

## Chapter 22 Charitable Solicitations Act

### 13-22-1 Short title.

This chapter is known as the "Charitable Solicitations Act."

Enacted by Chapter 122, 1987 General Session

### 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; or
      - (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.
  - (c) "Charitable organization" does not include a political 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 private grant or, if made by an individual, a public 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.
- (c) "Charitable solicitation" or "solicitation" does not include an entity's application or other request for a public grant.
- (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)
  - (a) "Exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a federal, state, or local public office or an office in a political organization, or the election of presidential or vice-presidential electors, regardless of whether the individual or the electors are selected, nominated, elected, or appointed.
  - (b) "Exempt function" includes making an expenditure relating to an office described in Subsection (11)(a) which, if incurred by the individual, would be allowable as a deduction under section 162(a) of 26 I.R.C. Sec. 1.162-20.
- (12) "Foreign nonprofit corporation" means the same as that term is defined in Section 16-6a-102.
- (13) "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.
- (14) "Nonprofit corporation" means the same as that term is defined in Section 16-6a-102.
- (15) "Political organization" means an incorporated or unincorporated party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function.
- (16)
  - (a) "Professional fund raiser" means a person who:
    - (i) for compensation or any other consideration, for or on behalf of a charitable organization that is a nonprofit corporation, or any other person that is not a political organization:

- (A) solicits contributions; or
- (B) promotes or sponsors the solicitation of contributions;
- (ii)
  - (A) for compensation or any other consideration, plans, manages, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization that is a nonprofit corporation, or any other person that is not a political organization; 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 that is a nonprofit corporation;
- (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;
  - (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; or
  - (iv) a political organization.
- (17)
  - (a) "Professional fund raising consultant" means a person who:
    - (i) for compensation or any other consideration, plans, manages, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization that is a nonprofit corporation or any other person that is not a political organization;
    - (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.
- (18) "Public grant" means the same as the term "grant" is defined in Section 63G-6a-103.
- (19)

- (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.
- (20) "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.

Amended by Chapter 102, 2024 General Session

**13-22-3 Investigative and enforcement powers -- Education.**

- (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.
- (2) Upon request, the attorney general shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this chapter.
- (3) The division may audit or investigate as necessary to determine whether a person is violating, has violated, or is about to violate a provision of this chapter or a rule made or order issued under this chapter. As part of the investigation, the division may:
  - (a) require a person to file a statement in writing;
  - (b) administer oaths, subpoena witnesses and compel a witness to attend, compel sworn responses to written questions, take evidence, and examine under oath a person in connection with an investigation; and
  - (c) require the production of books, papers, documents, merchandise, or other material relevant to the investigation.
- (4) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
  - (a) the director may impose an administrative fine of up to \$2,500 for each violation of this chapter; or
  - (b) the division may bring an action in a court with jurisdiction to enjoin the acts or practices constituting the violation or to enforce compliance with this chapter or a rule made or order issued under this chapter.
- (5) Upon a proper showing, the court hearing an action brought under Subsection (4)(b) may:
  - (a) issue an injunction;
  - (b) enter a declaratory judgment;
  - (c) appoint a receiver for the defendant or the defendant's assets;
  - (d) order disgorgement of any money received in violation of this chapter;
  - (e) order rescission of agreements violating this chapter;
  - (f) impose fines for each violation of this chapter; and
  - (g) impose a civil penalty or any other relief the court determines reasonable and necessary.
- (6) If a court with jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:
  - (a) reasonable attorney fees;
  - (b) court costs; and
  - (c) investigative fees.
- (7) In assessing the amount of a fine or penalty under Subsection (4)(a), (5)(f), or (5)(g), the director or court imposing the fine or penalty may consider the gravity of the violation.

