

By: Averitt

S.B. No. 776

A BILL TO BE ENTITLED

AN ACT

relating to regulating the collection or solicitation of donated goods subsequently sold by for-profit entities or individuals; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 17, Business & Commerce Code, is amended by adding Subchapter K to read as follows:

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

Sec. 17.921. DEFINITIONS. In this subchapter:

(1) "Charitable organization" means an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c) of that code.

(2) "For-profit entity" has the meaning assigned by Section 1.002, Business Organizations Code.

(3) "Household goods" mean furniture, furnishings, or personal effects used or for use in a dwelling.

(4) "Public donations receptacle" means a large container or bin in a parking lot or public place that is intended for use as a collection point for clothing or household goods donated by the public.

Sec. 17.922. REQUIRED DISCLOSURE FOR COLLECTIONS THROUGH PUBLIC RECEPTACLE. (a) A for-profit entity or individual may not

1 use a public donations receptacle to collect donated clothing or  
2 household goods and subsequently sell the donated items unless the  
3 for-profit entity or individual attaches to the receptacle a notice  
4 that:

5 (1) is permanently and prominently displayed on the  
6 front and at least one side of the receptacle;

7 (2) is in bold print, with letters at least two inches  
8 in height and one inch in width;

9 (3) contains the business address, other than a post  
10 office box number, and telephone number of the for-profit entity or  
11 individual; and

12 (4) contains the appropriate disclosure prescribed by  
13 this section.

14 (b) If none of the proceeds from the sale of the donated  
15 items will be given to a charitable organization, the disclosure  
16 required by Subsection (a)(4) must state:

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

19 (c) If any of the proceeds from the sale of the donated items  
20 will be given to a charitable organization, the disclosure required  
21 by Subsection (a)(4) must state:

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

25 (d) If the for-profit entity or individual pays to a  
26 charitable organization a flat fee that is not contingent on the  
27 proceeds generated from the sale of the donated items, and the

1 for-profit entity or individual retains a percentage of the  
2 proceeds from the sale, the disclosure required by Subsection  
3 (a)(4) must state:

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

9 Sec. 17.923. REQUIRED DISCLOSURES FOR TELEPHONE OR  
10 DOOR-TO-DOOR SOLICITATIONS. (a) A for-profit entity or individual  
11 who makes, or directs another person to make, a telephone or  
12 door-to-door solicitation requesting that the person solicited  
13 donate clothing or household goods may not subsequently sell the  
14 donated items unless the solicitor provides to each person  
15 solicited, before accepting a donation from the person, the  
16 appropriate disclaimer prescribed by this section.

17 (b) If none of the proceeds from the sale of the donated  
18 items will be given to a charitable organization, the solicitor  
19 must state:

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

22 (c) If any of the proceeds from the sale of the donated items  
23 will be given to a charitable organization, the solicitor must  
24 state:

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

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

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

11 Sec. 17.924. REQUIRED DISCLOSURES FOR MAIL SOLICITATIONS.

12 (a) A for-profit entity or individual who mails, or directs another  
13 person to mail, a solicitation requesting that the recipient donate  
14 clothing or household goods may not subsequently sell the donated  
15 items unless the solicitor includes with the mailed solicitation  
16 the appropriate disclosure prescribed by this section, prominently  
17 displayed in boldfaced type or capital letters.

18 (b) If none of the proceeds from the sale of the donated  
19 items will be given to a charitable organization, the disclosure  
20 required by Subsection (a) must state:

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

23 (c) If any of the proceeds from the sale of the donated items  
24 will be given to a charitable organization, the disclosure required  
25 by Subsection (a) must state:

26 "DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL  
27 BE SOLD FOR PROFIT AND \_\_\_\_\_ PERCENT (INSERT PERCENTAGE) OF ALL

1 PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

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

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

13 Sec. 17.925. LOCAL ORDINANCE OR REGULATION. Nothing in  
14 this subchapter shall be construed to limit the authority of a local  
15 government to adopt an ordinance or regulation relating to the use  
16 of public donations receptacles as a collection point for donated  
17 clothing or household goods if the ordinance or regulation is  
18 compatible with and equal to or more stringent than a requirement  
19 prescribed by this subchapter.

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

25 (b) The total amount of penalties that may be imposed under  
26 Subsection (a) may not exceed \$2,000 for donated items sold during a  
27 single transaction.

1        (c) In determining the amount of the civil penalty imposed  
2 under this section, the court shall consider the amount necessary  
3 to deter future violations.

4        (d) The attorney general or the prosecuting attorney in the  
5 county in which the violation occurs may bring an action to recover  
6 the civil penalty imposed under this section. In this subsection,  
7 "prosecuting attorney" has the meaning assigned by Section 41.101,  
8 Government Code.

9        SECTION 2. This Act takes effect September 1, 2009.