Session of 2018

HOUSE BILL No. 2707

By Committee on Judiciary

2-7

1 AN ACT concerning charitable organizations; relating to registration; 2 transfer from secretary of state to the attorney general; amending 3 K.S.A. 17-1763, 17-1764, 17-1765, 17-1769, 17-1771, 17-1772 and 46-236 and K.S.A. 2017 Supp. 17-1762 and repealing the existing 5 sections.

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Be it enacted by the Legislature of the State of Kansas:

8 New Section 1. There is hereby created the attorney general 9 charitable organizations fee fund. The attorney general shall remit all 10 moneys received by or for it from fees, charges or penalties collected 11 pursuant to the charitable organizations and solicitations act, K.S.A. 17-12 1759 et seq., and amendments thereto. Upon receipt of each such 13 remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the attorney general charitable organizations fee 14 fund. All expenditures from the attorney general charitable organizations 15 16 fee fund shall be for the operation of oversight and management of the charitable organizations and solicitations act. 17

18 Sec. 2. K.S.A. 2017 Supp. 17-1762 is hereby amended to read as 19 follows: 17-1762. The following persons shall not be required to register 20 with the secretary of state *attorney general*:

21 State educational institutions under the control and supervision of (a) 22 the state board of regents, unified school districts, educational interlocals, 23 educational cooperatives, area vocational-technical schools, all educational 24 institutions that are accredited by a regional accrediting association or by 25 an organization affiliated with the national commission of accrediting, any 26 foundation having an established identity with any of the aforementioned 27 educational institutions, any other educational institution confining its 28 solicitation of contributions to the student body, alumni, faculty and 29 trustees of such institution, and their families, or a library established 30 under the laws of this state, provided that the annual financial report of 31 such institution or library shall be filed with the attorney general;

(b) fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is confined to their membership. This exemption shall be extended to any subsidiary of a parent or superior organization exempted by this subsection where such solicitation is confined to the membership of the subsidiary, parent or 1 superior organization;

2 (c) persons requesting any contributions for the relief or benefit of 3 any individual, specified by name at the time of the solicitation, if the 4 contributions collected are turned over to the named beneficiary, first 5 deducting reasonable expenses for costs of banquets, or social gatherings, 6 if any, provided all fund raising functions are carried on by persons who 7 are unpaid, directly or indirectly, for such services;

8 (d) any charitable organization which does not intend to solicit and 9 receive and does not actually receive contributions in excess of \$10,000 10 during such organization's tax period, as defined by K.S.A. 17-7501, and amendments thereto, if all of such organization's fund-raising functions are 11 12 carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any 13 14 such tax period is in excess of \$10,000, such organization, within 30 days 15 after the end of such tax period, shall register with the secretary of state attorney general as provided in K.S.A. 17-1763, and amendments thereto; 16

17 (e) any incorporated community chest, united fund, united way or any 18 charitable organization receiving an allocation from an incorporated 19 community chest, united fund or united way;

20 (f) a bona fide organization of volunteer firemen, or a bona fide 21 auxiliary or affiliate of such organization, if all fund-raising activities are 22 carried on by members of such organization or an affiliate thereof and such 23 members receive no compensation, directly or indirectly, therefor;

24 (g) any charitable organization operating a nursery for infants 25 awaiting adoption if all fund-raising activities are carried on by members 26 of such an organization or an affiliate thereof and such members receive 27 no compensation, directly or indirectly, therefor;

28 (h) any corporation established by the federal congress that is 29 required by federal law to submit annual reports of such corporation's 30 activities to congress containing itemized accounts of all receipts and 31 expenditures after being duly audited by the department of defense or 32 other federal department;

33 (i) any girls' club which is affiliated with the girls' club of America, a 34 corporation chartered by congress, if such an affiliate properly files the 35 reports required by the girls' club of America and that the girls' club of 36 America files with the government of the United States the reports 37 required by such federal charter;

38 (i) any boys' club which is affiliated with the boys' club of America, a 39 corporation chartered by congress, if such an affiliate properly files the 40 reports required by the boys' club of America and that the boys' club of America files with the government of the United States the reports 41 required by such federal charter; 42 43

(k) any corporation, trust or organization incorporated or established

for religious purposes, or established for charitable, hospital or educational
 purposes and engaged in effectuating one or more of such purposes, that is

