

BILL ANALYSIS

S.B. 776
By: Averitt
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law authorizes a for-profit company to contract with a nonprofit entity to solicit donations around Texas, but it does not require disclosure to the donor of what portion of the donation goes to the nonprofit entity. These donations are solicited through unattended bins, telephone calls, door-to-door visits, and direct mail.

S.B. 776 requires a for-profit solicitor to disclose to a donor the disposition of donations, and it establishes a civil penalty for a violation of the disclosure requirements. The bill establishes a \$500 cap for each violation and a \$2,000 cap for a single transaction.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 776 amends the Business & Commerce Code to prohibit a for-profit entity or individual from using a public donations receptacle to collect donated clothing or household goods for subsequent sale unless the entity or individual attaches a notice to the receptacle that is permanently and prominently displayed on the front and at least one side of the receptacle, meets certain print type and size requirements, contains the business address and other identifying information of the for-profit entity or individual, and contains the appropriate disclosure as specified in the bill's provisions in English and Spanish. The bill prohibits a for-profit entity or individual who makes, or directs another person to make, a telephone or door-to-door solicitation requesting donations of clothing or household goods from subsequently selling the donated items unless the solicitor provides the appropriate disclaimer to each person solicited before accepting a donation. The bill prohibits a for-profit entity or individual who mails, or directs another person to mail, a solicitation requesting donations of clothing or household goods from subsequently selling the donated items unless the solicitor includes the appropriate disclosure in English and Spanish, prominently displayed in boldfaced type or capital letters, with the mailed solicitation. The bill provides the required language for a disclosure on a public donations receptacle, a solicitor's disclaimer, and on a mailed solicitation request and specifies the required disclosure language based on a certain amount or percentage of the proceeds from the sale of the donated items given to a charitable organization, if any.

S.B. 776 establishes that its provisions do not 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 these provisions.

S.B. 776 creates a civil penalty in an amount not to exceed \$500 for each violation of the disclosure requirements where each sale of a donated item is considered a separate violation, but prohibits the total amount of penalties imposed for donated items sold during a single transaction

from exceeding \$2,000. The bill requires a court to consider the amount necessary to deter future violations when determining the amount of the civil penalty imposed. The bill 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.

S.B. 776 defines "charitable organization," "for-profit entity," "household goods," "public donations receptacle," and "prosecuting attorney."

EFFECTIVE DATE

September 1, 2009.