

SENATE BILL 254

C2

3lr2686
CF HB 72

By: **Senator Hester**

Introduced and read first time: January 25, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2023

CHAPTER _____

1 AN ACT concerning

2 **Business Regulation – Charitable ~~Contribution~~ Definition Organizations**

3 FOR the purpose of altering the definition of “charitable contribution” to exclude ~~donations~~
4 ~~of property made with a certain intent and~~ an authorization for or a discount on the
5 use of certain services or materials, equipment, or facilities for purposes of provisions
6 of law regulating charitable organizations and charitable representatives;
7 authorizing the Maryland Secretary of State to accept certain documentation in place
8 of an audit or review in connection with a charitable organization’s registration
9 statement; and generally relating to charitable ~~contributions~~ organizations.

10 BY repealing and reenacting, without amendments,
11 Article – Business Regulation
12 Section 6–101(a)
13 Annotated Code of Maryland
14 (2015 Replacement Volume and 2022 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Business Regulation
17 Section 6–101(c) and 6–402
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2022 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Business Regulation

6–101.

(a) In this title the following words have the meanings indicated.

(c) (1) “Charitable contribution” means a contribution made on a representation that it will be used for a charitable purpose.

(2) “Charitable contribution” includes the payment, transfer, or enforceable pledge of financial help, including money, credit, property, or services.

(3) “Charitable contribution” does not include:

(i) an unsolicited gift;

(ii) a government grant or government money;

(iii) membership assessments, dues, or fines;

(iv) a payment for property sold or services rendered by a charitable organization, unless the property is sold or the services are rendered in connection with a charitable solicitation; [and]

(v) a public safety contribution as defined in subsection (j) of this section; AND

~~(VI) A DONATION OF PROPERTY THAT IS INTENDED TO BE REDISTRIBUTED WITHOUT CHARGE FOR A BENEVOLENT, EDUCATIONAL, ELEEMOSYNARY, HUMANE, PATRIOTIC, PHILANTHROPIC, OR RELIGIOUS PURPOSE; AND~~

~~(VII) AN AUTHORIZATION FOR OR A DISCOUNT ON THE USE OF SERVICES OR MATERIALS, EQUIPMENT, OR FACILITIES, INCLUDING THOSE RELATING TO:~~

1. ADVERTISING; AND

2. BROADCAST AIRTIME, INCLUDING PUBLIC SERVICE ANNOUNCEMENTS.

6–402.

(a) A registration statement shall be on the form that the Secretary of State provides.

1 (b) Except as provided in subsection (c) of this section, the registration statement
2 shall contain or be accompanied by:

3 (1) the name and address of the charitable organization and of any affiliate,
4 branch, or chapter in the State;

5 (2) the name and address of:

6 (i) each officer, including each principal salaried executive staff
7 officer, and each other person with final responsibility for the custody and final distribution
8 of the charitable contributions made to the charitable organization; or

9 (ii) each person who has custody of the financial records of the
10 charitable organization if the charitable organization does not have a local office in the
11 State;

12 (3) a statement of:

13 (i) the purposes for which the charitable organization was
14 organized;

15 (ii) the purposes for which charitable contributions will be used; and

16 (iii) whether the charitable organization intends to solicit directly or
17 to have a professional solicitor or fund-raising counsel solicit charitable contributions on
18 its behalf;

19 (4) a copy of the articles of incorporation or other governing instrument of
20 the charitable organization;

21 (5) a copy of a letter from the Internal Revenue Service, or other evidence,
22 showing the tax-exempt status of the charitable organization;

23 (6) (i) a copy of federal Form 990 that the charitable organization
24 submits to the Internal Revenue Service; or

25 (ii) information that the charitable organization states on a form
26 that the Secretary of State provides;

27 (7) (i) an audit by an independent certified public accountant if the
28 gross income from charitable contributions in the most recently completed fiscal year is at
29 least \$750,000; or

30 (ii) a review by an independent certified public accountant if the
31 gross income from charitable contributions in the most recently completed fiscal year is at
32 least \$300,000 but less than \$750,000;

(8) an affidavit signed by the chairman, president, or other principal officer attesting to the truth of the registration statement and each supporting document;

(9) (i) a certification that all taxes due from the applicant to the State or to Baltimore City or a county of the State for the preceding fiscal year have been paid, and all taxes the applicant was required to collect and pay over to the State or to Baltimore City or a county of the State for the preceding fiscal year have been collected and paid over; or

(ii) a certification that the taxes due from the applicant to the State or to Baltimore City or a county are under dispute and the dispute has not been finally resolved; and

(10) any other information that the Secretary of State requires by regulation.

