information to the public of a nature that is not  
18 commonly known or facts which are not universally regarded as  
19 obvious or as established by common understanding and which  
20 informs the public of what it can or should do about a  
21 particular issue.

22 (i) "Primary Program Service" means the program service  
23 upon which an organization spends more than 50% of its program  
24 service funds or the program activity which represents the  
25 largest expenditure of funds in the fiscal period.

26 (j) "Professional solicitor" means any natural person who  
27 is employed or retained for compensation by a professional fund  
28 raiser to solicit contributions for charitable purposes from  
29 persons in this State or from this State or on behalf of a  
30 charitable organization residing within this State.

31 (k) "Program Service Activity" means the actual charitable  
32 program activities of a charitable organization for which it  
33 expends its resources.

34 (l) "Program Service Expense" means the expenses of  
35 charitable program activity and not management expenses or fund  
36 raising expenses. In determining Program Service Expense,

1 management and fund raising expenses may not be included.

2 (m) "Public Safety Personnel Organization" means any  
3 person who uses any of the words "officer", "police",  
4 "policeman", "policemen", "troopers", "sheriff", "law  
5 enforcement", "fireman", "firemen", "paramedic", or similar  
6 words in its name or in conjunction with solicitations, or in  
7 the title or name of a magazine, newspaper, periodical,  
8 advertisement book, or any other medium of electronic or print  
9 publication, and is not a governmental entity. No organization  
10 may be a Public Safety Personnel Organization unless 80% or  
11 more of its voting members or trustees are active, retired, or  
12 disabled police officers, peace officers, firemen, fire  
13 fighters, emergency medical technicians - ambulance, emergency  
14 medical technicians - intermediate, emergency medical  
15 technicians - paramedic, ambulance drivers, or other medical  
16 assistance or first aid personnel.

17 (m-5) "Public Safety Personnel" includes police officers,  
18 peace officers, firemen, fire fighters, emergency medical  
19 technicians - ambulance, emergency medical technicians -  
20 intermediate, emergency medical technicians - paramedic,  
21 ambulance drivers, and other medical assistance or first aid  
22 personnel.

23 (n) "Trustee" means any person, individual, group of  
24 individuals, association, corporation, not for profit  
25 corporation, or other legal entity holding property for or  
26 solicited for any charitable purpose; or any officer, director,  
27 executive director or other controlling persons of a  
28 corporation soliciting or holding property for a charitable  
29 purpose.

30 (Source: P.A. 91-301, eff. 7-29-99.)

31 (225 ILCS 460/8.5 new)

32 Sec. 8.5. Contributions collection agent registration;  
33 records.

34 (a) No person may act as a contributions collection agent  
35 unless he or she has registered with the Attorney General in

1 the form and manner prescribed by the Attorney General.

2 (b) No person convicted of a felony may register as a  
3 contributions collection agent. No person convicted of a  
4 misdemeanor involving fiscal wrongdoing, breach of fiduciary  
5 duty, or a violation of this Act may register as a  
6 contributions collection agent.

7 (c) Every contributions collection agent must maintain  
8 accurate and detailed records regarding all property collected  
9 in the form and manner prescribed by the Attorney General. For  
10 any contributions collection agent who collects and oversees  
11 the resale of any motor vehicle, these records must include the  
12 following information for each vehicle collected and resold:

13 (1) The vehicle identification number.

14 (2) The resale amount of the vehicle.

15 (3) The fee collected by the contributions collection  
16 agent from the charitable organization or trustee for the  
17 collection and resale of the vehicle.

18 (4) The total amount distributed to the charitable  
19 organization upon the resale of the vehicle.

20 All such records shall be open to inspection at all reasonable  
21 times by the Attorney General or his or her duly authorized  
22 representative.

23 (d) Any person who violates the provisions of this Section  
24 is guilty of a Class A misdemeanor.

25 (e) Any person who violates the provisions of this Section  
26 shall not be entitled to keep or receive fees, salaries,  
27 commissions, or any compensation as a result or on account of  
28 the collections, and at the request of the Attorney General a  
29 court may order that such fees, salaries, commissions, or  
30 compensation shall be forfeited and distributed for charitable  
31 use.

32 (f) The Attorney General may adopt any rules and procedures  
33 necessary for the administration of this Section.

34 (225 ILCS 460/9) (from Ch. 23, par. 5109)

35 Sec. 9. (a) An action for violation of this Act may be

1 prosecuted by the Attorney General in the name of the people of  
2 the State, and in any such action, the Attorney General shall  
3 exercise all the powers and perform all duties which the  
4 State's Attorney would otherwise be authorized to exercise or  
5 to perform therein.

6 (b) This Act shall not be construed to limit or restrict  
7 the exercise of the powers or the performance of the duties of  
8 the Attorney General which he otherwise is authorized to  
9 exercise or perform under any other provision of law by statute  
10 or otherwise.