3 affiliated with, operated by or supervised or controlled by a corporation, 4 trust or organization incorporated or established for religious purposes, or 5 to any other religious agency or organization which serves religion by the 6 preservation of religious rights and freedom from persecution or prejudice 7 or by fostering religion, including the moral and ethical aspects of a 8 particular religious faith;

9 (l) the boy scouts of America and the girl scouts of America, 10 including any regional or local organization affiliated therewith;

(m) the young men's christian association and the young women's
 christian association, including any regional or local organization affiliated
 therewith;

(n) any licensed medical care facility which is organized as anonprofit corporation under the laws of this state;

(o) any licensed community mental health center or licensed mentalhealth clinic;

(p) any licensed community center for people with intellectual
 disability and its affiliates as determined by the Kansas department for
 aging and disability services;

(q) any charitable organization of employees of a corporation whose
 principal gifts are made to an incorporated community chest, united fund
 or united way, and whose solicitation is limited to such employees;

24 (r) any community foundation or community trust to which 25 deductible contributions can be made by individuals, corporations, public charities and private foundations, as well as other charitable organizations 26 27 and governmental agencies for the overall purposes of the foundation or to 28 particular charitable and endowment funds established under agreement 29 with the foundation or trust for the charitable benefit of the people of a 30 specific geographic area and which is a nonprofit organization exempt 31 from federal income taxation pursuant to section 501(a) of the internal 32 revenue code of 1986, as in effect on the effective date of this act, by 33 reason of qualification under section 501(c)(3) of the internal revenue code 34 of 1986, as in effect on the effective date of this act, and which is deemed 35 a publicly supported organization and not a private foundation within the meaning of section 509(a)(1) of the internal revenue code of 1986, as in 36 37 effect on the effective date of this act;

(s) any charitable organization which does not intend to or does not
 actually solicit or receive contributions from more than 100 persons;

40 (t) any charitable organization the funds of which are used to support41 an activity of a municipality of this state; and

42 (u) the junior league, including any local community organization 43 affiliated therewith. Sec. 3. K.S.A. 17-1763 is hereby amended to read as follows: 17-2 1763. (a) Except for charitable organizations exempt under K.S.A. 17-3 1762, and amendments thereto, no charitable organization shall solicit 4 funds in this state, nor employ a professional fund raiser to solicit funds in 5 this state, for any charitable purpose, unless such organization has filed 6 with the office of the secretary of state of the state of Kansas, a registered 7 statement with the attorney general prior to solicitation.

8 (b) The secretary of state *attorney general* shall prescribe registration 9 forms-which *that* shall be signed and sworn to by two authorized officers 10 of the organization, including the chief fiscal officer, and-which *that* shall 11 include the following information about such organization's activities in 12 this state:

(1) The name of the organization and the name or names under whichit intends to solicit;

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(2) the purpose for which such organization was organized;

(3) the principal mailing address and street address of the
 organization and the mailing addresses and street addresses of any offices
 in this state;

(4) the names and mailing addresses and street addresses of anysubsidiary or subordinate chapters, branches or affiliates in this state;

(5) the place where and the date when the organization was legally
established, the form in which such organization is organized and a
reference to any determination of such organization's tax-exempt status, if
any, under the federal internal revenue code of 1986;

25 (6) the names and mailing addresses and street addresses of the 26 officers, directors, trustees and principal salaried employees of the 27 organization;

(7) the name and mailing address and street address of the personhaving custody of such organization's financial records;

30 (8) the names of the individuals or officers of the organization who31 will have responsibility for the custody of the contributions;

(9) the names of the individuals or officers of the organization whowill have responsibility for the distribution of the contributions;

(10) the names of the individuals or officers of the organization whowill have responsibility for the conduct of solicitation activities;

(11) the general purposes for which the organization intends to solicitcontributions;

(12) a statement indicating whether the organization intends to solicit
 contributions directly or have such solicitation done on such organization's
 behalf by others and naming any professional fund raiser the organization
 intends to use;

42 (13) a statement indicating whether the organization is authorized by 43 any other governmental authority to solicit contributions and whether such 1 organization is or has ever been enjoined by any court from soliciting 2 contributions;

3 (14) the cost of fund raising incurred or anticipated to be incurred by 4 the organization, including a statement of such costs as a percentage of 5 contributions received; and

