

BILL ANALYSIS

Senate Research Center

C.S.S.B. 776
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Business & Commerce
3/19/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, for-profit companies are authorized to contract with nonprofit entities to solicit donations around the state without having to disclose to the donor what portion of the donation goes to the nonprofit organization. There is no requirement for any disclosure to inform the donor where their donations will go and what percentage of the proceeds will go the charitable organization. These donations are solicited by way of unattended bins, telephone calls, door-to-door visits, and direct mail.

C.S.S.B. 776 requires disclosure for for-profit solicitors and establishes a civil penalty for violations. C.S.S.B. 776 requires solicitors to fully disclose to donors what will be done with the donation or the monies from the re-sale of the donated items. The bill prohibits the civil penalty for each violation from exceeding \$500, with a cap of \$2,000 for a single transaction.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 17, Business & Commerce Code, by adding Subchapter K, as follows:

SUBCHAPTER K. REGULATING THE COLLECTION OR SOLICITATION BY FOR-PROFIT ENTITIES OF CERTAIN PUBLIC DONATIONS

Sec. 17.921. DEFINITIONS. Defines "charitable organization," "for-profit entity," "household goods," and "public donations receptacle."

Sec. 17.922. REQUIRED DISCLOSURE FOR COLLECTIONS THROUGH PUBLIC RECEPTACLE. (a) Prohibits a for-profit entity or individual from using a public donations receptacle to collect donated clothing or household goods and subsequently selling the donated items unless the for-profit entity or individual attaches to the receptacle a notice that is permanently and prominently displayed on the front and at least one side of the receptacle; is in bold print, with letters at least two inches in height and one inch in width; contains the business address, other than a post office box number, and telephone number of the for-profit entity or individual; and contains the appropriate disclosure prescribed by this section in English and Spanish.

(b) Requires that the disclosure required by Subsection (a)(4), if none of the proceeds from the sale of the donated items will be given to a charitable organization, state:

"DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE SOLD FOR PROFIT."

(c) Requires that the disclosure required by Subsection (a)(4), if any of the proceeds from the sale of the donated items will be given to a charitable organization, state:

"DONATIONS ARE TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) AND WILL BE SOLD FOR PROFIT. ___ PERCENT (INSERT PERCENTAGE) OF ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

(d) Requires that the disclosure required by Subsection (a)(4), if the for-profit entity or individual pays to a charitable organization a flat fee that is not contingent on the proceeds generated from the sale of the donated items and the for-profit entity or individual retains a percentage of the proceeds from the sale, state:

"THIS DONATION RECEIPT IS OPERATED BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations are sold for profit by (name of for-profit entity or individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Sec. 17.923. REQUIRED DISCLOSURES FOR TELEPHONE OR DOOR-TO-DOOR SOLICITATIONS. (a) Prohibits a for-profit entity or individual who makes, or directs another person to make, a telephone or door-to-door solicitation requesting that the person solicited donate clothing or household goods, from subsequently selling the donated items unless the solicitor provides to each person solicited, before accepting a donation from the person, the appropriate disclaimer prescribed by this section.

(b) Requires the solicitor, if none of the proceeds from the sale of the donated items will be given to a charitable organization, to state:

"DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE SOLD FOR PROFIT."

(c) Requires the solicitor, if any of the proceeds from the sale of the donated items will be given to a charitable organization, to state:

"DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL BE SOLD FOR PROFIT AND ___ PERCENT (INSERT PERCENTAGE) OF ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

(d) Requires the solicitor, if the for-profit entity or individual pays to a charitable organization a flat fee that is not contingent on the proceeds generated from the sale of the donated items and the for-profit entity or individual retains a percentage of the proceeds from the sale, to state:

"SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations will be sold for profit by (name of for-profit entity or individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Sec. 17.924. REQUIRED DISCLOSURES FOR MAIL SOLICITATIONS. (a) Prohibits a for-profit entity or individual who mails, or directs another person to mail, a solicitation requesting that the recipient donate clothing or household goods from subsequently selling the donated items unless the solicitor includes with the mailed solicitation the appropriate disclosure prescribed by this section, prominently displayed in boldfaced type of capital letters in English and Spanish.

(b) Requires that the disclosure required by Subsection (a), if none of the proceeds from the sale of the donated items will be given to a charitable organization, state:

"DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE SOLD FOR PROFIT."

(c) Requires that the disclosure required by Subsection (a), if any of the proceeds from the sale of the donated items will be given to a charitable organization, state:

"DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL BE SOLD FOR PROFIT AND ___ PERCENT (INSERT PERCENTAGE) OF ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

(d) Requires that the disclosure required by Subsection (a), if the for-profit entity or individual pays to a charitable organization a flat fee that is not contingent on the proceeds generated from the sale of the donated items and the for-profit entity or individual retains a percentage of the proceeds from the sale, state:

"SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations will be sold for profit by (name of for-profit entity or individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Sec. 17.925. LOCAL ORDINANCE OR REGULATION. Prohibits anything in this subchapter from being construed to limit the authority of a local government to adopt an ordinance or regulation relating to the use of public donations receptacles as a collection point for donated clothing or household goods if the ordinance or regulation is compatible with and equal to or more stringent than a requirement prescribed by this subchapter.

Sec. 17.926. CIVIL PENALTY. (a) Provides that a person who violates this subchapter, except as provided by Subsection (b), is liable to this state for a civil penalty in an amount not to exceed \$500 for each violation. Provides that each sale of a donated item is considered a separate violation for purposes of this subsection.

(b) Prohibits the total amount of penalties that may be imposed under Subsection (a) from exceeding \$2,000 for donated items sold during a single transaction.

(c) Requires that the court, in determining the amount of the civil penalty imposed under this section, consider the amount necessary to deter future violations.

(d) Authorizes the attorney general or the prosecuting attorney in the county in which the violation occurs to bring an action to recover the civil penalty imposed under this section. Defines "prosecuting attorney."

SECTION 2. Effective date: September 1, 2009.