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H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to certain measures to prevent and reduce fraudulent
charitable solicitations and theft during disasters, including
establishing a voluntary accreditation program for disaster relief
organizations; creating a criminal offense; increasing a criminal
penalty; providing a civil cause of action.

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

ARTICLE 1. SHORT TITLE

SECTION 1.01. This Act shall be known as the Disaster Scam
Response Act.

ARTICLE 2. CONSUMER PROTECTION

SECTION 2.01. Subchapter C, Chapter 418, Government Code,
is amended by adding Section 418.0431 to read as follows:

Sec. 418.0431. EDUCATIONAL MATERIALS ON IDENTIFYING AND
AVOIDING FRAUDULENT CHARITABLE SOLICITATIONS. The division, in
consultation with the consumer protection division of the attorney
general's office, shall create and make available to the public on
the respective agencies' Internet websites educational materials
regarding identifying and avoiding fraudulent charitable
solicitations during a disaster.

SECTION 2.02. Chapter 418, Government Code, is amended by
adding Subchapter L to read as follows:

1 SUBCHAPTER L. VOLUNTARY ACCREDITATION OF DISASTER RELIEF

2 ORGANIZATIONS; FRAUD HOTLINE

3 Sec. 418.401. DEFINITIONS. In this subchapter:

4 (1) "Accreditation" means the accreditation issued to
5 a disaster relief organization under this subchapter.

6 (2) "Accreditation program" means the accreditation
7 program established under this subchapter.

8 (3) "Declared disaster" means:

9 (A) a disaster declared by the president of the
10 United States;

11 (B) a state of disaster declared by the governor
12 under Section 418.014; or

13 (C) a local state of disaster declared by the
14 presiding officer of the governing body of a political subdivision
15 under Section 418.108.

16 Sec. 418.402. VOLUNTARY ACCREDITATION PROGRAM FOR DISASTER
17 RELIEF ORGANIZATIONS. (a) The attorney general, in consultation
18 with the division, shall establish and administer an accreditation
19 program for nonprofit organizations that solicit and accept
20 donations to provide disaster relief services during a declared
21 disaster. The purpose of the accreditation program is to assist the
22 public in identifying reputable nonprofit organizations to which
23 the public may donate to support disaster relief efforts.

24 (b) Participation in the accreditation program is
25 voluntary. A nonprofit organization is not required to obtain
26 accreditation under the program to solicit or accept donations in
27 response to a declared disaster.

1 Sec. 418.403. ELIGIBILITY FOR ACCREDITATION. (a) The
2 attorney general, in consultation with the division and the Texas
3 Nonprofit Council established under Chapter 550, shall by rule
4 establish:

5 (1) eligibility criteria that a nonprofit
6 organization must meet and maintain to qualify for an
7 accreditation;

8 (2) procedures for evaluating accreditation
9 applications;

10 (3) procedures for renewal and revocation of
11 accreditations; and

12 (4) procedures for ensuring the data privacy and
13 security of applicant information.

14 (b) The attorney general may also consult with the emergency
15 management council for purposes of adopting rules under this
16 section.

17 Sec. 418.404. APPLICATION FOR ACCREDITATION. A nonprofit
18 organization may apply for an accreditation in the form and manner
19 prescribed by the attorney general.

20 Sec. 418.405. PUBLIC REGISTRY; SEAL. (a) The attorney
21 general shall maintain and regularly update a public registry of
22 nonprofit organizations accredited under this subchapter on the
23 attorney general's Internet website.

24 (b) The attorney general shall prescribe and approve a seal
25 that may be used and displayed by a nonprofit organization
26 accredited under this subchapter.

27 (c) The attorney general shall ensure the registry

1 maintained under Subsection (a) and any materials used by an
2 accredited nonprofit organization to display the seal prescribed by
3 the attorney general under Subsection (b) include a clear and
4 conspicuous statement that accreditation under this subchapter is
5 voluntary and does not constitute this state's endorsement or
6 approval of the organization.

7 Sec. 418.406. CONSIDERATION OF ACCREDITATION STATUS IN
8 CERTAIN APPLICATIONS FOR STATE MONEY. Notwithstanding any other
9 law, a state or local government entity administering a grant or
10 other program that provides state money to support mitigation,
11 preparedness, response, recovery, or other relief efforts in
12 response to a declared disaster may consider a nonprofit
13 organization's accreditation status under this subchapter when
14 evaluating the organization's application for state money under the
15 grant or other program.

16 Sec. 418.407. TRANSPARENCY AND REPORTING. The attorney
17 general, in consultation with the division and the Texas Nonprofit
18 Council established under Chapter 550, shall by rule establish
19 reporting and transparency standards for nonprofit organizations
20 accredited under this subchapter.

21 Sec. 418.408. VOLUNTEER EFFORTS. A state or local
22 government entity may not prohibit or otherwise prevent volunteer
23 efforts during a declared disaster based solely on a nonprofit
24 organization's lack of accreditation under this subchapter.