- (8)
- (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of up to \$5,000 for each violation.
  - (b) A court may impose a civil penalty authorized under this section in a civil action brought by the attorney general on behalf of the division.
- (9) The division may provide or contract to provide public education and voluntary education for applicants and registrants under this chapter. The education may be in the form of publications, advertisements, seminars, courses, or other appropriate means. The scope of the education may include:
- (a) the requirements, prohibitions, and regulated practices under this chapter;
  - (b) suggestions for effective financial and organizational practices for charitable organizations;
  - (c) charitable giving and solicitation;
  - (d) potential problems with solicitations and fraudulent or deceptive practices; and
  - (e) any other matter relevant to the subject of this chapter.
- (10) Nothing in this chapter limits other available rights or remedies authorized under the laws of this state or the United States.

Amended by Chapter 158, 2024 General Session

**13-22-4 Action for damages.**

Nothing in this chapter precludes any person damaged as a result of a charitable solicitation from maintaining a civil action for damages or injunctive relief.

Amended by Chapter 102, 2024 General Session

**13-22-5 Registration required.**

- (1) Unless a person acting as a professional fund raiser is registered with the division in accordance with Section 13-22-9, the person may not:
- (a) make or facilitate a solicitation either directed toward the state or originating from the state; or
  - (b) maintain a place of business in the state or employ an individual located in the state.
- (2) Unless a person acting as a professional fund raising consultant is registered with the division in accordance with Section 13-22-9, the person may not:
- (a) maintain a place of business in the state or employ an individual located in the state; or
  - (b) provide any service of a professional fund raising consultant to or for a charitable organization, or any other person, over which the state has general jurisdiction.

Amended by Chapter 102, 2024 General Session

**13-22-9 Professional fund raiser's or fund raising consultant's registration.**

- (1) A person applying for or renewing a registration as a professional fund raiser or a professional fund raising consultant shall:
- (a) pay an application fee as determined under Section 63J-1-504; and
  - (b) submit a written application, verified under oath, on a form approved by the division that includes:
    - (i) the applicant's name, address, telephone number, facsimile number, if any;
    - (ii) the name and address of each organization or person controlled by, controlling, or affiliated with the applicant;

- (iii) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;
- (iv) whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;
- (v) the names and residence addresses of the applicant's officers and directors;
- (vi) the name and address of the applicant's registered agent for service of process and a consent to service of process;
- (vii) if a professional fund raiser:
  - (A) the purpose of the solicitation and use of the contributions to be solicited;
  - (B) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;
  - (C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and other expenses;
  - (D) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of the flat fee; and
  - (E) a statement of total contributions collected or received by the professional fund raiser within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;
- (viii) if a professional fund raising consultant:
  - (A) the purpose of the plan, management, advice, or preparation of materials for, or with respect to, the solicitation and use of the contributions solicited;
  - (B) the method by which the plan, management, advice, or preparation of materials for, or with respect to, the solicitation will be organized or coordinated and the projected length of time of the solicitation;
  - (C) the anticipated expenses of the plan, management, advice, or preparation of materials for, or with respect to, the solicitation, including all commissions, costs of collection, salaries, and other expenses;
  - (D) a statement of total fees to be earned or received from the charitable organization declared in the application, and what percentage of the contributions collected as a result of the plan, management, advice, or preparation of materials for, or with respect to, the solicitation are projected after deducting the total fees to be earned or received remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of such flat fee; and
  - (E) a statement of total net fees earned or received within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use of the net earned or received fees in the planning, management, advising, or preparation of materials for, or with respect to, the solicitation and use of the contributions solicited for the charitable organization;
- (ix) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of a crime involving a charitable solicitation or a felony involving fraud, dishonesty, a false statement, forgery, or theft;
- (x) each written agreement the applicant has with a charitable organization;

- (xi) disclosure of any injunction, judgment, or administrative order or conviction of a crime involving a charitable solicitation or a felony involving fraud, dishonesty, a false statement, forgery, or theft with respect to any officer, director, manager, operator, or principal of the applicant;
  - (xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;
  - (xiii) an acknowledgment that fund raising in the state will not commence until both the professional fund raiser or professional fund raising consultant and the charity, and its parent foundation, if any, are registered and in compliance with this chapter; and
  - (xiv) additional information the division may require by rule.
- (2) If information contained in the application for registration becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.
- (3) In addition to the registration fee, an applicant failing to file an application for registration or renewal by the due date or filing an incomplete application for registration or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the application for registration or renewal was due to be filed.

