

# Exhibit 5

4-30

DATE GOVERNOR'S ACTION TAKEN:

APR 30 2002

SENATE VOTE \_\_\_\_ Y \_\_\_\_ N

HOME RULE MESSAGE \_\_\_\_ Y \_\_\_\_ N

DATE \_\_\_\_\_

ASSEMBLY VOTE \_\_\_\_ Y \_\_\_\_ N

DATE \_\_\_\_\_

NEW YORK STATE ASSEMBLY

MEMORANDUM IN SUPPORT OF LEGISLATION

submitted in accordance with Assembly Rule III, Sec 1(e)

**BILL NUMBER:** A871F

**SPONSOR:** Morelle

**TITLE OF BILL:** An act to amend the executive law and the estates, powers and trusts law, in relation to solicitation and collection of charitable contributions and the holding and administering of charitable assets in the state of New York and in relation to disclosure and reports by charitable organizations

**PURPOSE OR GENERAL IDEA OF BILL:** This bill makes provisions to clarify financial reporting and disclosure by charitable organizations.

**SUMMARY OF SPECIFIC PROVISIONS:** Section 1 amends the executive law to include in the definition of “professional fund raiser” persons who have directly or indirectly contracted with charitable organizations to solicit on such organization's behalf.

Section 2 amends the executive law to provide that charitable organizations required to register pursuant to the estates, powers and trusts law (EPTL) shall not be required to register separately with the attorney general, but shall file a form with the attorney general certifying registration pursuant to the EPTL, and shall also provide any additional information necessary. This section requires that such forms include any communication with the internal revenue service regarding an audit, and whether such charity's board of directors or executive personnel have been fined or penalized or barred from solicitation. The registration will also be required to disclose what percentage of funds contributed are allocated to administrative and operating expenses and what percent are allocated to direct charitable purposes. This section also provides for the revocation of registration should a charitable organization fail to file the appropriate forms or the prescribed statement of changes when necessary.

Section 3 makes technical amendments regarding charitable organizations which receive less than twenty-five thousand dollars in gross contributions annually.

Section 4 provides for the re-registration of those organizations whose registrations have been canceled. Furthermore, this section changes the thresholds at which organizations must file financial reports.

Section 5 clarifies provisions whereby a non-resident charitable organization appoints the New York secretary of state as its agent for service of process.

Section 6 extends prohibited activity making untrue material statements on forms and documents required to be filed with the attorney general, and soliciting on behalf of a charitable organization without being in compliance with filing requirements. Additionally, this section prohibits stating in the course of a solicitation that the charitable organization or professional fund raiser is on file with the Attorney General unless all filing requirements have been complied with. Furthermore, this section prohibits the use in a solicitation of a New York State address unless an actual office is maintained in New York State or it is clearly indicated that the New York address is merely a “mail drop”

Section 7 provides for the registration of a professional fund raiser or fund raising counsel on behalf of a charitable organization, and for the posting of a bond by such individual. Additionally, this section provides that such registration will be valid for one year. This section also requires such professional fund raiser to maintain accurate bookkeeping, and for such bookkeeping to be kept on file and made available to the charitable organization.

Section 8 requires that within ten days after contracting with a charitable organization, a professional fund raiser or fund raising counsel shall file a copy of such contract with the attorney general, and provides for the restriction of fund raising activities should the attorney general notify either party of deficiencies in such contract.

Section 9 changes the registration period of a professional solicitor from part of a year (to expire on August 31) to a full year from the date of registration or re-registration.

Section 10 clarifies provisions whereby non-resident professional fund raisers, fund raising counsel, professional solicitor and commercial coventurer appoint the New York Secretary of State as an agent for service of process.

Section 11 makes technical corrections to existing statute.

Section 12 makes technical changes to canceling contracts and to allow the attorney general to recover restitution, damages, costs and attorneys fees.

Section 13 specifies that oral solicitation is included in required disclosure that, upon request, a person may obtain a copy of the last financial report filed by the organization.

Section 14 provides that penalties may be included in any order made pursuant to an action brought by the attorney general.

Section 15 makes technical corrections to existing statute.

Section 16 makes technical corrections to existing statute.

Section 17 amends the EPTL, adding executor and trustee holding and administering property for a charitable trust to the definition of “trustee” for the filing of financial reports by the trustee.

**EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER:** This bill makes a number of technical changes to the present law which clarify language and make for consistent application.

Additionally, this bill:

-specifies that a professional fund raiser is one who contracts with by sub-contracting, letter or other agreement. Currently law is not contract specific, referring to plan, managing, and conducting solicitations for a charitable organization.

-provides that the current requirement of duplicative filing pursuant to the Executive Law and the EPTL is wasteful and need not be done;

-changes the threshold levels at which charitable organizations must file financial reports;

-requires non-resident charitable organizations, professional fund raisers, solicitors, etc. . . to appoint the New York secretary of state as agent for service of process. At present, there is no provision for acquiring jurisdiction over these entities conducting business in New York;

-prevents stating during a solicitation that the entity is registered unless it is true. Neither can a New York address be used unless there is an office here or it is stated that the address is merely a "mail drop". This is new and is intended to enable people to make an informed choice about making a contribution;

-makes the term of registration of the charitable organization, professional fund raiser or solicitor one year from the date of registration or re-registration. This changes the wording of current law, the effect of which could make the term as short as a few weeks.

**JUSTIFICATION:** This legislation would provide necessary clarifications to the registration and solicitation procedures followed by charitable organizations in the state.

**FISCAL IMPLICATIONS:** None.

**EFFECTIVE DATE:** The first day of the first month next succeeding the ninetieth day after it shall have become law.

## B-201 BUDGET REPORT ON BILLS Session Year 2002

### SENATE:

### Introduced by:

### ASSEMBLY:

M of A. Morelle, Destituto, Grannis, Pheffer,

Galef

No. 871-F

Law: Executive (EXEC)

Sections: EXEC 171 (a-d), 172, 173, 173

Estates Powers and Trusts Law (EPTL)

(a-c), 174, 174(a), 175-7, EPTL 8

### Division of the Budget recommendation on the above bill:

Approve: ☒ Veto: ☐ No Objection: ☐ No Recommendation: ☐

#### 1. Subject and Purpose:

This bill clarifies financial reporting and disclosure by charitable organizations and streamlines the filing process by eliminating the current requirement of duplicative filing.

#### 2. Summary of Provisions: