

1 **CHARITABLE SOLICITATION ACT AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Bruce R. Cutler**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to charitable organizations.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ clarifies defined terms;
- 13 ▶ modifies the registration fee for a certified local museum;
- 14 ▶ provides that the Division of Consumer Protection may require an exempt
- 15 organization to file a renewal of a notice of claim of exemption;
- 16 ▶ addresses the financial reporting requirements for a charitable organization;
- 17 ▶ modifies the requirements for a charitable organization and a professional fund
- 18 raiser relating to separate accounts for contributions and receipts for contributions;
- 19 ▶ requires a charitable organization and a professional fund raiser to develop and
- 20 maintain adequate internal controls for receipt, management, and disbursement of
- 21 money; and
- 22 ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 13-22-2, as last amended by Laws of Utah 2001, Chapter 210

- 30 13-22-6, as last amended by Laws of Utah 2009, Chapter 183
- 31 13-22-8, as last amended by Laws of Utah 2014, Chapter 189
- 32 13-22-15, as last amended by Laws of Utah 2001, Chapter 210
- 33 13-22-16, as last amended by Laws of Utah 2001, Chapter 210

34

35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section 13-22-2 is amended to read:

37 **13-22-2. Definitions.**

38 As used in this chapter:

39 (1) (a) "Charitable organization" or "organization" means any person, joint venture,
40 partnership, limited liability company, corporation, association, group, or other entity:

41 (i) ~~[that]~~ who is or holds itself out to be:

42 (A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic,
43 religious or eleemosynary, social welfare or advocacy, public health, environmental or
44 conservation, or civic organization;

45 (B) for the benefit of a public safety, law enforcement, or firefighter fraternal
46 association; or

47 (C) established for any charitable purpose;

48 (ii) who solicits or obtains contributions solicited from the public for a charitable
49 purpose; or

50 (iii) in any manner employs a charitable appeal as the basis of any solicitation or
51 employs an appeal that reasonably suggests or implies that there is a charitable purpose to any
52 solicitation.

53 (b) "Charitable organization" includes a [~~"chapter," "branch," "area," "office," or~~
54 ~~similar "affiliate"~~] chapter, branch, area, office, or similar affiliate or any person [~~soliciting~~
55 who solicits contributions within the state for a charitable organization [~~that has its~~] whose
56 principal place of business is outside the state.

57 (2) "Charitable purpose" means any benevolent, educational, philanthropic, humane,

58 patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental,
 59 conservation, civic, or other charitable objective or for the benefit of a public safety, law
 60 enforcement, or firefighter fraternal association.

61 ~~[(4)]~~ (3) "Charitable sales promotion" means an advertising or sales campaign,
 62 conducted by a commercial co-venturer, which represents that the purchase or use of goods or
 63 services offered by the commercial co-venturer will benefit, in whole or in part, a charitable
 64 organization or purpose.

65 ~~[(3)]~~ (4) (a) "Charitable solicitation" or "solicitation" means any request, directly or
 66 indirectly, for money, credit, property, financial assistance, or any other thing of value on the
 67 plea or representation that it will be used for a charitable purpose. ~~[A charitable solicitation~~
 68 ~~may be made in any manner, including:]~~

69 (b) "Charitable solicitation" or "solicitation" includes:

70 ~~[(a)]~~ (i) any oral or written request, including any request by telephone, radio or
 71 television, or other advertising or communications media;

72 ~~[(b)]~~ (ii) the distribution, circulation, or posting of any handbill, written advertisement,
 73 or publication; ~~[(or)]~~

74 (iii) an application or other request for a grant; or

75 ~~[(c)]~~ (iv) the sale of, offer or attempt to sell, or request of donations in exchange for
 76 any advertisement, ~~[book, card, chance, coupon, device, magazine,]~~ membership,
 77 ~~[merchandise,]~~ subscription, ~~[ticket, flower, flag, button, sticker, ribbon, token, trinket, tag,~~
 78 ~~souvenir, candy,]~~ or ~~[any]~~ other article in connection with which any appeal is made for any
 79 charitable purpose, or the use of the name of any charitable organization or movement as an
 80 inducement or reason for making any purchase donation, or, in connection with any sale or
 81 donation, stating or implying that the whole or any part of the proceeds of any sale or donation
 82 will go to or be donated to any charitable purpose.