6 (15) a copy of the federal income tax return of the charitable 7 organization, if the charitable organization is required to file such; 8 otherwise a financial statement covering complete disclosure of the fiscal activities of the organization during the preceding year. The financial 9 statement shall be submitted on forms approved by the secretary of state 10 attorney general, signed and sworn by at least two authorized officers of 11 the organization, including the chief fiscal officer. Such financial statement 12 shall include a balance sheet and statement of income and expense, clearly 13 setting forth the following: Gross receipts and gross income from all 14 15 sources, broken down into total receipts and income from each separate 16 solicitation project or source; cost of administration; cost of solicitation; 17 cost of programs designed to inform or educate the public; funds or 18 properties transferred out of this state, with explanation as to recipient and 19 purpose; and total net amount disbursed or dedicated for each major 20 purpose, charitable or otherwise.

(c) A charitable organization that received contributions in excess of \$500,000 during the organization's most recently completed fiscal year shall file, in addition to the federal income tax returns or the statement required by subsection (b), an audited financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and the opinion of an independent certified public accountant on the financial statement.

(d) Upon receipt of any such registration, the secretary of stateattorney general shall issue a charitable solicitation license and identification number. All certificates of registration and identification numbers issued to charitable organizations shall expire on the last day of the sixth month following the month in which the fiscal year of the charitable organization ends.

(e) Every charitable organization required to register with the
 secretary of state attorney general shall pay a fee of \$20 with each
 registration.

(f) (1) The secretary of state attorney general may adopt rules and
 regulations necessary for the administration of this act.

(2) All rules and regulations, orders, directives and standards of the
secretary of state relating to charitable organizations, which rules and
regulations, orders, directives and standards were in existence
immediately preceding the effective date of this act, shall continue to be
effective and shall be deemed to be the rules and regulations, orders,

1 directives and standards of the attorney general until amended, revoked or 2 nullified pursuant to law.

3 Sec. 4. K.S.A. 17-1764 is hereby amended to read as follows: 17-1764. No person shall act as a professional fund raiser for a charitable 4 5 organization or for any religious organization as described in-subsection 6 (k) of K.S.A. 17-1762(k), and amendments thereto, before such person has 7 registered with the secretary of state attorney general or after the 8 expiration or cancellation of such registration or any renewal of such registration. Applications for registration and reregistration shall be in 9 writing and under oath in the form prescribed by the secretary of state 10 attorney general. Registration or reregistration shall be in effect for a 11 12 period of one year, or a part thereof, expiring on June 30, and may be renewed upon written application, under oath, in the form prescribed by 13 the secretary of state attorney general for additional one year periods. 14 Every professional fund raiser required to register pursuant to this act shall 15 16 file an annual written report with the secretary of state attorney general containing such information as the secretary attorney general may require 17 by rule and regulation pursuant to K.S.A. 17-1763, and amendments 18 19 thereto.

20 Sec. 5. K.S.A. 17-1765 is hereby amended to read as follows: 17-21 1765. No person shall act as a professional solicitor in the employ of a 22 professional fund raiser before such person has registered with the 23 secretary of state attorney general or after the expiration or cancellation of such registration or any renewal of such registration. Application for 24 25 registration or reregistration shall be in writing, under oath and in the form prescribed by the secretary of state attorney general. Upon receipt of any 26 27 such registration, the secretary of state attorney general shall issue a 28 professional solicitor's license and identification number. Such registration 29 or reregistration shall be in effect for a period of one year, or a part thereof, expiring on June 30, and may be renewed upon written application, under 30 31 oath, in the form prescribed by the secretary of state attorney general for 32 an additional one-year period.

Sec. 6. K.S.A. 17-1769 is hereby amended to read as follows: 17 The following acts and practices are hereby declared unlawful as
 applied to the planning, conduct or execution of any solicitation or
 charitable purpose:

(a) Operating in violation of, or failing to comply with, any of therequirements of this act;

(b) utilizing any deceptive acts or practices whether or not any person
has in fact been misled. Deceptive acts or practices include, but are not
limited to, the following:

42 (1) The intentional use in any solicitation of exaggeration, innuendo43 or ambiguity as to a material fact; and

1 (2) the intentional failure to state a material fact, or the intentional 2 concealment, suppression or omission of a material fact in any solicitation;

3 (c) utilizing any unconscionable acts or practices. An unconscionable 4 act or practice violates this act whether it occurs before, during or after the 5 solicitation.

6 (1) The unconscionability of an act or practice is a question for the 7 court.