11 (c) Whenever the Attorney General shall have reason to  
12 believe that any charitable organization, professional fund  
13 raiser, ~~or~~ professional solicitor, or contributions collection  
14 agent is operating in violation of the provisions of this Act,  
15 or if any of the principal officers of any charitable  
16 organization has refused or failed, after notice, to produce  
17 any records of such organization or there is employed or is  
18 about to be employed in any solicitation or collection of  
19 contributions for a charitable organization any device,  
20 scheme, or artifice to defraud or for obtaining money or  
21 property by means of any false pretense, representation or  
22 promise, or any false statement has been made in any  
23 application, registration or statement required to be filed  
24 pursuant to this Act, in addition to any other action  
25 authorized by law, he may bring in the circuit court an action  
26 in the name, and on behalf of the people of the State of  
27 Illinois against such charitable organization and any other  
28 person who has participated or is about to participate in such  
29 solicitation or collection by employing such device, scheme,  
30 artifice, false representation or promise, to enjoin such  
31 charitable organization or other person from continuing such  
32 solicitation or collection or engaging therein or doing any  
33 acts in furtherance thereof, or to cancel any registration  
34 statement previously filed with the Attorney General.

35 In connection with such proposed action the Attorney  
36 General is authorized to take proof in the manner provided in

1 Section 2-1003 of the Code of Civil Procedure.

2 (d) Upon a showing by the Attorney General in an  
3 application for an injunction that any person engaged in the  
4 solicitation or collection of funds for charitable purposes,  
5 either as an individual or as a member of a copartnership, or  
6 as an officer of a corporation or as an agent for some other  
7 person, or copartnership or corporation, has been convicted in  
8 this State or elsewhere of a felony or of a misdemeanor where  
9 such felony or misdemeanor involved the misappropriation,  
10 misapplication or misuse of the money or property of another,  
11 he may enjoin such persons from engaging in any solicitation or  
12 collection of funds for charitable purposes.

13 (e) The Attorney General may exercise the authority granted  
14 in this Section against any charitable organization or person  
15 which or who operates under the guise or pretense of being an  
16 organization exempted by the provisions of Section 3 and is not  
17 in fact an organization entitled to such an exemption.

18 (f) In any action brought under the provisions of this Act,  
19 the Attorney General is entitled to recover costs for the use  
20 of this State.

21 (g) Any person who knowingly violates this Section may be  
22 enjoined from such conduct, removed from office, enjoined from  
23 acting for charity and subject to punitive damages as deemed  
24 appropriate by the circuit court.

25 (h) Any person who violates this Section shall not be  
26 entitled to keep or receive monies, fees, salaries, commissions  
27 or any compensation, as a result of the solicitations or fund  
28 raising campaigns, and at the request of the Attorney General  
29 such monies, fees, salaries, commissions or any compensation  
30 shall be forfeited and subject to distribution to charitable  
31 use as a court of equity determines.

32 (i) The Attorney General may publish an annual report of  
33 all charitable organizations based on information contained in  
34 reports filed hereunder stating the amount of money each  
35 organization received through solicitation and the amount of  
36 money which was expended on program service activity and the



1 percentage of the solicited assets that were expended on  
2 charitable activity.

3 (j) The Attorney General shall cancel the registration of  
4 any organization, professional fund raiser, ~~or~~ professional  
5 solicitor, or contributions collection agent who violates the  
6 provisions of this Section.

7 (k) Any person who solicits financial contributions or the  
8 sale of merchandise, goods, services, memberships, or  
9 advertisements in violation of the prohibitions of subsection  
10 (d-1) of Section 11 of this Act, or commits false personation,  
11 use of title, or solicitation as defined by Section 17-2 of the  
12 Criminal Code of 1961 shall, in addition to any other penalties  
13 provided for by law, be subject to civil remedy by cause of  
14 action brought by the Attorney General or a Public Safety  
15 Personnel Organization affected by the violation.

16 In addition to equitable relief, a successful claimant or  
17 the Attorney General shall recover damages of triple the amount  
18 collected as a result of solicitations made in violation of  
19 this Act, plus reasonable attorney's fees and costs.

20 A plaintiff in any suit filed under this Section shall  
21 serve a copy of all pleadings on the Attorney General and the  
22 State's Attorney for the county in which the suit is filed.

23 (Source: P.A. 91-301, eff. 7-29-99.)

24 (225 ILCS 460/12) (from Ch. 23, par. 5112)

25 Sec. 12. Registration under this Act shall not be deemed to  
26 constitute an endorsement by the State of Illinois of the  
27 charitable organization, professional fund raiser, ~~or~~  
28 professional solicitor, or contributions collection agent so  
29 registered. It shall be unlawful for any charitable  
30 organization, professional fund raiser, ~~or~~ professional  
31 solicitor, or contributions collection agent to represent,  
32 directly or indirectly, for the purpose of solicitation and  
33 collection of funds for charitable purposes, in any form or  
34 manner whatsoever by advertising or otherwise, that it has  
35 registered or otherwise complied with the provisions of this

1 Act. The Attorney General may, in his discretion, cancel the  
2 registration of any organization, professional fund raiser, ~~or~~  
3 professional solicitor, or contributions collection agent  
4 which or who violates the provisions of this Section. The  
5 Attorney General shall, by rule, set forth the standards by  
6 which he shall make this determination. Such standards shall be  
7 stated as precisely and clearly as practicable, to inform fully  
8 those persons affected.

9 (Source: P.A. 83-1282.)