83 (5) "Commercial co-venturer" means a person who for profit is regularly and primarily
 84 engaged in trade or commerce other than in connection with soliciting for a charitable
 85 ~~[organizations or purposes]~~ organization or purpose.

86 (6) (a) "Contribution" means the pledge or grant for a charitable purpose of any money
87 or property of any kind, including any of the following:

88 (i) a gift, subscription, loan, advance, or deposit of money or anything of value;

89 (ii) a contract, promise, or agreement, express or implied, whether or not legally
90 enforceable, to make a contribution for charitable purposes; ~~and~~ or

91 (iii) fees, dues, or assessments paid by members, when membership is conferred solely
92 as consideration for making a contribution.

93 (b) "Contribution" does not include:

94 (i) money loaned to a charitable organization by a financial institution in the ordinary
95 course of business; or

96 (ii) fees, dues, or assessments paid by members when membership is not conferred
97 solely as consideration for making a contribution.

98 (7) "Contributor" means any donor, pledgor, purchaser, or other person who makes a
99 contribution.

100 (8) "Director" means the director of the Division of Consumer Protection.

101 (9) "Division" means the Division of Consumer Protection of the Department of
102 Commerce.

103 (10) "Material fact" means information that a person of ordinary intelligence and
104 prudence would consider relevant in deciding whether or not to make a contribution in
105 response to a charitable solicitation.

106 (11) (a) "Professional fund raiser[;]" ~~[except as provided in Subsection (11)(b),]~~ means
107 ~~[any]~~ a person who:

108 (i) for compensation or any other consideration solicits contributions for charitable
109 purposes, or plans or manages the solicitation of contributions for or on behalf of any
110 charitable organization or any other person;

111 (ii) engages in, or ~~[who holds himself out to persons in this state as]~~ represents being
112 independently engaged in, the business of soliciting contributions for a charitable organization;

113 (iii) manages, supervises, or trains any solicitor whether as an employee or otherwise;

114 or

115 (iv) uses a vending device or vending device decal for financial or other consideration
116 that implies a solicitation of contributions or donations for any charitable organization or
117 charitable purposes.

118 (b) "Professional fund raiser" does not include a bona fide officer, director, volunteer,
119 or full-time employee of a charitable organization.

120 (12) (a) "Professional fund raising counsel or consultant" or other comparable
121 designation or title means a person who:

122 (i) for compensation plans, manages, advises, counsels, consults, or prepares material
123 for, or with respect to, the solicitation in this state of contributions for a charitable
124 organization, whether or not at any time the person has custody of contributions from a
125 solicitation;

126 (ii) does not solicit contributions; and

127 (iii) does not employ, procure, or engage any compensated person to solicit or receive
128 contributions.

129 (b) "Professional fund raising counsel or consultant" does not include an attorney,
130 investment counselor, or banker who in the conduct of that person's profession advises a client
131 when actually engaged in the giving of legal, investment, or financial advice.

132 (13) "Vending device" means a container used by a charitable organization or
133 professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or
134 donation whether or not the device offers a product or item in return for the contribution or
135 donation. "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any
136 other container.

137 (14) "Vending device decal" means any decal, tag, or similar designation material that
138 is attached to a vending device, whether or not used or placed by a charitable organization or
139 professional fund raiser, that would indicate that all or a portion of the proceeds from the
140 purchase of items from the vending device will go to a specific charitable organization.

