

1 **CHARITABLE SOLICITATIONS ACT**

2 **AMENDMENTS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Patrice M. Arent**

6 Afton B. Bradshaw

7 **This act modifies the Charitable Solicitations Act. The act defines a charitable sales**
8 **promotion and requires the filing of a notice before a promotion is conducted. The act**
9 **repeals the bonding requirement for professional fund raisers. The act repeals the**
10 **requirement to issue an information card. The act amends the exemptions to the Charitable**
11 **Solicitations Act. The act imposes fiduciary duties upon solicitors. The act makes other**
12 **technical changes.**

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **13-22-2**, as last amended by Chapter 187, Laws of Utah 1996

16 **13-22-5**, as last amended by Chapter 187, Laws of Utah 1996

17 **13-22-8**, as last amended by Chapter 187, Laws of Utah 1996

18 **13-22-9**, as last amended by Chapter 187, Laws of Utah 1996

19 **13-22-12**, as last amended by Chapter 187, Laws of Utah 1996

20 **13-22-14**, as last amended by Chapter 187, Laws of Utah 1996

21 **13-22-15**, as last amended by Chapter 187, Laws of Utah 1996

22 **13-22-16**, as enacted by Chapter 280, Laws of Utah 1993

23 ENACTS:

24 **13-22-22**, Utah Code Annotated 1953

25 **13-22-23**, Utah Code Annotated 1953

26 REPEALS:

27 **13-22-10**, as last amended by Chapter 187, Laws of Utah 1996

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

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

30 **13-22-2. Definitions.**

31 As used in this chapter:

32 (1) (a) "Charitable organization" or "organization" means any person, joint venture,
33 partnership, limited liability company, corporation, association, group, or other entity~~[-excluding~~
34 ~~the state and its political subdivisions]~~:

35 (i) that is or holds itself out to be:

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

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

40 or

41 (C) established for any charitable purpose;

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

43 or

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

46 (b) "Charitable organization" includes a "chapter," "branch," "area," "office," or similar
47 "affiliate" or any person soliciting contributions within the state for a charitable organization that
48 has its principal place of business outside the state.

49 (2) "Charitable purpose" means any benevolent, educational, philanthropic, humane,
50 patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental,
51 conservation, civic, or other charitable objective or for the benefit of a public safety, law
52 enforcement, or firefighter fraternal association.

53 (3) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for
54 money, credit, property, financial assistance, or any other thing of value on the plea or
55 representation that it will be used for a charitable purpose. A charitable solicitation may be made
56 in any manner, including:

57 (a) any oral or written request, including any ~~[telephonic]~~ request by telephone, radio or
58 television, or other advertising or communications media;

59 (b) the distribution, circulation, or posting of any handbill, written advertisement, or
60 publication; or

61 (c) the sale of, offer or attempt to sell, or request of donations in exchange for any
62 advertisement, book, card, chance, coupon, device, magazine, membership, merchandise,
63 subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any
64 other article in connection with which any appeal is made for any charitable purpose, or the use
65 of the name of any charitable organization or movement as an inducement or reason for making
66 any purchase donation, or, in connection with any sale or donation, stating or implying that the
67 whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable
68 purpose.

69 (4) "Charitable sales promotion" means an advertising or sales campaign, conducted by
70 a commercial co-venturer, which represents that the purchase or use of goods or services offered
71 by the commercial co-venturer will benefit, in whole or in part, a charitable organization or
72 purpose.

73 (5) "Commercial co-venturer" means a person who for profit is regularly and primarily
74 engaged in trade or commerce other than in connection with soliciting for charitable organizations
75 or purposes.

76 [~~4~~] (6) (a) "Contribution" means the pledge or grant for a charitable purpose of any
77 money or property of any kind, including any of the following:

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

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

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

83 (b) "Contribution" does not include:

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

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

88 [~~5~~] (7) "Contributor" means any donor, pledgor, purchaser, or other person who makes
89 a contribution.

90 ~~[(6)]~~ (8) "Director" means the director of the Division of Consumer Protection.

91 ~~[(7)]~~ (9) "Division" means the Division of Consumer Protection of the Department of
92 Commerce.

93 ~~[(8)]~~ (10) "Material fact" means information that a person of ordinary intelligence and
94 prudence would consider relevant in deciding whether or not to make a contribution in response
95 to a charitable solicitation.

