

Legal Alert

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Recent Amendments to Michigan's Charitable Organizations and Solicitations Act

A new registration system was established, as well as increase penalties for noncompliance

By Scott D. Harvey, Attorney

On December 22, 2010, Governor Granholm signed into law amendments to Michigan's Charitable Organizations and Solicitations Act (the Act). The amendments, which become effective on March 30, 2011, impact charitable organizations in several ways and reflect an increasing scrutiny by the state government on the activities of charitable organizations.

Previously under the Act, charitable organizations (generally, most tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code, with a few exceptions) that intended to solicit and receive \$8,000 or more per year in contributions in Michigan were required to obtain a charitable solicitation license through the Michigan Attorney General's office prior to soliciting contributions in Michigan. Failure to obtain a license was a misdemeanor that could result in a fine of \$500 or imprisonment for up to six months, or both.

Under the amendments, charitable organizations will now be required to register with (rather than

be licensed by) the Attorney General. Such registration will not be required until and unless the organization receives more than \$25,000 in contributions in Michigan in any 12-month period (this exception does not apply if the organization's fundraising is conducted by a "professional fundraiser"). As before, there exist other exceptions to the registration requirement.

The registration statement, which has not yet been developed by the Attorney General's office, must contain a variety of information about the organization, including names of its officers and directors, its purposes, all methods by which solicitation will be made, a copy of its annual information return filed with the IRS and, for organizations that receive contributions in excess of \$500,000, audited financial statements (or reviewed statements if contributions are less than \$500,000 but more than \$250,000).

If registered by the Attorney General, the effective date of registration is the date that the registration statement was received by the

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Attorney General's office (thus permitting organizations to solicit contributions while the registration statement is pending). The registration statement expires one year and seven months after the date of the financial statement (or information return) provided by the organization in connection with the registration statement.

The amendments also prohibit a number of activities involving misrepresentations and noncompliance by the organization and significantly enhance the penalties for violations of the Act. Penalties for misdemeanor violations of the Act are increased from \$500 to \$5,000 (with a possible civil fine of up to \$10,000), in addition to possible injunctive relief. In addition, certain violations of the Act

are now a felony, punishable by up to five years in prison or a fine of up to \$20,000, or both.

Finally, the amendments strengthen enforcement of the Act by authorizing the Attorney General to bring a civil action for damages or equitable relief and by permitting county prosecutors to enforce the Act in the same manner as the Attorney General.

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Any questions about how the amendments to the Act may affect a particular organization, or for assistance in complying with its provisions, please do not hesitate to contact Scott or any member of Smith Haughey Rice & Roegge's Business and Individual Planning practice group.



Scott Harvey is a member of Smith Haughey Rice & Roegge's Business and Individual Planning Group. Scott focuses his practice on nonprofit law and represents a number of nonprofit organizations.

He may be reached directly at 231.486.4545 or sharvey@shrr.com.