141 Section 2. Section **13-22-6** is amended to read:

142 **13-22-6. Application for registration.**

143 (1) An applicant for registration or renewal of registration as a charitable organization
144 shall:

145 (a) pay an application fee as determined under Section 63J-1-504; and

146 (b) submit an application on a form approved by the division which shall include:

147 (i) the organization's name, address, telephone number, facsimile number, if any, and
148 the names and addresses of any organizations or persons controlled by, controlling, or affiliated
149 with the applicant;

150 (ii) the specific legal nature of the organization, that is, whether [it] the organization is
151 an individual, joint venture, partnership, limited liability company, corporation, association, or
152 other entity;

153 (iii) the names and residence addresses of the officers and directors of the organization;

154 (iv) the name and address of the registered agent for service of process and a consent to
155 service of process;

156 (v) the purpose of the solicitation and use of the contributions to be solicited;

157 (vi) the method by which the solicitation will be conducted and the projected length of
158 time [it] the solicitation is to be conducted;

159 (vii) the anticipated expenses of the solicitation, including all commissions, costs of
160 collection, salaries, and any other items;

161 (viii) a statement of what percentage of the contributions collected as a result of the
162 solicitation are projected to remain available for application to the charitable purposes declared
163 in the application, including a satisfactory statement of the factual basis for the projected
164 percentage;

165 (ix) a statement of total contributions collected or received by the organization within
166 the calendar year immediately preceding the date of the application, including a description of
167 the expenditures made from or the use made of the contributions;

168 (x) a copy of any written agreements with any professional fund raiser involved with
169 the solicitation;

170 (xi) disclosure of any injunction, judgment, or administrative order or conviction of
171 any crime involving moral turpitude with respect to any officer, director, manager, operator, or
172 principal of the organization;

173 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party
174 regarding the use of proceeds for the solicitation or fundraising;

175 (xiii) a statement of whether ~~[or not]~~ the ~~[charity]~~ charitable organization, or ~~[its]~~ the
176 charitable organization's parent foundation, will be using the services of a professional fund
177 raiser or of a professional fund raising counsel or consultant;

178 (xiv) if either the ~~[charity or its]~~ charitable organization or the charitable organization's
179 parent foundation will be using the services of a professional fund raiser or a professional fund
180 raising counsel or consultant:

181 (A) a copy of all agreements related to the services; and

182 (B) an acknowledgment that fund raising in the state will not commence until both the
183 charitable organization, its parent foundation, if any, and the professional fund raiser or
184 professional fund raising counsel or consultant are registered and in compliance with this
185 chapter; ~~[and]~~

186 (xv) any documents required under Section 13-22-15; and

187 ~~[(xv)]~~ (xvi) any additional information the division may require by rule.

188 (2) If any information contained in the application for registration becomes incorrect or
189 incomplete, the applicant or registrant shall, within 30 days after the information becomes
190 incorrect or incomplete, correct the application or file the complete information required by the
191 division.

192 (3) In addition to the registration fee, an organization failing to file a registration
193 application or renewal by the due date or filing an incomplete registration application or
194 renewal shall pay an additional fee of \$25 for each month or part of a month after the date on
195 which the registration application or renewal were due to be filed.

196 (4) Notwithstanding Subsection (1)(a), the registration fee for a certified local museum
197 under Section 9-6-603 is ~~[65% of]~~ \$25 less than the registration fee established under

198 Subsection (1).

199 Section 3. Section 13-22-8 is amended to read:

200 **13-22-8. Exemptions.**

201 (1) Section 13-22-5 does not apply to:

202 (a) a solicitation that an organization conducts among [~~its~~] the organization's own
203 established and bona fide membership exclusively through the voluntarily donated efforts of
204 other members or officers of the organization;

205 (b) a bona fide religious, ecclesiastical, or denominational organization if:

206 (i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;

207 and

208 (ii) the organization is either:

209 (A) a lawfully organized corporation, institution, society, church, or established
210 physical place of worship, at which nonprofit religious services and activities are regularly
211 conducted and carried on;