25 Sec. 418.409. FRAUD HOTLINE. (a) The attorney general
26 shall operate a telephone hotline during each declared disaster for
27 submission of reports of a suspected:

1 (1) fraudulent Internet website or nonprofit
2 organization soliciting charitable donations; and

3 (2) offense under Section 31.03(e)(4)(H) or 32.61,
4 Penal Code.

5 (b) The attorney general shall:

6 (1) maintain a record of each report submitted under
7 this section;

8 (2) review each submitted report of a suspected fraud
9 to determine whether an investigation is warranted;

10 (3) investigate each credible report of a suspected
11 fraud, regardless of the total number of similar complaints
12 submitted;

13 (4) refer any report of a suspected fraud involving a
14 potential criminal offense to an appropriate law enforcement
15 authority; and

16 (5) provide aggregate, non-identifying information to
17 the public on the number and types of reports submitted through the
18 hotline during each declared disaster after the conclusion of the
19 disaster.

20 Sec. 418.410. DATA PRIVACY AND SECURITY. (a) The attorney
21 general by rule shall ensure any personal or organizational
22 information compiled under this subchapter is:

23 (1) limited to information necessary to determine a
24 nonprofit organization's eligibility for initial accreditation and
25 to maintain accreditation; and

26 (2) collected in the least intrusive manner possible.

27 (b) The attorney general shall provide to each nonprofit

organization applying for accreditation clear notice describing:

(1) the specific types of information collected;

(2) the purposes for which the collected information will be used; and

(3) whether and with whom the collected information will be shared.

(c) Information collected under this subchapter may not be:

(1) used for any purpose other than a purpose related to a nonprofit organization's accreditation;

(2) sold, rented, or otherwise provided to a third party for commercial purposes; or

(3) shared with another governmental entity except as required by law or for a purpose directly related to administration of the accreditation program.

(d) The attorney general shall establish and implement reasonable administrative, technical, and physical protections to maintain the confidentiality, integrity, and availability of information collected under this subchapter, including protections for the secure storage, transmission, and disposal of collected information.

(e) The attorney general shall publish in a publicly accessible location on the attorney general's Internet website a description of the data management practices for the accreditation program, including:

(1) the categories of information collected from each nonprofit organization applicant;

(2) authorized uses of the collected information;

1 (3) the length of time the collected information is
2 retained; and

3 (4) the measures in place to protect the collected
4 information from unauthorized access or disclosure.

5 Sec. 418.411. REPORT TO LEGISLATURE. The attorney general
6 shall submit to the legislature an annual report evaluating the
7 operation of the accreditation program under this subchapter,
8 including:

9 (1) the number of nonprofit organizations accredited;

10 (2) use and public recognition of the accreditation
11 seal prescribed by the attorney general;

12 (3) any impact the program may have on charitable
13 giving during a declared disaster, to the extent data is available;

14 (4) any impact on nonprofit organizations in this
15 state, including participation rates, administrative burden, and
16 perceived benefits or challenges of accreditation; and

17 (5) legislative recommendations for improvements to
18 the program.

19 SECTION 2.03. As soon as practicable after the effective
20 date of this Act, the attorney general, in consultation with the
21 Texas Division of Emergency Management and the Texas Nonprofit
22 Council established under Chapter 550, Government Code, shall adopt
23 rules to implement Subchapter L, Chapter 418, Government Code, as
24 added by this article.

25 ARTICLE 3. CRIMINAL PENALTIES FOR DISASTER SCAMS

26 SECTION 3.01. Section 31.03, Penal Code, is amended by
27 amending Subsection (e) and adding Subsection (f-3) to read as

1 follows:

2 (e) Except as otherwise provided by this section
3 [~~Subsections (f) and (f-1)~~], an offense under this section is:

4 (1) a Class C misdemeanor if the value of the property
5 stolen is less than \$100;

6 (2) a Class B misdemeanor if:

7 (A) the value of the property stolen is \$100 or
8 more but less than \$750;

9 (B) the value of the property stolen is less than
10 \$100 and the defendant has previously been convicted of any grade of
11 theft; or

12 (C) the property stolen is a driver's license,
13 commercial driver's license, or personal identification
14 certificate issued by this state or another state;

15 (3) a Class A misdemeanor if the value of the property
16 stolen is \$750 or more but less than \$2,500;

17 (4) a state jail felony if:

18 (A) the value of the property stolen is \$2,500 or
19 more but less than \$30,000, or the property is less than 10 head of
20 sheep, swine, or goats or any part thereof under the value of
21 \$30,000;

22 (B) regardless of value, the property is stolen
23 from the person of another or from a human corpse or grave,
24 including property that is a military grave marker;

25 (C) the property stolen is a firearm;

26 (D) the value of the property stolen is less than
27 \$2,500 and the defendant has been previously convicted two or more

times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election;

(F) the value of the property stolen is less than \$20,000 and the property stolen is:

(i) aluminum;

(ii) bronze;

(iii) copper; or

(iv) brass; ~~or~~

(G) the cost of replacing the property stolen is less than \$30,000 and the property stolen is a catalytic converter; or

