

OCCUPATIONS CODE

TITLE 11. REGULATION OF SALES AND SOLICITATION

CHAPTER 1803. SOLICITATION FOR PUBLIC SAFETY ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1803.001. DEFINITIONS. In this chapter:

(1) "Law enforcement personnel" means commissioned peace officers who are employees of government law enforcement agencies.

(2) "Public safety entity" means a public safety promoter or public safety organization.

(3) "Public safety organization" means a nongovernmental organization that, in a manner that reasonably implies that the organization is composed of law enforcement or public safety personnel or that a contribution, purchase, or membership will benefit public safety personnel, uses the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "fireman," "firefighter," "volunteer fireman," "emergency medical service provider," "civilian employee," or any other term:

(A) in its name;

(B) in a publication of the organization; or

(C) in a solicitation for:

(i) contributions to the organization;

(ii) membership in the organization;

(iii) the purchase of advertising in a publication of the organization; or

(iv) the purchase of products or tickets to an event sponsored by or for the benefit of the organization by a solicitor.

(4) "Public safety personnel" means employees or volunteers of a public safety organization, including:

(A) firefighters;

(B) emergency medical service providers; or

(C) civilian employees of a public safety

organization.

(5) "Public safety promoter" means a person who:

(A) is not affiliated with a public safety organization; and

(B) in the name of public safety or in a name associated with public safety makes a request for a donation or the sale of tickets or advertising.

(6) "Public safety publication" means a nongovernmental publication with a name that includes the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "fireman," "firefighter," "volunteer fireman," "emergency medical service provider," "civilian employee," or any other term in a manner that reasonably implies that the publication is published by a public safety organization or benefits public safety.

(7) "Public safety solicitor" means a person who:

(A) contracts for or receives money for providing solicitation services for a public safety entity or public safety publication; and

(B) solicits:

(i) contributions in person, by telephone, by electronic media, or by mail;

(ii) membership in a public safety organization from an individual not employed by a public safety agency of the United States, this state, or a political subdivision of this state; or

(iii) the purchase of:

(a) advertising; or

(b) goods, services, or tickets to an event sponsored by or for the benefit of a public safety organization or for the cause of public safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.002. EFFECT ON MUNICIPAL ORDINANCE. This chapter preempts any municipal ordinance applicable to public safety entities, public safety publications, public safety solicitors, or

solicitations related to a person registered under this chapter.
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS

Sec. 1803.051. REGISTRATION. (a) A public safety entity or public safety publication may not solicit unless the entity or publication:

(1) files a registration statement under Section 1803.053; and

(2) pays a registration fee under Section 1803.054.

(b) A public safety entity or public safety publication may not use a public safety solicitor, and a person may not act as a public safety solicitor unless the solicitor:

(1) files a registration statement and pays the registration fee under Section 1803.055; and

(2) files and maintains a bond under Section 1803.056.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.052. ELIGIBILITY TO USE SOLICITOR. (a) A public safety organization may register under Section 1803.053 and use a public safety solicitor only if the organization is a bona fide membership organization consisting of individual members:

(1) of whom at least five percent or 500 members, whichever is less, are employed as law enforcement personnel or public safety personnel by a public safety agency of the United States, this state, or a political subdivision of this state; and

(2) who have signed membership agreements with the organization and paid an annual membership fee of at least \$10.

(b) A public safety promoter may register under Section 1803.053 and use a public safety solicitor if the disclosure required by Section 1803.101 is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.053. REGISTRATION STATEMENT BY PUBLIC SAFETY ENTITY OR PUBLICATION. (a) Before beginning solicitations, a public safety entity or public safety publication shall file with

the secretary of state:

(1) a registration statement signed by two of its officers or directors; and

(2) if the public safety entity or publisher of the publication, as applicable, is a nonresident, an irrevocable written consent appointing the secretary of state as agent for service of process on the entity or publisher for any action relating to a violation of this chapter.