212 (B) a bona fide religious group:

213 (I) that does not maintain specific places of worship;

214 (II) that is not subject to federal income tax; and

215 (III) not required to file an IRS Form 990 under any circumstance; or

216 (C) a separate group or corporation that is an integral part of an institution that is an
217 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported
218 by funds solicited outside [~~its~~] the group's or corporation's own membership or congregation;

219 (c) a solicitation by a broadcast media owned or operated by an educational institution
220 or governmental entity, or any entity organized solely for the support of that broadcast media;

221 (d) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any
222 person sustaining a life-threatening illness or injury specified by name at the time of
223 solicitation if the entire amount collected without any deduction is turned over to the named
224 person;

225 (e) a political party authorized to transact [~~its~~] the political party's affairs within this

226 state and any candidate and campaign worker of the political party if the content and manner of
227 any solicitation make clear that the solicitation is for the benefit of the political party or
228 candidate;

229 (f) a political action committee or group soliciting funds relating to issues or candidates
230 on the ballot if the committee or group is required to file financial information with a federal or
231 state election commission;

232 (g) any school accredited by the state, any accredited institution of higher learning, or
233 club or parent, teacher, or student organization within and authorized by the school in support
234 of the operations or extracurricular activities of the school;

235 (h) a public or higher education foundation established under Title 53A, State System
236 of Public Education, or Title 53B, State System of Higher Education;

237 (i) a television station, radio station, or newspaper of general circulation that donates
238 air time or print space for no consideration as part of a cooperative solicitation effort on behalf
239 of a charitable organization, whether or not that organization is required to register under this
240 chapter;

241 (j) a volunteer fire department, rescue squad, or local civil defense organization whose
242 financial oversight is under the control of a local governmental entity;

243 (k) any governmental unit of any state or the United States; and

244 (l) any corporation:

245 (i) established by an act of the United States Congress; and

246 (ii) that is required by federal law to submit an annual report:

247 (A) on the activities of the corporation, including an itemized report of all receipts and
248 expenditures of the corporation; and

249 (B) to the United States Secretary of Defense to be:

250 (I) audited; and

251 (II) submitted to the United States Congress.

252 (2) Any organization claiming an exemption under this section bears the burden of
253 proving its eligibility for, or the applicability of, the exemption claimed.

254 (3) Each organization exempt from registration pursuant to this section that makes a
255 material change in ~~[its]~~ the organization's legal status, officers, address, or similar changes shall
256 file a report informing the division of ~~[its]~~ the organization's current legal status, business
257 address, business phone, officers, and primary contact person within 30 days of the change.

258 (4) The division may by rule:

259 (a) require ~~[organizations]~~ an organization that is exempt from registration ~~[pursuant~~
260 ~~to]~~ under this section to:

261 (i) file a notice of claim of exemption; and

262 (ii) file a renewal of a notice of claim of exemption;

263 (b) prescribe the contents of ~~[the]~~ a notice of claim of exemption and a renewal of a
264 notice of claim of exemption; and

265 (c) require a filing fee for ~~[the]~~ a notice[;] of claim of exemption and a renewal of a
266 notice of claim of exemption as determined under Section [63J-1-504](#).

267 Section 4. Section **13-22-15** is amended to read:

268 **13-22-15. Financial reports required.**

269 (1) (a) ~~[Each]~~ Except as provided in Subsection (1)(c), as part of a charitable
270 organization's application for registration or renewal of registration described in Section
271 13-22-6, each charitable organization ~~[registered under this chapter]~~ shall file ~~[each year of~~
272 ~~registration]~~:

273 (i) an annual financial report ~~[or]~~ on a form prescribed by the division;

274 (ii) an IRS Form 990, 990EZ, 990N, or 990PF~~[-The financial report or IRS Form 990,~~
275 ~~990EZ, or 990PF shall be filed with the division within 30 days after the end of the year~~
276 ~~reported . If an annual financial report or IRS Form 990, 990EZ, or 990PF are]; or~~

277 (iii) both the documents described in Subsections (1)(a)(i) and (ii).

