S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. OAKS, BARRA, CALHOUN, GIGLIO, HAWLEY, KOLB -- Multi-Sponsored by -- M. of A. ALFANO, BURLING, ERRIGO, FINCH, McDONOUGH, MILLER, WALKER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to registration of charitable organizations and the establishment of a collective trust

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 172 of the executive law is amended by adding a new paragraph (k) to read as follows:

(K) A CLEAR DESCRIPTION OF THE PURPOSE OF THE CHARITABLE ORGANIZATION AND THE USE OF COLLECTED FUNDS.

S 2. The opening paragraph of subdivision 2 of section 175 of the executive law, as amended by chapter 43 of the laws of 2002, is amended to read as follows:

In addition to any other action or proceeding authorized by law and any action or proceeding by the attorney general, the attorney general may bring an action or special proceeding in the supreme court, in the name and in behalf of the people of the state of New York, against a charitable organization and any other persons acting for it or in its behalf to enjoin such organization and/or persons from continuing the solicitation or collection of funds or property or engaging therein or doing any acts in furtherance thereof, WITH ANY FUNDS COLLECTED THEREIN TO BE HELD IN TRUST FOR THE BENEFIT OF THE CHARITABLE ORGANIZATION OR DONEE FOR ANY LENGTH OF TIME DEEMED NECESSARY BY THE ATTORNEY GENERAL, and to cancel any registration statement previously filed with the attorney general pursuant to this article and for an order awarding restitution and damages, penalties and costs; and removing any director or other person responsible for the violation of this article; dissolving a corporation and other relief which the court may deem proper,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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whenever the attorney general shall have reason to believe that the charitable organization or other person:

S 3. Paragraph (c) of subdivision 2 of section 172-a of the executive law, as amended by chapter 43 of the laws of 2002, is amended to read as follows:

(c) Persons requesting any contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are paid to or for the benefit of the named beneficiary; PROVIDED HOWEVER, IF GROSS CONTRIBUTIONS RECEIVED BY SUCH PERSONS SHALL BE IN EXCESS OF FIVE THOUSAND DOLLARS SUCH PERSON SHALL BE DEEMED TO BE A CHARITABLE ORGANIZATION AND SUCH PERSON SHALL WITHIN THIRTY DAYS AFTER THE DATE IT SHALL HAVE RECEIVED TOTAL CONTRIBUTIONS IN EXCESS OF FIVE THOUSAND DOLLARS REGISTER WITH THE ATTORNEY GENERAL AS REQUIRED BY SECTION ONE HUNDRED SEVENTY-TWO OF THIS ARTICLE. Prior to the commencement of any such solicitation, the principal person requesting contributions may file with the attorney general a form, provided by the attorney general, which shall read as follows:

CHARITABLE SOLICITATION FOR THE RELIEF OF AN INDIVIDUAL

_____

NAME AND ADDRESS OF THE PRINCIPAL PERSON REQUESTING CONTRIBUTIONS

_____

PURPOSE OF THE SOLICITATION

_____

NAME AND ADDRESS OF THE PRIMARY INDIVIDUAL BENEFICIARY

_____

NAME AND ADDRESS OF SECONDARY BENEFICIARY (IF ANY)
LIST NO MORE THAN THREE SECONDARY BENEFICIARIES

The principal person requesting contributions may, on such form designate up to three secondary individuals or charitable organizations as charitable beneficiaries who shall be entitled to such contributions in the event circumstances change rendering it impossible or impracticable to use any or all of the money collected for the primary beneficiary. The designation of one or more secondary beneficiaries shall be ineffective unless such form has been filed with the attorney general and all persons requesting contributions shall have informed any person solicited at the time of any solicitation of such filing. In the event that it is or may be impossible or impracticable to use any or all of the money collected for the benefit of the primary beneficiary, and (i) no secondary beneficiary has been properly designated pursuant to this paragraph, or (ii) no secondary beneficiary exists, then the attorney general, the primary beneficiary, or any person who requested contributions may petition the supreme court, on notice to the attorney general, the primary beneficiary if living, any secondary beneficiaries, and the principal person who requested the contributions for an order directing that any moneys remaining shall be transferred to a charitable organization with purposes similar to those for which such contributions were collected. In the event that money collected for the relief of any individual, without any deductions whatsoever, is paid to or for the benefit of the primary beneficiary within sixty days of its receipt, then all require-

ments of this paragraph shall be deemed to have been complied with. For the purposes of this section, the term "principal person requesting the contributions" shall mean any person who is primarily responsible for soliciting funds for the relief of an individual, but shall not include any person who solicits funds when all such funds are subsequently transferred over to a principal person requesting contributions.

S 4. The executive law is amended by adding a new section 174-e to read as follows:

S 174-E. CONSTRUCTIVE TRUST. ANY FUNDS COLLECTED IN EXCESS OF FIVE THOUSAND DOLLARS SHALL BE DEEMED TO BE HELD IN TRUST FOR THE BENEFIT OF THE CHARITABLE ORGANIZATION OR DONEE AND TO BE APPLIED FIRST FOR THE PURPOSE OF THE SOLICITATION BEFORE USING ANY PART OF THE TOTAL OF THE SAME FOR ANY OTHER PURPOSE.

S 5. This act shall take effect immediately.