

By: Darby

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, shall by rule  
3 establish:

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

7           (2) procedures for evaluating accreditation  
8 applications; and

9           (3) procedures for renewal and revocation of  
10 accreditations.

11       (b) The attorney general may also consult with the emergency  
12 management council for purposes of adopting rules under this  
13 section.

14       Sec. 418.404. APPLICATION FOR ACCREDITATION. A nonprofit  
15 organization may apply for an accreditation in the form and manner  
16 prescribed by the attorney general.

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

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

24       Sec. 418.406. CONSIDERATION OF ACCREDITATION STATUS IN  
25 CERTAIN APPLICATIONS FOR STATE MONEY. Notwithstanding any other  
26 law, a state or local government entity administering a grant or  
27 other program that provides state money to support mitigation,

1 preparedness, response, recovery, or other relief efforts in  
2 response to a declared disaster may consider a nonprofit  
3 organization's accreditation status under this subchapter when  
4 evaluating the organization's application for state money under the  
5 grant or other program.

6 Sec. 418.407. TRANSPARENCY AND REPORTING. The attorney  
7 general, in consultation with the division, shall by rule establish  
8 reporting and transparency standards for nonprofit organizations  
9 accredited under this subchapter.

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

14 Sec. 418.409. FRAUD HOTLINE. The attorney general shall  
15 operate a telephone hotline during each declared disaster for  
16 submission of reports of a suspected:

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

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

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

26 ARTICLE 3. CRIMINAL PENALTIES FOR DISASTER SCAMS

27 SECTION 3.01. Section 31.03, Penal Code, is amended by

amending Subsection (e) and adding Subsection (f-3) to read as follows:

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

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

(2) a Class B misdemeanor if:

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

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

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

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

(4) a state jail felony if:

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

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

(C) the property stolen is a firearm;

(D) the value of the property stolen is less than

\$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

1 less than \$150,000; or

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

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

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

9 (6) a felony of the second degree if:

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

12 (B) the value of the property stolen is less than  
13 \$300,000 and the property stolen is an automated teller machine or  
14 the contents or components of an automated teller machine; or

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

17 (f-3) The increase in the punishment provided by Section  
18 12.50 for an offense under this section does not apply if the  
19 penalty described by Subsection (e)(4)(H) applies.

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

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

24 (A) subject to a disaster declaration issued by:

25 (i) the president of the United States  
26 under the Robert T. Stafford Disaster Relief and Emergency  
27 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;

1           (2) solicits donations on behalf of a donee with the  
2 intent to retain the donations instead of delivering the donations  
3 to the donee on whose behalf the donations were solicited;

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

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

9                   (B) inducing the victim to believe that:

10                           (i) the person is a disaster volunteer; and

11                           (ii) the services described by Paragraph

12 (A) would be provided at no cost to the victim; or

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

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

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

19 or

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

22           (d) Notwithstanding Subsection (c), an offense under  
23 Subsection (b)(1), (2), or (3) is a felony of the first degree if  
24 the person fabricated an accreditation seal described by Section  
25 418.405, Government Code.

26           (e) An offense under Subsection (b)(4) is a felony of the  
27 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

(2) reasonable and necessary attorney's fees.

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

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

(2) reasonable and necessary attorney's fees.

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

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

ARTICLE 5. EFFECTIVE DATE

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