(H) the value of the property stolen is less than \$30,000 and the property was stolen in a disaster area and came into the actor's custody, possession, or control by virtue of the actor's status or purported status as a disaster volunteer, as that term is defined by Section 32.61;

(5) a felony of the third degree if the value of the property stolen is \$30,000 or more but less than \$150,000, or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$150,000;

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$150,000; or

(C) a controlled substance, having a value of less than \$150,000, if stolen from:

(i) a commercial building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, nursing facility, or warehouse; or

(ii) a vehicle owned or operated by a wholesale distributor of prescription drugs;

(6) a felony of the second degree if:

(A) the value of the property stolen is \$150,000 or more but less than \$300,000; or

(B) the value of the property stolen is less than \$300,000 and the property stolen is an automated teller machine or the contents or components of an automated teller machine; or

(7) a felony of the first degree if the value of the property stolen is \$300,000 or more.

(f-3) The increase in the punishment provided by Section 12.50 for an offense under this section does not apply if the penalty described by Subsection (e)(4)(H) applies.

SECTION 3.02. Section 31.03(h), Penal Code, is amended by adding Subdivision (9) to read as follows:

(9) "Disaster area" is an area that was, at the time of the offense:

(A) subject to a disaster declaration issued by:

(i) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);

(ii) the governor under Section 418.014,

Government Code; or

(iii) the presiding officer of the governing body of a political subdivision under Section 418.108,

Government Code; or

(B) subject to an emergency evacuation order.

SECTION 3.03. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.61 to read as follows:

Sec. 32.61. MALICIOUS SOLICITATION OF DISASTER VICTIM OR FOR DISASTER RESPONSE OR RECOVERY. (a) In this section:

(1) "Disaster" has the meaning assigned by Section 418.004, Government Code.

(2) "Disaster volunteer" means a person who provides or offers to provide a service at no cost to or at the direction of:

(A) a victim of a disaster; or

(B) a governmental entity engaged in disaster response or recovery.

(3) "Relative" has the meaning assigned by Section 20.01.

(4) "Victim of a disaster" means a person who has suffered harm as a result of a disaster.

(b) A person commits an offense if the person, with the intent to defraud or harm any person:

(1) solicits a donation from another person while inducing the other person to believe that the donation will be used for disaster response or recovery, regardless of the manner of solicitation;

(2) solicits donations on behalf of a donee with the

intent to retain the donations instead of delivering the donations to the donee on whose behalf the donations were solicited;

(3) solicits payment from a victim of a disaster after:

(A) providing services to the victim that are related to disaster response or recovery, including debris removal or transportation; and

(B) inducing the victim to believe that:

(i) the person is a disaster volunteer; and

(ii) the services described by Paragraph (A) would be provided at no cost to the victim; or

(4) solicits payment from a victim of a disaster while inducing the victim to believe that the actor will search for or return to the victim a relative who is believed to be missing as a result of the disaster.

(c) An offense under Subsection (b)(1), (2), or (3) is:

(1) for a first offense, a felony of the third degree; or

(2) for a second or subsequent offense, a felony of the second degree.

(d) Notwithstanding Subsection (c), an offense under Subsection (b)(1), (2), or (3) is a felony of the first degree if the person fabricated an accreditation seal described by Section 418.405, Government Code.

(e) An offense under Subsection (b)(4) is a felony of the first degree.

(f) If conduct that constitutes an offense under this

section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law, or both.

SECTION 3.04. Section 31.03, Penal Code, as amended by this article, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 4. CIVIL LIABILITY FOR MALICIOUS SOLICITATION DURING
DISASTER

SECTION 4.01. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100D to read as follows:

CHAPTER 100D. LIABILITY FOR MALICIOUS SOLICITATION DURING DISASTER

Sec. 100D.001. DEFINITION. In this chapter, "malicious solicitation during a disaster" means conduct that constitutes an offense under Section 32.61, Penal Code.

Sec. 100D.002. LIABILITY. A person who engages in malicious solicitation during a disaster is liable to the donee on whose behalf the payment was collected, the donee's estate, the donor from whom the payment was solicited, or the donor's estate.

Sec. 100D.003. DAMAGES. (a) A court shall award a donee or donee's estate who prevails in an action brought under this chapter:

(1) 300 percent of the amount of donations the defendant collected on behalf of the donee; and

1 (2) reasonable and necessary attorney's fees.

2 (b) A court shall award a donor or a donor's estate who
3 prevails in an action brought under this chapter:

4 (1) 300 percent of the amount of donations the
5 defendant collected from the donor; and

6 (2) reasonable and necessary attorney's fees.

7 (c) Nothing in this section prevents a donee, donee's
8 estate, donor, or donor's estate from pursuing a claim for
9 exemplary damages under Chapter 41 for the defendant's malicious
10 solicitation during a disaster.

11 SECTION 4.02. Chapter 100D, Civil Practice and Remedies
12 Code, as added by this article, applies only to a cause of action
13 that accrues on or after the effective date of this Act.

14 ARTICLE 5. EFFECTIVE DATE

15 SECTION 5.01. This Act takes effect on the 91st day after
16 the last day of the legislative session.