96 ~~[(9) (a) "Paid solicitor" means any person who, for financial or other consideration:]~~

97 ~~[(i) solicits contribution for charitable purposes; or]~~

98 ~~[(ii) acts as an employee or agent for any charitable organization or professional fund~~
99 ~~raiser to solicit contributions for charitable purposes.]~~

100 ~~[(b) "Paid solicitor" does not include any clerical employee who is not primarily involved~~
101 ~~with soliciting.]~~

102 ~~[(10)]~~ (11) (a) "Professional fund raiser," except as provided in Subsection ~~[(10)]~~ (11)(b),
103 means any person who:

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

107 (ii) engages in, or who holds himself out to persons in this state as being independently
108 engaged in, the business of soliciting contributions for a charitable organization;

109 (iii) manages, supervises, or trains any [~~paid~~] solicitor whether as an employee or
110 otherwise; or

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

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

116 ~~[(11)]~~ (12) (a) "Professional fund raising counsel or consultant" or other comparable
117 designation or title means a person who:

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

121 (ii) does not solicit contributions; and
122 (iii) does not employ, procure, or engage any compensated person to solicit or receive
123 contributions.

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

127 [~~(12)~~] (13) "Vending device" means a container used by a charitable organization, [~~paid~~
128 ~~solicitor,~~] or professional fund raiser, for the purpose of collecting a charitable solicitation,
129 contribution, or donation whether or not the device offers a product or item in return for the
130 contribution or donation. "Vending device" includes machines, boxes, jars, wishing wells, barrels,
131 or any other container.

132 [~~(13)~~] (14) "Vending device decal" means any decal, tag, or similar designation material
133 that is attached to a vending device, whether or not used or placed by a charitable organization,
134 [~~paid-solicitor,~~] or professional fund raiser, that would indicate that all or a portion of the proceeds
135 from the purchase of items from the vending device will go to a specific charitable organization.

136 Section 2. Section 13-22-5 is amended to read:

137 **13-22-5. Registration required.**

138 (1) It is unlawful for any organization that is not exempt under Section 13-22-8 to
139 knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any
140 contribution for a charitable purpose, unless the organization is registered with the division.

141 (2) Subsection (1) does not prohibit an organization from receiving an unsolicited
142 contribution.

143 (3) It is unlawful for any professional fund raiser to knowingly solicit, request, promote,
144 advertise, or sponsor the solicitation in this state of any contribution for a charitable organization,
145 whether or not the charitable organization is exempt under Section 13-22-8, unless the professional
146 fund raiser [~~is~~] and any nonexempt charitable organization that is benefitted are registered with the
147 division.

148 (4) It is unlawful for any professional fund raising counsel or consultant to knowingly plan,
149 manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this
150 state of a contribution for a charitable organization, whether or not the charitable organization is
151 exempt under Section 13-22-8, unless the professional fund raising counsel or consultant [~~is~~] and

152 any nonexempt charitable organization that is benefitted are registered with the division.

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

154 **13-22-8. Exemptions.**

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

156 (a) a solicitation that an organization conducts among its own established and bona fide
157 membership exclusively through the voluntarily donated efforts of other members or officers of
158 the organization;

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

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

161 and

162 (ii) the organization is either:

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

166 (B) a bona fide religious group:

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

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

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

170 (C) a separate group or corporation that is an integral part of an institution that is an
171 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported by
172 funds solicited outside its own membership or congregation;

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

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

178 (e) a political party authorized to transact its affairs within this state and any candidate and
179 campaign worker of the party if the content and manner of any solicitation make clear that the
180 solicitation is for the benefit of the political party or candidate;

181 (f) a political action committee or group soliciting funds relating to issues or candidates
182 on the ballot if the committee or group is ~~[registered with the lieutenant governor's office under:]~~

183 required to file financial information with a federal or state election commission;

184 ~~[(i) Title 20A, Chapter 11, Part 6, Political Action Committee Registration and Financial~~
185 ~~Reporting Requirements; or]~~

186 ~~[(ii) Title 20A, Chapter 11, Part 8, Political Issues Committees – Registration and Financial~~
187 ~~Reporting;]~~

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

191 (h) a public or higher education foundation established under Title 53A or 53B;

192 (i) a television station, radio station, or newspaper of general circulation that donates air
193 time or print space for no consideration as part of a cooperative solicitation effort on behalf of a
194 charitable organization, whether or not that organization is required to register under this chapter;
195 [and]

196 (j) a volunteer fire department, rescue squad, or local civil defense organization whose
197 financial oversight is under the control of a local governmental entity[-]; and

198 (k) any governmental unit of any state or the United States.

