

**Effective 3/19/2018**

**Superseded 2/27/2023**

**13-22-2 Definitions.**

As used in this chapter:

- (1) "Chapter" means a chapter, branch, area, office, or similar affiliate of a charitable organization.
- (2)
  - (a) "Charitable organization" or "organization" means any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:
    - (i) who is or holds itself out to be:
      - (A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;
      - (B) for the benefit of a public safety, law enforcement, or firefighter fraternal association;
      - (C) established for any charitable purpose;
    - (ii) who solicits or obtains contributions solicited from the public for a charitable purpose; or
    - (iii) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.
  - (b) "Charitable organization" includes a chapter or a person who solicits contributions within the state for a charitable organization.
- (3) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of a public safety, law enforcement, or firefighter fraternal association.
- (4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or purpose.
- (5)
  - (a) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose.
  - (b) "Charitable solicitation" or "solicitation" includes:
    - (i) any of the following done, or purporting to be done, for a charitable purpose:
      - (A) any oral or written request, including any request by telephone, radio, television, or other advertising or communications media;
      - (B) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or
      - (C) an application or other request for a grant; or
    - (ii) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, membership, subscription, or other article in connection with which any appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.
- (6) "Commercial co-venturer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for a charitable organization or purpose.

- (7)
- (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:
    - (i) a gift, subscription, loan, advance, or deposit of money or anything of value;
    - (ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; or
    - (iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.
  - (b) "Contribution" does not include:
    - (i) money loaned to a charitable organization by a financial institution in the ordinary course of business; or
    - (ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.
- (8) "Contributor" means a donor, pledgor, purchaser, or other person who makes a contribution.
- (9) "Director" means the director of the Division of Consumer Protection.
- (10) "Division" means the Division of Consumer Protection of the Department of Commerce.
- (11) "Material fact" means information that a person of ordinary intelligence and prudence would consider relevant in deciding whether or not to make a contribution in response to a charitable solicitation.
- (12)
- (a) "Professional fund raiser" means a person who:
    - (i) for compensation or any other consideration, for or on behalf of a charitable organization or any other person:
      - (A) solicits contributions; or
      - (B) promotes or sponsors the solicitation of contributions;
    - (ii)
      - (A) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person; and
      - (B) at any time has custody of a contribution for the charitable organization;
    - (iii) engages in, or represents being independently engaged in, the business of soliciting contributions for a charitable organization;
    - (iv) manages, supervises, or trains any solicitor whether as an employee or otherwise; or
    - (v) uses a vending device or vending device decal for financial or other consideration that implies a solicitation of contributions or donations for any charitable organization or charitable purposes.
  - (b) "Professional fund raiser" does not include:
    - (i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;
    - (ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client regarding legal, investment, or financial advice; or
    - (iii) a person who tangentially prepares materials, including a person who:
      - (A) makes copies;
      - (B) cuts or folds flyers; or
      - (C) creates a graphic design or other artwork without providing strategic or campaign-related input.
- (13)
- (a) "Professional fund raising counsel or consultant" means a person who:

- (i) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person;
  - (ii) does not solicit contributions;
  - (iii) does not at any time have custody of a contribution from solicitation; and
  - (iv) does not employ, procure, or engage any compensated person to solicit or receive contributions.
- (b) "Professional fund raising counsel or consultant" does not include:
- (i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;
  - (ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client regarding legal, investment, or financial advice; or
  - (iii) a person who tangentially prepares materials, including a person who:
    - (A) makes copies;
    - (B) cuts or folds flyers; or
    - (C) creates a graphic design or other artwork without providing strategic or campaign-related input.
- (14)
- (a) "Vending device" means a container used by a charitable organization or professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or donation whether or not the device offers a product or item in return for the contribution or donation.
  - (b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.
- (15) "Vending device decal" means any decal, tag, or similar designation material that is attached to a vending device, whether or not used or placed by a charitable organization or professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.