

SUBJECT: Requiring disclosure by for-profit groups collecting donated goods

COMMITTEE: Business and Industry —favorable, without amendment

VOTE: 8 ayes — Deshotel, Christian, Gattis, Giddings, Keffer, Orr, Quintanilla, S. Turner

0 nays

3 absent — Elkins, England, S. Miller

WITNESSES: For — Lori Henning, Texas Association of Goodwills

Against — None

BACKGROUND: The Business Organizations Code, sec. 1.002 defines a “nonprofit entity” as a nonprofit corporation, nonprofit association, or other entity that is organized solely for charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural, horticultural, and other purposes. Sec. 1.002 defines a “for-profit entity” as an entity other than a non-profit entity.

Sec. 501(a) of the federal Internal Revenue Code exempts nonprofit corporations and trusts from taxation, provided they support charitable activities, do not benefit a private individual or corporation, do not engage in political activities, and meet certain IRS report requirements.

DIGEST: HB 1162 would require a for-profit entity to disclose what portion of the proceeds, if any, from the resale of donated clothing, furniture, or other personal items would benefit a charitable organization. The disclosure notices would be required regardless of whether the donations were accepted from public receptacles or through telephone or mail solicitations.

Public donation receptacles. HB 1162 would prohibit any for-profit entity from using a public receptacle to collect donated clothing or household goods unless a notice was posted on the receptacle disclosing

the use of proceeds from resale of the goods. The for-profit group would be required to disclose that:

- donations would not be for charitable organizations and would be sold for profit;
- what percentage of the proceeds from resale of the donations would be donated to a charitable organization; or
- that the for-profit entity would pay a flat fee to a charitable organization from proceeds of the resale of the donations and how much that fee to the charitable organization would be.

The notices would be required to:

- be permanently and prominently displayed on the front and at least one side of the receptacle;
- be in bold print with letters at least two inches high and one inch wide;
- display the business address, other than a post office box number, and the telephone number of the for-profit entity; and
- disclose how proceeds from the resale of the donation would be allocated among the for-profit group and any charities.

Telephone, door-to-door, and mail solicitations. Any for-profit entity soliciting donations of clothing or household items for resale by telephone or door-to-door would be required to state that donations would not benefit charitable organizations, or if they did, whether a percentage of the proceeds or a flat fee would be paid and how much the percentage and fee would be. Other provisions would require similar disclosures in boldfaced, capital letters in mail solicitations for donated clothing and household goods.

Local restrictions. HB 1162 would not limit the ability of a local government to regulate collection of donated clothing and household goods through ordinance or regulation, provided local standards were compatible with and equal to or more stringent than the provisions of the bill.

Penalties. The bill would provide a civil penalty of up to \$500 for each violation — with each sale of a donated item considered a separate violation — with a penalty of no more than \$2,000 for donated items sold during a single transaction. Other provisions would authorize either the

Attorney General's Office or a county prosecuting attorney where the offense occurred to seek the civil penalty. A court would be required to consider what level of civil penalty would be needed to deter future violations.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 1162 would help end what is essentially a deceptive trade practice preying on those who want to help others. Most would assume that the charity being named on the sign for a clothing drop-off box would be the principal beneficiary of their donations. However, the non-profit may receive only 10 to 12 percent of the proceeds of the resale or only a small fee for the use of their name. HB 1162 would ensure disclosure of whatever contribution to charity that a for-profit organization made from donated clothing or household goods

Mandatory disclosure on how the proceeds from resale of donated clothing and household goods were spent would allow Texans make informed choices on how and when they wanted to help charities. Some donors want the convenience of door-to-door pick up or the donation bin in a parking lot. However, they should be aware of how for-profit entities take advantage of the donors' mistaken belief that all donation bins help charities when they actually keep most or all the proceeds from resale of the clothing and household goods. The for-profit entities compete with charities and take away donations from non-profits that provide needed community services.

Resale retail stores represent a big business. Goodwill's retail sales in Texas exceeded \$110 million last year. The organization's job training and employment programs placed more than 6,000 into permanent jobs. Almost 94,000 Texans were helped by Goodwill programs, including literacy, English as a second language classes, at-risk youth programs, prisoner re-entry and other programs. Loss of donations to for-profit groups means reduced sales at stores and less money for employment and community services.

Charitable organizations must use prudent business practices, including sales of clothing to recycling firms, to maximize income from donated items. Nonprofit groups must meet strict standards to qualify for their 501 (a) non-tax status, and those financial reports are available to donors.

Additional information and consumer rankings are readily available from the Better Business Bureau and other charity watchdogs.

OPPONENTS
SAY:

HB 1162 should require similar disclosure by non-profit organizations of their business practices and use of donated goods.

NOTES:

On March 20, the Senate Business and Commerce Committee reported favorably SB 776 by Averitt, the companion bill, and recommended it for the Senate Local and Uncontested Calendar.