Amended by Chapter 102, 2024 General Session

**13-22-11 Expiration of registration.**

- (1) Each professional fund raiser's registration issued under this chapter expires annually on the date of issuance.
- (2) Each professional fund raising consultant's registration issued under this chapter expires annually on the date of issuance.
- (3) A registration may be renewed only by complying with the requirements for obtaining the original registration.

Amended by Chapter 102, 2024 General Session

**13-22-12 Grounds for denial, suspension, or revocation.**

The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application or registration, upon a finding that the order is in the public interest and that:

- (1) the application for registration or renewal is incomplete or misleading in any material respect;
- (2) the applicant or registrant or an officer, director, agent, or employee of the applicant or registrant has:
  - (a) violated this chapter or committed a prohibited act or practice described in this chapter;
  - (b) been enjoined by a court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, breach of fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;
  - (c) been convicted of a crime involving fraud, dishonesty, a false statement, forgery, or theft;
  - (d) obtained or attempted to obtain a registration by misrepresentation;
  - (e) materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with a solicitation;
  - (f) caused or allowed a paid solicitor to violate a rule made or order issued under this chapter by the division;

- (g) failed to take corrective action with a solicitor that has violated this chapter or committed an act or practice prohibited by this chapter;
- (h) used, or attempted to use a name that is deceptive or is reasonably likely to cause confusion;
- (i) failed to timely file with the division a report or information required in this chapter or by rules made under this chapter; or
- (j) failed to pay a fine imposed by the division in accordance with Section 13-22-3.

Amended by Chapter 102, 2024 General Session

**13-22-13 Prohibited practices.**

In connection with a solicitation, each of the following acts and practices is prohibited:

- (1) stating or implying that registration constitutes endorsement or approval by the division or a governmental entity;
- (2) violating a requirement of this chapter or a rule made under this chapter;
- (3) making a false statement of a material fact or failing to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading, whether in connection with a charitable solicitation or a filing with the division; and
- (4) violating an order issued by the division under Section 13-22-3.

Amended by Chapter 102, 2024 General Session

**13-22-14 Accuracy not guaranteed.**

- (1) By issuing a registration, the state does not guarantee the accuracy of any representation contained in the registration, nor does it warrant that any statement made by the holder of the registration is truthful. The state makes no certification as to the charitable worthiness of any organization on whose behalf a solicitation is made nor as to the moral character of the holder of the registration.
- (2) The following statement shall appear on each registration: "THE STATE OF UTAH MAKES NO CERTIFICATION AS TO THE CHARITABLE WORTHINESS OF ANY ORGANIZATION ON WHOSE BEHALF A SOLICITATION IS MADE NOR AS TO THE MORAL CHARACTER OF THE HOLDER OF THE REGISTRATION."

Amended by Chapter 102, 2024 General Session

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

- (1)
  - (a) Beginning January 1, 2025, and subject to Subsection (2), a charitable organization that is a nonprofit corporation, or that is a foreign nonprofit corporation, shall file an unredacted copy of the charitable organization's most recent IRS Form 990, 990-EZ, 990-N, or 990-PF.
  - (b) Subsection (1)(a) does not apply to a nonprofit corporation or a foreign nonprofit corporation that is not required to file a Form 990, 990-EZ, 990-N, or 990-PF with the IRS.
- (2)
  - (a)
    - (i) The division may not require a charitable organization to file Schedule B of a form described in Subsection (1).
    - (ii) An IRS Form 990-T is not required to be filed under this section.
  - (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:



- (i) the manner in which a charitable organization is required to file the forms described in Subsection (1); and
- (ii) the process by which a charitable organization is required to file the forms described in Subsection (1).

