

48-101-514. Enforcement by secretary of state.

Statute text

(a)(1) The secretary of state, upon the secretary of state's own motion or upon complaint of any person, if the secretary of state has reasonable ground to suspect any violation of this part or any rule thereunder or to aid in enforcement of this part, may publicly or privately investigate as the secretary of state deems necessary any charitable organization, professional solicitor or other person to determine whether such person or organization has filed any registration application or other information required under this part that contains false or misleading statements, has conducted any solicitation of contributions by any unfair, false, misleading or deceptive means or manner, or has otherwise violated any provision of this part. If the secretary of state finds that any application or other information contains false or misleading statements or that a registrant under this part has violated the provisions thereof, the secretary of state may find that such registrant's registration is improper or unlawful. Further, the secretary of state, or the secretary of state's authorized representative, may impose a civil penalty of not more than five thousand dollars (\$5,000) for each and any violation of this part or a rule thereunder. Upon notice to the affected parties of an order by the secretary of state that registration is improper or unlawful and/or that sanctions should be imposed, including civil penalties, the affected party may seek review of that decision by requesting a "contested case" hearing, which shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) Any civil penalty shall be enforced in the following manner:

(A) If a petition for review of the assessment of a penalty through a "contested case" hearing is not filed within thirty (30) days after the date the assessment is served, the affected party shall be deemed to have consented to the assessment and it shall become final;

(B) Whenever any assessment has become final, because of a person's failure to appeal the secretary of state's assessment or otherwise, the secretary of state, in the name of the state, may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(C) The secretary of state may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation or failure to comply occurred, or in the county in which such person resides, has such person's principal place of

conducting solicitations, or has conducted or transacted business or solicitation campaigns.

(b)(1) In conducting a public or private investigation as set forth in this part, the secretary of state or the secretary of state's authorized representative may issue subpoenas and summon witnesses, administer oaths to such witnesses, take the depositions of witnesses, compel the production of documents, exhibits, records or things, and require testimony on any issue related to the investigation.

(2) The secretary of state may visit, investigate or place investigative personnel in the office or places of operation of a charitable organization or professional solicitor.

(3) In addition to the authority to inspect fiscal or other records set forth in § 48-101-509, the secretary of state, in conducting a public or private investigation, may compel by either a request for production of documents, exhibits or things or subpoena duces tecum the presentation or delivery of all books, records, documents or other tangible items, by any person, which the secretary of state believes to be pertinent to the conduct of such investigation.

(4) Subpoenas under this part may be served by registered mail, return receipt requested, to the addressee's registered mailing address, or by such personnel as the secretary of state may designate, or shall be directed for service to the sheriff of the county where such witness resides is conducting a solicitation campaign or is found or where such person in custody of any books, records or papers resides or is found.

(5) In case of a refusal to obey a subpoena issued to any person under this part, any circuit or chancery court of this state within the jurisdiction in which the person refusing to obey the subpoena resides or is found may issue to such person, upon application by the secretary of state, an order requiring such person to appear before the court to show cause why such person should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as a contempt of court.

(6) At any time prior to the return date specified in the secretary of state's subpoena or request for production of documents, exhibits, or things pursuant to this subsection, or within the ten (10) days following service of such subpoena or request, whichever is shorter, any person from whom information has been requested may petition the circuit or chancery court of Davidson County, stating good cause, for a protective order to extend the return date for a reasonable time, or to modify or set aside the subpoena or

request for production. The secretary of state shall receive at least one (1) day's notice of such a petition and shall be given an opportunity to respond.

(7) Any person who has received a subpoena or request for production pursuant to this part, and who, with intent to avoid, evade or prevent compliance, in whole or in part, removes from any place, conceals, withholds, destroys, mutilates, falsifies or by any other means alters any documentary material in the possession, custody or control of any person subject to such notice, is subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500) recoverable by the state in addition to any other appropriate sanction.

(c)(1) Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this part or any rule or order hereunder, and that proceeding would be in the public interest, the secretary of state may in the secretary of state's discretion bring an action, in the name of the state, through the attorney general and reporter in the circuit or chancery court of any county of this state, to:

(A) Enjoin the acts, practices or violations of this part;

(B) Impose civil penalties;

(C) Appropriately remedy damages caused directly or indirectly by any violations of this part;

(D) Prohibit the disposing of any contributions or altering in any other way the financial status of that person or organization;

(E) Enforce compliance with this part or any rule or order hereunder; and

(F) Provide other appropriate relief for violations of this part.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged violation of this part took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of conducting solicitations, conducts, transacts, or has transacted solicitations or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) Upon a showing of a violation of this part, the courts are authorized to:

(A) Issue orders to restrain or enjoin, temporarily or permanently, violations of this part;

(B) Disgorge proceeds from unlawful solicitations;

- (C) Provide restitution to solicitees or injured charitable organizations;
- (D) Forfeit to the state any unlawfully obtained contributions;
- (E) Prohibit the disposal of assets or any contributions or the altering of the financial status of any person or organization in violation of this part;
- (F) Appoint a receiver or conservator of a defendant's assets; and
- (G) Grant other proper equitable relief.

(4) The court may not require the secretary of state to post a bond, and no costs shall be taxed to the secretary of state in actions commenced under this part.

(5) Whenever any order for injunctive relief or other relief is granted in an action, or pursuant to an application by the secretary of state in the name of the state under this part, reasonable costs, including the costs of investigation, and attorney's fees may be awarded to the secretary of state, for use by the secretary of state in defraying the costs of administering this part.

(6) Any knowing violation of the terms of an injunction or order for other relief issued pursuant to subdivision (3) shall be prima facie evidence of a violation of this part in any action brought pursuant to this section and is punishable by a civil penalty of not more than ten thousand dollars (\$10,000) recoverable by the state for each violation, in addition to any other appropriate relief.

(d) The secretary of state, or the secretary of state's designee, may appear before any court of competent jurisdiction empowered to issue warrants of arrest in criminal cases and request the issuance of a warrant; upon presentation of probable cause, the court shall issue a warrant directed to any sheriff, deputy sheriff, or police officer.

History

[Acts 1976, ch. 735, § 14; T.C.A., § 48-2214; Acts 1989, ch. 285, §§ 30-32; 1991, ch. 299, §§ 10, 11; 1993, ch. 252, §§ 6-11; T.C.A., § 48-3-514.]