278 (b) The division shall instruct each applicant for registration or renewal of registration
279 as a charitable organization on which documents to file under Subsection (1)(a).

280 (c) If a document required under Subsections (1)(a) and (b) is not available during [its]
281 the charitable organization's first year of registration, upon request from the division, the

282 charitable organization shall provide a quarterly financial ~~[reports]~~ report to the division within
283 30 days after the ~~[end of the quarter reported]~~ day on which the division requests the quarterly
284 financial report.

285 (2) Each annual or quarterly financial report shall disclose:

286 (a) the gross amount of contributions received;

287 (b) the amount of contributions disbursed or to be disbursed to each charitable
288 organization or charitable purpose represented;

289 (c) aggregate amounts paid to any professional fund raiser;

290 (d) amounts spent for overhead, expenses, commissions, and similar purposes; and

291 (e) unless disclosed in another part of the charitable organization's application for
292 registration or renewal of registration, the name and address of any professional fund raiser
293 used by the charitable organization.

294 (3) Each report required under this section shall be signed under oath by an officer or
295 principal of the charitable organization.

296 ~~[(4) The registration of any organization that fails to file a timely report or IRS Form~~
297 ~~990, 990EZ, or 990PF as required in this section or files an incomplete report or IRS Form 990,~~
298 ~~990EZ, or 990PF is automatically suspended pending a final order of the division under~~
299 ~~Section 13-22-12. The division may reinstate the registration after receiving:]~~

300 ~~[(a) a report or IRS Form 990, 990EZ, or 990PF fulfilling the requirements of this~~
301 ~~section;]~~

302 ~~[(b) an application for renewed registration; and]~~

303 ~~[(c) a penalty of \$25 for each month or part of a month after the date on which the~~
304 ~~quarterly report or IRS Form 990 was due to be filed.]~~

305 (4) (a) If a charitable organization fails to timely file a quarterly financial report in
306 accordance with Subsection (1)(c), the charitable organization's registration is immediately and
307 automatically suspended pending a final order of the division under Section 13-22-12.

308 (b) The division may reinstate the charitable organization's registration after the
309 division receives:

310 (i) the quarterly financial report requested in accordance with Subsection (1)(c); and
311 (ii) a penalty of \$25 for each full or partial calendar month after the day on which the
312 quarterly report was due.

313 Section 5. Section 13-22-16 is amended to read:

314 **13-22-16. Separate accounts and receipts required.**

315 (1) (a) Each [organization required to be registered under this chapter and each]
316 professional fund raiser shall segregate and maintain all contributed funds in an account held
317 separately from [its] the professional fund raiser's operating account.

318 (b) Each contribution in the control or custody of the professional [solicitor] fund raiser
319 shall, [in its entirety and within] no later than 10 days [of its receipt,] after the day on which the
320 contribution is received, be deposited [in] into an account at a bank or other federally insured
321 financial institution [which shall be] that is in the name of the charitable organization.

322 (c) The charitable organization shall maintain and administer the account and shall
323 have sole control of all withdrawals.

324 (2) Each organization required to be registered under this chapter and each professional
325 fund raiser shall [maintain and use duplicate receipts for contributions of money, securities, and
326 cash equivalents so that one receipt is issued to each contributor and one is maintained by the
327 charitable organization.]:

328 (a) maintain a record of each contribution of money, securities, or cash equivalent
329 sufficient to allow the organization or professional fund raiser to provide a receipt to the
330 contributor upon request or as required by law; and

331 (b) provide a contributor a receipt for each contribution upon request or as required by
332 law.

333 (3) An organization required to be registered under this chapter and each professional
334 fund raiser shall develop and maintain adequate internal controls for receipt, management, and
335 disbursement of money that are reasonable in light of the organization's or professional fund
336 raiser's assets and organizational complexity.