Repealed and Re-enacted by Chapter 102, 2024 General Session

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

- (1)
  - (a) Each professional fund raiser shall segregate and maintain all contributed funds in an account held separately from the professional fund raiser's operating account.
  - (b) Each contribution in the control or custody of the professional fund raiser shall, no later than 10 days after the day on which the contribution is received, be deposited into an account at a bank or other federally insured financial institution that is in the name of the charitable organization.
  - (c) The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.
- (2) Each professional fund raiser shall:
  - (a) maintain a record of each contribution of money, securities, or cash equivalent sufficient to allow the organization or professional fund raiser to provide a receipt to the contributor upon request or as required by law; and
  - (b) provide a contributor a receipt for each contribution upon request or as required by law.
- (3) A professional fund raiser shall develop and maintain adequate internal controls for receipt, management, and disbursement of money that are reasonable in light of the organization's or professional fund raiser's assets and organizational complexity.

Amended by Chapter 102, 2024 General Session

**13-22-17 Written agreement required.**

- (1) A professional fund raiser may only engage in activities on behalf of a charitable organization through written agreement with the organization.
- (2) A professional fund raising consultant may only engage in activities on behalf of a charitable organization through written agreement with the organization.
- (3) A charitable organization may only engage the services of a professional fund raiser or professional fund raising consultant through written agreement.
- (4) A professional fund raiser or professional fund raising consultant shall file each agreement described in this section with its application for registration.

Amended by Chapter 102, 2024 General Session

**13-22-18 Local ordinance.**

This chapter does not prohibit any political subdivision of the state from enacting any ordinance regulating the solicitation of contributions within the subdivision's boundaries so long as the ordinance only coordinates enforcement of this chapter with the division.

Enacted by Chapter 280, 1993 General Session

**13-22-19 Reciprocal agreements.**

- (1) The division may convey or exchange information obtained under this chapter with other agencies having regulatory authority over charitable organizations.
- (2) The division may accept information that a charitable organization or professional fund raiser files in another state or with any federal agency or other organization in place of substantially similar information that is required to be filed under this chapter.

Enacted by Chapter 280, 1993 General Session

**13-22-22 Charitable sales promotions.**

A commercial co-venturer shall disclose in each advertisement for a charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose.

Amended by Chapter 102, 2024 General Session

**13-22-23 Fiduciary capacity.**

Every person soliciting, collecting, or expending contributions for charitable purposes, and every officer, director, trustee, or employee of any person concerned with the solicitation, collection, or expenditure of those contributions, shall be considered to be a fiduciary and acting in a fiduciary capacity.

Enacted by Chapter 210, 2001 General Session

**13-22-24 Fund raising campaign registration required.**

- (1) As used in this section, "fund raising campaign" means charitable solicitation activity that a professional fund raiser engages in on behalf of a charitable organization where the professional fund raiser receives a portion of the funds raised or other compensation in exchange for services.
- (2) Before commencing a fund raising campaign, a professional fund raiser shall submit to the division:
  - (a) projected expenses and revenue for the campaign;
  - (b) bank account information for the bank account where the professional fund raiser will hold contributions collected in connection with the fund raising campaign;
  - (c) the solicitation scripts that will be used for the fund raising campaign;
  - (d) an affirmation from the professional fund raiser that the charity has approved the solicitation materials to be used in the fund raising campaign; and
  - (e) names and contact information for the individuals overseeing the fund raising campaign.
- (3) No later than 90 days after the day on which the fund raising campaign ends, the professional fund raiser shall submit a report to the division detailing:
  - (a) all contributions collected during the fund raising campaign;
  - (b) all contributions paid to the charitable organization as a result of the fund raising campaign; and
  - (c) expenses paid by the charitable organization to the professional fund raiser for the fund raising campaign.
- (4) A professional fund raiser shall keep records related to the information described in Subsection (2) for five years after the day on which the fund raising campaign ends.

Enacted by Chapter 102, 2024 General Session

