

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

[Chairman Linda W. Cropp, at the request of the Mayor,] Councilmember Phil Mendelson introduced the following bill, which was referred to the Committee on _____ [_____].

To amend the District of Columbia Nonprofit Corporation Act to facilitate investigation of possible violations of the laws governing nonprofit corporations and charitable solicitations, to clarify that nonprofit corporations are to be organized only for nonprofit purposes, to expressly authorize alternatives to corporate dissolution in cases involving nonprofit corporations that have acted contrary to their nonprofit purposes, and to amend the District of Columbia Charitable Solicitation Act to [need summary]; and to amend section 28-3901 of the District of Columbia Official Code to eliminate the judicially[-] created exemption to the Consumer Protection Procedures Act for nonprofit organizations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Nonprofit Organizations Oversight Improvement Amendment Act of [2006]2007”.

Sec. 2. The District of Columbia Nonprofit Corporation Act [~~(Public Law 87-569)~~], approved August 6, 1972 (76 Stat. 266; D.C. Official Code § 29-301.01 et seq.), is amended [to read] as follows:

[~~Section 2 (D.C. Official Code § 29-301.02) is amended by inserting at the end:~~]

[~~“(12) ‘Nonprofit purpose’ means a purpose other than to generate income, profit, or an increase in monetary value~~]

(a) Section 4 (D.C. Official Code § 29-301.04) is amended to read as follows:
“Corporations may be organized under this subchapter for any lawful nonprofit purpose or purposes including, but not limited to, one or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional; commercial; industrial; business; or trade association; mutual improvement; promotion of the arts; except that organizations subject to any of the provisions of the insurance laws of the District may not be organized under this chapter. No corporation may be organized under this subchapter, and no corporation may avail itself of the provisions of this subchapter, if any part of the net earnings of the corporation inures to the benefit of a private shareholder or individual having a personal and private interest in the activities of the corporation.”

(b) Section [4 (D.C. Official Code § 29-301.04) is amended by inserting “, nonprofit” after “lawful”.]

[~~— (c) Subsection 53(a) (D.C. Official Code § 29-301.53(a)) is amended by striking “instituted by the Mayor” and inserting “brought by the Attorney General” in its place, and by striking “when it is made to appear to the court that” and inserting “when the court finds that” in its place.~~]

[~~— (d) Subsection 53(b) (D.C. Official Code § 29-301.53(b)) is amended by striking “filed by the Mayor” and inserting “filed by the Attorney General” in its place, and by striking “the Mayor shall not file” and inserting “the Attorney General shall not file” in its place.~~]**53**
(D.C. Official Code § 29-301.53 is amended as follows:

[~~— (e) New subsections (c) and (d) are added to section 53~~] **(1) Section 53(a)** (D.C. Official Code § 29-301.53)] **(a) is amended** to read as follows:

“**(a)** A court may [place a corporation]**order the involuntary dissolution, placement** in receivership, [impose]**imposition of** a constructive trust on compensation paid to a director, officer, or manager, or grant other injunctive or equitable relief_[5] **against a corporation** in an action brought by the Attorney General in the name of the District of Columbia_[7] when the court finds **by a preponderance of the evidence** that:

[_____“] (1) The franchise of the corporation [has acted or would act in a manner that does not serve, directly or indirectly, or that is inconsistent with,] was procured through fraud;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by this subchapter;

(3) The corporation has failed for 90 days to appoint and maintain a registered agent as provided in this subchapter;

(4) The corporation has failed for 90 days after a change of its registered office or registered agent to deliver to the Mayor a statement of such change;

(5) The corporation has conducted more than an insubstantial amount of activities that are inconsistent with the nonprofit purposes for which the corporation was organized;

[“] (~~2~~)6 The corporation [has] used, maintained, or transferred [or would use, maintain, or transfer,] substantial assets of the corporation in a manner that does not serve, directly or indirectly, or that is inconsistent with, the nonprofit purposes for which the corporation was organized; or

[“] (~~3~~)7 The corporation has paid [or would pay] unreasonable [and excessive] compensation to a director, officer, or manager [or] [_____“~~(4) The corporation has made or would make expenditures whose extravagance, under the circumstances, is inconsistent with the nonprofit purposes for which the corporation was organized.]”~~]

(2) Subsection (b) is amended as follows:

[“(d)](A) Strike the phrase “filed by the Mayor” and insert the phrase “filed by the Attorney General” in its place.

(B) Strike the phrase “the Mayor shall not file” and insert the phrase “the Attorney General shall not file” in its place.

(3) New subsections (c) and (d) are added to read as follows:

“(c) In the course of an investigation to determine whether [there is reason] to bring a court action under this section, **if the Attorney General has reason to believe that the corporation has committed a material violation under this subsection,** the Attorney General may subpoena witnesses, administer oaths, examine an individual under oath, and compel production of records, books, papers, contracts, and other documents. Information obtained pursuant to this authority to subpoena is not admissible in a later criminal proceeding against the person who provides the evidence,

“(d) The Attorney General may petition the Superior Court of the District of Columbia for an order compelling compliance with a subpoena issued pursuant to this authority to subpoena.”

Sec. 3. [~~The~~]**Section 13 (c) of the** District of Columbia Charitable Solicitation Act [~~(Public Law 85-87), approved July 10, 1957 (71 Stat. 281); D.C. Official Code § 44-1701 et seq.~~]**1712 (c)** is amended [~~by amending subsection 13(c) to read~~] as follows:

(a) Designate the existing text as paragraph (1).

(b) A new paragraph (2) is added to read as follows:

“([e]2) The Attorney General for the District of Columbia or any of his assistants is hereby empowered to bring an action or actions in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any person from soliciting in violation of this Act or in violation of any regulation made pursuant to this Act. In the course of an investigation to determine whether [there is reason] to bring an action under this subsection, **if the Attorney General has reason to believe that a corporation has committed a material violation under this Act,** the Attorney General may subpoena witnesses, administer oaths, examine an individual under oath, and compel production of records, books, papers, contracts, and other documents. Information obtained pursuant to this authority to subpoena is not admissible in a later criminal proceeding against the person who provides the evidence.”

Sec. 4. [~~Subsection~~]**Section 28-3901(a)(3)** [~~of Title 28~~] of the District of Columbia Official Code is amended to read as follows:

“(3) ‘merchant’ means a person, whether organized or operating for profit or for a nonprofit purpose, who does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who does or would supply the goods or services which are or would be the subject matter of a trade or practice;”

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-~~233~~206.02(c)(1)), and publication in the District of Columbia Register.