

1-1 By: Averitt S.B. No. 776
1-2 (In the Senate - Filed February 10, 2009; March 4, 2009,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 20, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 20, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 776 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to regulating the collection or solicitation of donated
1-11 goods subsequently sold by for-profit entities or individuals;
1-12 providing a civil penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 17, Business & Commerce Code, is amended
1-15 by adding Subchapter K to read as follows:

1-16 SUBCHAPTER K. REGULATING THE COLLECTION OR SOLICITATION BY
1-17 FOR-PROFIT ENTITIES OF CERTAIN PUBLIC DONATIONS

1-18 Sec. 17.921. DEFINITIONS. In this subchapter:

1-19 (1) "Charitable organization" means an organization
1-20 that is exempt from federal income tax under Section 501(a) of the
1-21 Internal Revenue Code of 1986 by being listed as an exempt
1-22 organization in Section 501(c) of that code.

1-23 (2) "For-profit entity" has the meaning assigned by
1-24 Section 1.002, Business Organizations Code.

1-25 (3) "Household goods" mean furniture, furnishings, or
1-26 personal effects used or for use in a dwelling.

1-27 (4) "Public donations receptacle" means a large
1-28 container or bin in a parking lot or public place that is intended
1-29 for use as a collection point for clothing or household goods
1-30 donated by the public.

1-31 Sec. 17.922. REQUIRED DISCLOSURE FOR COLLECTIONS THROUGH
1-32 PUBLIC RECEPTACLE. (a) A for-profit entity or individual may not
1-33 use a public donations receptacle to collect donated clothing or
1-34 household goods and subsequently sell the donated items unless the
1-35 for-profit entity or individual attaches to the receptacle a notice
1-36 that:

1-37 (1) is permanently and prominently displayed on the
1-38 front and at least one side of the receptacle;

1-39 (2) is in bold print, with letters at least two inches
1-40 in height and one inch in width;

1-41 (3) contains the business address, other than a post
1-42 office box number, and telephone number of the for-profit entity or
1-43 individual; and

1-44 (4) contains the appropriate disclosure prescribed by
1-45 this section in English and Spanish.

1-46 (b) If none of the proceeds from the sale of the donated
1-47 items will be given to a charitable organization, the disclosure
1-48 required by Subsection (a)(4) must state:

1-49 "DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE
1-50 SOLD FOR PROFIT."

1-51 (c) If any of the proceeds from the sale of the donated items
1-52 will be given to a charitable organization, the disclosure required
1-53 by Subsection (a)(4) must state:

1-54 "DONATIONS ARE TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL)
1-55 AND WILL BE SOLD FOR PROFIT. _____ PERCENT (INSERT PERCENTAGE) OF
1-56 ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

1-57 (d) If the for-profit entity or individual pays to a
1-58 charitable organization a flat fee that is not contingent on the
1-59 proceeds generated from the sale of the donated items and the
1-60 for-profit entity or individual retains a percentage of the
1-61 proceeds from the sale, the disclosure required by Subsection
1-62 (a)(4) must state:

1-63 "THIS DONATION RECEPTACLE IS OPERATED BY (NAME OF FOR-PROFIT

2-1 ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE
 2-2 ORGANIZATION). Donations are sold for profit by (name of
 2-3 for-profit entity or individual) and a flat fee of (insert amount)
 2-4 is paid to (name of charitable organization)."

2-5 Sec. 17.923. REQUIRED DISCLOSURES FOR TELEPHONE OR
 2-6 DOOR-TO-DOOR SOLICITATIONS. (a) A for-profit entity or
 2-7 individual who makes, or directs another person to make, a
 2-8 telephone or door-to-door solicitation requesting that the person
 2-9 solicited donate clothing or household goods may not subsequently
 2-10 sell the donated items unless the solicitor provides to each person
 2-11 solicited, before accepting a donation from the person, the
 2-12 appropriate disclaimer prescribed by this section.

2-13 (b) If none of the proceeds from the sale of the donated
 2-14 items will be given to a charitable organization, the solicitor
 2-15 must state:

2-16 "DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE
 2-17 SOLD FOR PROFIT."

2-18 (c) If any of the proceeds from the sale of the donated items
 2-19 will be given to a charitable organization, the solicitor must
 2-20 state:

2-21 "DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL
 2-22 BE SOLD FOR PROFIT AND _____ PERCENT (INSERT PERCENTAGE) OF ALL
 2-23 PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

2-24 (d) If the for-profit entity or individual pays to a
 2-25 charitable organization a flat fee that is not contingent on the
 2-26 proceeds generated from the sale of the donated items and the
 2-27 for-profit entity or individual retains a percentage of the
 2-28 proceeds from the sale, the solicitor must state:

2-29 "SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF FOR-PROFIT
 2-30 ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE
 2-31 ORGANIZATION). Donations will be sold for profit by (name of
 2-32 for-profit entity or individual) and a flat fee of (insert amount)
 2-33 is paid to (name of charitable organization)."

2-34 Sec. 17.924. REQUIRED DISCLOSURES FOR MAIL SOLICITATIONS.
 2-35 (a) A for-profit entity or individual who mails, or directs
 2-36 another person to mail, a solicitation requesting that the
 2-37 recipient donate clothing or household goods may not subsequently
 2-38 sell the donated items unless the solicitor includes with the
 2-39 mailed solicitation the appropriate disclosure prescribed by this
 2-40 section, prominently displayed in boldfaced type or capital letters
 2-41 in English and Spanish.

2-42 (b) If none of the proceeds from the sale of the donated
 2-43 items will be given to a charitable organization, the disclosure
 2-44 required by Subsection (a) must state:

2-45 "DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE
 2-46 SOLD FOR PROFIT."

2-47 (c) If any of the proceeds from the sale of the donated items
 2-48 will be given to a charitable organization, the disclosure required
 2-49 by Subsection (a) must state:

2-50 "DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL
 2-51 BE SOLD FOR PROFIT AND _____ PERCENT (INSERT PERCENTAGE) OF ALL
 2-52 PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

2-53 (d) If the for-profit entity or individual pays to a
 2-54 charitable organization a flat fee that is not contingent on the
 2-55 proceeds generated from the sale of the donated items and the
 2-56 for-profit entity or individual retains a percentage of the
 2-57 proceeds from the sale, the disclosure required by Subsection (a)
 2-58 must state:

2-59 "SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF FOR-PROFIT
 2-60 ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE
 2-61 ORGANIZATION). Donations will be sold for profit by (name of
 2-62 for-profit entity or individual) and a flat fee of (insert amount)
 2-63 is paid to (name of charitable organization)."

2-64 Sec. 17.925. LOCAL ORDINANCE OR REGULATION. Nothing in
 2-65 this subchapter shall be construed to limit the authority of a local
 2-66 government to adopt an ordinance or regulation relating to the use
 2-67 of public donations receptacles as a collection point for donated
 2-68 clothing or household goods if the ordinance or regulation is
 2-69 compatible with and equal to or more stringent than a requirement

3-1 prescribed by this subchapter.

3-2 Sec. 17.926. CIVIL PENALTY. (a) Except as provided by
3-3 Subsection (b), a person who violates this subchapter is liable to
3-4 this state for a civil penalty in an amount not to exceed \$500 for
3-5 each violation. Each sale of a donated item is considered a
3-6 separate violation for purposes of this subsection.

3-7 (b) The total amount of penalties that may be imposed under
3-8 Subsection (a) may not exceed \$2,000 for donated items sold during a
3-9 single transaction.

3-10 (c) In determining the amount of the civil penalty imposed
3-11 under this section, the court shall consider the amount necessary
3-12 to deter future violations.

3-13 (d) The attorney general or the prosecuting attorney in the
3-14 county in which the violation occurs may bring an action to recover
3-15 the civil penalty imposed under this section. In this subsection,
3-16 "prosecuting attorney" has the meaning assigned by Section 41.101,
3-17 Government Code.

3-18 SECTION 2. This Act takes effect September 1, 2009.

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