(b) The registration statement must disclose:

(1) the name, street address, and telephone number of any public safety solicitor for the registering entity;

(2) the name, street address, and telephone number of each public safety organization, public safety publication, or fund for which any part of the contributions will be used, or if there is no organization, publication, or fund, a statement describing how the contributions will be used;

(3) whether the registering entity or fund that the contributions are being solicited for has a federal and state charitable tax exemption;

(4) the name and public safety agency or former agency of each active and retired public safety officer serving on the board of directors or governing body of the registering entity;

(5) the number of members and the percentage of members who are active and retired public safety officers of the United States, this state, or a political subdivision of this state, as determined on December 31 of the year preceding the year in which the registration is made and the contributions are solicited, if the registering entity is a public safety organization;

(6) the name of the local chapter, lodge, association, or group of licensed public safety officers of the public safety organization for which contributions are being solicited, if the registering entity is a public safety organization;

(7) a copy of the most recent tax or informational return filed with the Internal Revenue Service by the registering entity;

(8) the amount of money collected during the previous

year by the registering entity by solicitations of nonmembers of the public safety organization for which the funds were collected and the amount of funds paid as expenses to maintain the solicitation operation;

(9) the amount of money, if known or projected, expected to be collected during the year of filing by the registering entity by nonmember solicitations described by Subdivision (8);

(10) a copy of any contract or agreement between the registering entity and a solicitor; and

(11) if the registering entity is a public safety publication, information on:

(A) the total number of copies of each issue of the publication printed during the previous year;

(B) the frequency of the publication; and

(C) the date and circulation of the most recent issue of the publication.

(c) A registration statement takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Section 1803.054.

(d) A public safety entity or public safety publication shall file an updated statement with the secretary of state not later than the 30th day after the date of a change of street address, phone number, or name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.054. PUBLIC SAFETY ENTITY REGISTRATION FEE. (a) Except as provided by Subsection (b), a public safety entity registering under Section 1803.053 shall pay to the secretary of state an annual registration fee of \$250.

(b) A public safety organization consisting of members who are volunteer firefighters for a local political subdivision and that solicits only in the area of the firefighters' jurisdiction is not required to pay a registration fee.

(c) Subsection (b) does not apply to a statewide association

of volunteer firefighters.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.055. SOLICITOR REGISTRATION STATEMENT AND FEE.

(a) Before beginning solicitations for a public safety entity or public safety publication, a public safety solicitor shall file with the secretary of state a registration statement containing:

(1) the name, street and mailing address, and telephone number of the solicitor;

(2) the name, street and mailing address, and telephone number of each public safety entity or public safety publication for whom the solicitor solicits or will solicit in this state; and

(3) if the solicitor is a nonresident, an irrevocable written consent appointing the secretary of state as agent for service of process on the solicitor for any action pertaining to a violation of this chapter.

(b) The registration statement required by Subsection (a) must be accompanied by:

(1) a \$500 registration fee; and

(2) a bond as required by Section 1803.056.

(c) A registration statement takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (b).

(d) A solicitor shall file an updated statement with the secretary of state not later than the 30th day after the date of a change of street address, mailing address, phone number, or name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.056. SOLICITOR BOND. (a) A public safety

solicitor shall post with the secretary of state a \$10,000 surety bond issued by a surety company authorized to do business in this state.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

SUBCHAPTER C. SOLICITATION RESTRICTIONS

Sec. 1803.101. SOLICITATION DISCLOSURE. (a) An oral or a written disclosure shall be given to each person before the person delivers any consideration to a public safety entity, public safety publication, or public safety solicitor.

(b) A written disclosure must be in contrasting eight-point type or larger.