(c) The Secretary of State may accept other documentation in place of any item required under subsection (b) of this section, INCLUDING, IN PLACE OF THE AUDIT OR REVIEW REQUIRED BY SUBSECTION (B)(7) OF THIS SECTION, SUPPORTING DOCUMENTS INDICATING, AND AN AFFIDAVIT ATTESTING, THAT:

(1) THE CHARITABLE ORGANIZATION:

(I) PRIMARILY SOLICITS IN-KIND CONTRIBUTIONS;

(II) RECEIVES DONATIONS OF PROPERTY, INCLUDING HOUSEHOLD GOODS, FURNITURE, APPLIANCES, AND CLOTHING, THAT ARE INTENDED TO BE REDISTRIBUTED TO INDIVIDUALS RESIDING IN THE STATE WITHOUT CHARGE;

(III) DOES NOT EMPLOY A PROFESSIONAL SOLICITOR OR FUND-RAISING COUNSEL;

(IV) USED GENERALLY ACCEPTED ACCOUNTING PRINCIPLES TO DETERMINE THE VALUE OF PROPERTY RECEIVED AS CHARITABLE CONTRIBUTIONS DURING THE IMMEDIATELY PRECEDING FISCAL YEAR;

(V) HAS CASH RECEIPTS FROM CHARITABLE CONTRIBUTIONS NOT EXCEEDING \$300,000 AND AMOUNTING TO 20% OR LESS OF THE CHARITABLE ORGANIZATION'S GROSS INCOME DURING THE IMMEDIATELY PRECEDING FISCAL YEAR THAT ARE USED FOR PROGRAM SERVICES OR MANAGEMENT AND GENERAL EXPENSES OF THE CHARITABLE ORGANIZATION, AS SET FORTH UNDER COMAR 01.02.04.04.A AND C;

1 (VI) IS CURRENT AND UP TO DATE IN ALL REGISTRATION AND
2 REPORTING REQUIREMENTS UNDER THIS TITLE;

3 (VII) IS IN GOOD STANDING WITH THE STATE DEPARTMENT OF
4 ASSESSMENTS AND TAXATION, IF APPLICABLE; AND

5 (VIII) HAS TAX-EXEMPT STATUS UNDER § 501(C)(3) OF THE
6 INTERNAL REVENUE CODE;

7 (2) THE CHARITABLE CONTRIBUTIONS OF PROPERTY ARE:

8 (I) DIRECTLY RELATED TO THE PURPOSES FOR WHICH THE
9 CHARITABLE ORGANIZATION WAS ORGANIZED; AND

10 (II) WILL BE USED IN CONDUCTING THE CHARITABLE
11 ORGANIZATION'S PROGRAMS; AND

12 (3) THE GOVERNING BODY OF THE CHARITABLE ORGANIZATION:

13 (I) IS COMPOSED OF AT LEAST THREE INDEPENDENT AND
14 UNRELATED DIRECTORS; AND

15 (II) COMPLETED AN ONBOARDING AND TRAINING PROGRAM
16 DURING THE IMMEDIATELY PRECEDING FISCAL YEAR, PROVIDED INTERNALLY OR
17 EXTERNALLY, THAT COVERED:

18 1. THE CHARITABLE ORGANIZATION'S MISSION;

19 2. THE POLICIES, PROCEDURES, AND OPERATIONS OF
20 THE CHARITABLE ORGANIZATION; AND

21 3. THE DUTIES AND RESPONSIBILITIES OF DIRECTORS
22 AND OFFICERS AS FIDUCIARIES OF THE CHARITABLE CONTRIBUTIONS THAT THE
23 CHARITABLE ORGANIZATION COLLECTS AND SPENDS.

24 (d) The Secretary of State may require an audit or review if the amount of gross
25 income is less than \$750,000.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2023.