8 (2) In determining whether an act or practice is unconscionable, the 9 court shall consider circumstances which the charitable organization or 10 fund raiser knew or had reason to know including, but not limited to, the 11 following:

(A) Taking advantage of a person's inability to reasonably protect
such person's interests because of the person's physical infirmity,
ignorance, illiteracy, inability to understand the language of a solicitation
or similar factor; and

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(B) using undue pressure in soliciting;

(d) utilizing any representation that implies the contribution is for or
on behalf of a charitable organization or utilizing any emblem, device or
printed matter belonging to or associated with a charitable organization,
without obtaining authorization in writing from the charitable
organization;

(e) utilizing a name, symbol or statement so closely related or similar
to that used by another charitable organization that the use thereof would
tend to confuse or mislead a solicited person, whether or not any person
has in fact been misled;

(f) misrepresenting or misleading any person in any manner to
believe that the person on whose behalf a solicitation or charitable purpose
is being conducted is a charitable organization;

(g) using donations for purposes other than those stated in an
 organization's articles of incorporation or current registration statements
 filed with the secretary of state attorney general;

32 (h) using donations for purposes other than those stated in 33 solicitations;

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(i) using donations for other than charitable purposes;

(j) misrepresenting or misleading any person in any matter, to believe
that any other person or governmental unit sponsors, endorses or approves
such solicitation or charitable purpose when such other person has not
given consent in writing to the use of such person's name for these
purposes; and

40 (k) utilizing or exploiting the fact of registrations so as to lead any
41 person to believe that such registration in any manner constitutes an
42 endorsement or approval by the state.

43 Sec. 7. K.S.A. 17-1771 is hereby amended to read as follows: 17-

1 1771. Registration under this act shall not be deemed to constitute an 2 endorsement by the state of Kansas of any registering charitable 3 organization, professional fund raiser or professional solicitor. It shall be 4 unlawful for any charitable organization, professional fund raiser or 5 professional solicitor to represent, directly or indirectly, by advertising or 6 any other manner, that such charitable organization, professional fund 7 raiser or professional solicitor has registered or otherwise complied with 8 the provisions of this act, for the purpose of solicitation and collection of 9 funds for charitable purposes. The secretary of state attorney general shall 10 cancel the registration of any organization, professional fund raiser or professional solicitor that violates the provisions of this section. 11

Sec. 8. K.S.A. 17-1772 is hereby amended to read as follows: 17-1772. The secretary of state *attorney general* may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the secretary of state*attorney general* or to such other like authority.

17 Sec. 9. K.S.A. 46-236 is hereby amended to read as follows: 46-236. 18 No state officer or employee, candidate for state office or state officer elect 19 shall solicit any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service from any person known to have a special 20 21 interest, under circumstances where such officer, employee, candidate or 22 state officer elect knows or should know that a major purpose of the donor 23 in granting the same could be to influence the performance of the official 24 duties or prospective official duties of such officer, employee, candidate or 25 state officer elect.

26 Except when a particular course of official action is to be followed as a 27 condition thereon, this section shall not apply to: (1) Any contribution 28 reported in compliance with the campaign finance act; (2) a commercially 29 reasonable loan or other commercial transaction in the ordinary course of 30 business; (3) any solicitation for the benefit of any charitable organization 31 which is required to file a registration statement with the secretary of state 32 attorney general pursuant to K.S.A. 17-1761, and amendments thereto, or 33 which is exempted from filing such statement pursuant to K.S.A. 17-1762, 34 and amendments thereto, or for the benefit of any educational institution or 35 such institution's endowment association, if such association has qualified 36 as a nonprofit organization under paragraph (3) of subsection (c) of section 37 501(c)(3) of the internal revenue code of 1986, as amended; (4) any 38 solicitation for the benefit of any national nonprofit, nonpartisan 39 organization established for the purpose of serving, informing, educating 40 and strengthening state legislatures in all states of the nation; or (5) any solicitation for the benefit of any national, nonprofit organization 41 42 established for the purpose of serving, informing and educating elected 43 executive branch officials in all states of the nation.

- Sec. 10. K.S.A. 17-1763, 17-1764, 17-1765, 17-1769, 17-1771, 17-1 2
- 1772 and 46-236 and K.S.A. 2017 Supp. 17-1762 are hereby repealed. Sec. 11. This act shall take effect and be in force from and after its 3
- publication in the statute book. 4