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4 **SENATE BILL No. 20**

5
6 By Committee on Judiciary

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8 1-10

9
10 AN ACT concerning the charitable organizations and solicitations act;
11 relating to bonds; **violations of act, penalty; elder or disabled per-**
12 **sons;** amending K.S.A. 17-1764 **and 17-1773** and repealing the exist-
13 ing ~~section~~ **sections**.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 17-1764 is hereby amended to read as follows: 17-
17 1764. No person shall act as a professional fund raiser for a charitable
18 organization or for any religious organization as described in subsection
19 (k) of K.S.A. 17-1762 and amendments thereto before such person has
20 registered with the secretary of state or after the expiration or cancellation
21 of such registration or any renewal of such registration. Applications for
22 registration and reregistration shall be in writing and under oath in the
23 form prescribed by the secretary of state. ~~The applicant, at the time of~~
24 ~~making application, shall file with, and have approval of the secretary of~~
25 ~~state, a bond in the sum of \$5,000, in which the applicant shall be the~~
26 ~~principal obligor, with one or more corporate sureties licensed to do busi-~~
27 ~~ness in this state whose liability in the aggregate will at least equal such~~
28 ~~sum. The bond shall run to the state for the use of the state and to any~~
29 ~~person who may have a cause of action against the obligor of the bond~~
30 ~~for any malfeasance or misfeasance in the conduct of such solicitation.~~
31 ~~The aggregate limit of liability of the surety to the state and to all such~~
32 ~~persons, in no event, shall exceed the sum of such bond. Registration or~~
33 ~~reregistration shall be in effect for a period of one year, or a part thereof,~~
34 ~~expiring on June 30, and may be renewed upon written application, under~~
35 ~~oath, in the form prescribed by the secretary of state and the filing of the~~
36 ~~bond for additional one year periods. Every professional fund raiser re-~~
37 ~~quired to register pursuant to this act shall file an annual written report~~
38 ~~with the secretary of state containing such information as the secretary~~
39 ~~may require by rule and regulation pursuant to K.S.A. 17-1763 and~~
40 ~~amendments thereto.~~

41 **Sec. 2. K.S.A. 17-1773 is hereby amended to read as follows:**
42 **17-1773. (a) The commission of any act or practice declared to be**
43 **a violation of this act shall render the violator liable to the ag-**

1 *grieved contributor, or the state or a county as provided in subsec-*
2 *tion (c), for the payment of a civil penalty, in a sum set by the court*
3 *of not more than ~~\$2,000~~ \$5,000 for each violation. An aggrieved con-*
4 *tributor is not a required party in actions brought by the attorney*
5 *general or a county or district attorney pursuant to this act.*

6 *(b) Any person who willfully violates the terms of any injunc-*
7 *tion or court order issued pursuant to this act shall forfeit and pay*
8 *a civil penalty of not more than \$10,000 per violation, in addition*
9 *to other penalties that may be imposed by the court, as the court*
10 *shall deem necessary and proper. For the purposes of this act, the*
11 *district court issuing an injunction shall retain jurisdiction, and in*
12 *such cases, the attorney general, acting in the name of the state or*
13 *the appropriate county attorney or district attorney may petition*
14 *for recovery of civil penalties.*

15 *(c) In administering and pursuing actions under this act, the*
16 *attorney general and the county attorney or district attorney are*
17 *authorized to sue for and collect reasonable expenses and investi-*
18 *gation fees as determined by the court. Civil penalties or contempt*
19 *penalties sued for and recovered by the attorney general shall be*
20 *paid into the general fund of the state. Civil penalties and contempt*
21 *penalties sued for and recovered by the county attorney or district*
22 *attorney shall be paid into the general fund of the county where the*
23 *proceedings were instigated.*

24 *New Sec. 3. (a) If any person is found to have violated any pro-*
25 *vision of the charitable organizations and solicitations act, and such*
26 *violation is committed against elder or disabled persons, in addition*
27 *to any civil penalty otherwise provided by law, the court may im-*
28 *pose an additional civil penalty not to exceed \$10,000 for each such*
29 *violation.*

30 *(b) In determining whether to impose a civil penalty as provided*
31 *in this section and the amount of such civil penalty, the court shall*
32 *consider the extent to which one or more of the following factors*
33 *are present:*

34 *(1) Whether the defendant's conduct was in disregard of the*
35 *rights of the elder or disabled person;*

36 *(2) whether the defendant knew or should have known that the*
37 *defendant's conduct was directed to an elder or disabled person;*

38 *(3) whether the elder or disabled person was more vulnerable*
39 *to the defendant's conduct because of age, poor health, infirmity,*
40 *impaired understanding, restricted mobility or disability than other*
41 *persons and actually suffered substantial physical, emotional or ec-*
42 *onomic damage resulting from the defendant's conduct;*

43 *(4) whether the defendant's conduct caused an elder or disabled*

1 *person to suffer any of the following:*

2 (A) *Mental or emotional anguish;*

3 (B) *loss of or encumbrance upon a primary residence of the el-*
4 *der or disabled person;*

5 (C) *loss of or encumbrance upon the elder or disabled person's*
6 *principal employment or principal source of income;*

7 (D) *loss of funds received under a pension or retirement plan*
8 *or a government benefits program;*

9 (E) *loss of property set aside for retirement or for personal or*
10 *family care and maintenance;*

11 (F) *loss of assets essential to the health and welfare of the elder*
12 *or disabled person; or*

13 (G) *any other factors the court deems appropriate.*

14 (c) *As used in this section elder person and disabled person shall*
15 *mean the same as provided in K.S.A. 2000 Supp. 50-676, and amend-*
16 *ments thereto.*

17 (d) *The provisions of this section shall be part of and supple-*
18 *mental to the charitable organizations and solicitations act.*

19 Sec. ~~2~~ 4. K.S.A. 17-1764 ~~is~~ *and 17-1773 are* hereby repealed.

20 Sec. ~~3~~ 5. This act shall take effect and be in force from and after its
21 publication in the statute book.

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