(c) A disclosure must include:

(1) the name of the public safety organization registered under Section 1803.053, if an organization is involved;

(2) a statement that the promotion is independent of affiliation with any public safety organization, if a public safety promoter is involved;

(3) the name of any public safety solicitor employed;

(4) a general statement of the use of net funds received; and

(5) the name, street address, and statewide telephone number established under Section 1803.102 that a person may use to obtain from the secretary of state additional information on the public safety entity, public safety publication, or public safety solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.102. SOLICITATION INFORMATION HOTLINE. The secretary of state shall establish and operate a toll-free telephone line known as the Solicitation Information Hotline that enables a person to call the hotline number to:

(1) obtain information concerning a public safety entity, public safety publication, or public safety solicitor that has filed a registration statement with the secretary of state under this chapter; or

(2) report an alleged violation of this chapter by a public safety entity, public safety publication, or public safety solicitor.

Sec. 1803.103. PROHIBITED PRACTICES. In soliciting for a public safety entity or public safety publication, a person may not:

(1) use, unless authorized in writing by a public safety agency or public safety organization:

(A) any representation that implies that the contribution is for or on behalf of the agency or organization; or

(B) any emblem, device, or printed matter belonging to or associated with the agency or organization;

(2) use a name, symbol, or statement similar to a name, symbol, or statement used by a public safety agency or organization in a manner intended to confuse or mislead a person being solicited;

(3) knowingly represent or imply that the solicitation proceeds are being used for a purpose other than the purpose for which the funds are actually used;

(4) represent or imply that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not an officer or a member;

(5) use or exploit the fact of filing with the secretary of state in a manner leading a person to believe that filing, in any way, constitutes an endorsement by or approval of the state;

(6) knowingly file incomplete, false, or misleading information in a document required to be filed with the secretary of state under this chapter;

(7) solicit for a public safety entity or public safety publication, or represent that those responding affirmatively to the solicitation will receive favored treatment by public safety personnel;

(8) collect a contribution or membership fee solicited at a person's residence by an in-person or telephone solicitation by means other than payment through the United States mail or parcel post courier;

(9) solicit for a public safety organization in a county in which members of the organization do not have

jurisdiction; or

(10) commit another unfair or deceptive act or practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.104. FAILURE TO FILE TIMELY REPORT. A public safety entity or public safety publication that fails to timely file the information required by this chapter or that files information required by this chapter that is found to contain material misrepresentation may not use a public safety solicitor until it provides or corrects the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 1803.151. AUDIT BY ATTORNEY GENERAL. (a) The attorney general may make a written request for information from a public safety entity, public safety publication, or public safety solicitor to audit or verify a representation contained in a registration statement.

(b) A public safety entity, public safety publication, or public safety solicitor shall provide information requested by the attorney general under Subsection (a) not later than the 10th working day after the date of the attorney general's request.

(c) Wilful failure to provide timely information under this section is a ground for bond forfeiture or suspension of registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.152. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this chapter is a Class A misdemeanor.

(c) A corporation or association may be held criminally responsible for conduct by a person acting on its behalf if the person's conduct:

(1) constitutes an offense under this chapter; and

(2) is done with the knowledge and approval of the

corporation or association.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.153. CIVIL PENALTY AND INJUNCTION. (a) The attorney general may bring an action in a Travis County district court:

(1) for a civil penalty for a violation of this chapter; and

(2) to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is commenced.

(c) Notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.154. CIVIL PENALTIES. (a) A person who violates this chapter or an injunction issued under Section 1803.153 is liable to the state for a civil penalty of not more than:

(1) \$2,500 for a single violation; or

(2) \$10,000 for all of the violations.

(b) If a person found to have violated this chapter or an injunction has filed a bond under this chapter, the suit may be brought against the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.155. SERVICE ON SECRETARY OF STATE. (a) A service of process or pleading served on the secretary of state as the agent for a nonresident public safety solicitor, public safety entity, or public safety publication must be served in triplicate.

(b) The secretary of state shall file one copy in the secretary of state's office and immediately forward the other copies by certified mail, return receipt requested, to the address of the nonresident, as shown on the nonresident's registration statement.

(c) Service on the secretary of state shall be returned not later than the 30th day after the date of service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.