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

201 (3) Each organization exempt from registration pursuant to this section that makes a
202 material change in its legal status, officers, address, or similar changes shall file a report informing
203 the division of its current legal status, business address, business phone, officers, and primary
204 contact person within 30 days of the change.

205 (4) The division may by rule:

206 (a) require organizations exempt from registration pursuant to this section to file a notice
207 of claim of exemption;

208 (b) prescribe the contents of the notice of claim; and

209 (c) require a filing fee for the notice, as determined under Section 63-38-3.2.

210 Section 4. Section **13-22-9** is amended to read:

211 **13-22-9. Professional fund raiser's or fund raising counsel's or consultant's permit.**

212 (1) It is unlawful for any person or entity to act as a professional fund raiser or professional
213 fund raising counsel or consultant, whether or not representing an organization exempt from

214 registration under Section 13-22-8, without first obtaining a permit from the division by complying
215 with all of the following application requirements:

216 (a) pay an application fee as determined under Section 63-38-3.2; and

217 (b) submit a written application, verified under oath, on a form approved by the division
218 that includes:

219 (i) the applicant's name, address, telephone number, facsimile number, if any;

220 (ii) the name and address of any organization or person controlled by, controlling, or
221 affiliated with the applicant;

222 (iii) the applicant's business, occupation, or employment for the three-year period
223 immediately preceding the date of the application;

224 (iv) whether it is an individual, joint venture, partnership, limited liability company,
225 corporation, association, or other entity;

226 (v) the names and residence addresses of any officer or director of the applicant;

227 (vi) the name and address of the registered agent for service of process and a consent to
228 service of process;

229 (vii) if a professional fund raiser:

230 (A) the purpose of the solicitation and use of the contributions to be solicited;

231 (B) the method by which the solicitation will be conducted and the projected length of time
232 it is to be conducted;

233 (C) the anticipated expenses of the solicitation, including all commissions, costs of
234 collection, salaries, and any other items;

235 (D) a statement of what percentage of the contributions collected as a result of the
236 solicitation are projected to remain available to the charitable organization declared in the
237 application, including a satisfactory statement of the factual basis for the projected percentage and
238 projected anticipated revenues provided to the charitable organization, and if a flat fee is charged,
239 documentation to support the reasonableness of the flat fee; and

240 (E) a statement of total contributions collected or received by the professional fund raiser
241 within the calendar year immediately preceding the date of the application, including a description
242 of the expenditures made from or the use made of the contributions;

243 (viii) if a professional fund raising counsel or consultant:

244 (A) the purpose of the plan, management, advise, counsel or preparation of materials for,

245 or respect to the solicitation and use of the contributions solicited;

246 (B) the method by which the plan, management, advise, counsel, or preparation of
247 materials for, or respect to the solicitation will be organized or coordinated and the projected
248 length of time of the solicitation;

249 (C) the anticipated expenses of the plan, management, advise, counsel, or preparation of
250 materials for, or respect to the solicitation, including all commissions, costs of collection, salaries,
251 and any other items;

252 (D) a statement of total fees to be earned or received from the charitable organization
253 declared in the application, and what percentage of the contributions collected as a result of the
254 plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation
255 are projected after deducting the total fees to be earned or received remain available to the
256 charitable organization declared in the application, including a satisfactory statement of the factual
257 basis for the projected percentage and projected anticipated revenues provided to the charitable
258 organization, and if a flat fee is charged, documentation to support the reasonableness of such flat
259 fee; and

260 (E) a statement of total net fees earned or received within the calendar year immediately
261 preceding the date of the application, including a description of the expenditures made from or the
262 use of the net earned or received fees in the planning, management, advising, counseling, or
263 preparation of materials for, or respect to the solicitation and use of the contributions solicited for
264 the charitable organization;

265 (ix) disclosure of any injunction, judgment, or administrative order against the applicant
266 or the applicant's conviction of any crime involving moral turpitude;

267 (x) a copy of any written agreements with any charitable organization;

268 (xi) the disclosure of any injunction, judgment, or administrative order or conviction of
269 any crime involving moral turpitude with respect to any officer, director, manager, operator, or
270 principal of the applicant;

271 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding
272 the use of proceeds;

273 (xiii) an acknowledgment that fund raising in the state will not commence until both the
274 professional fund raiser or professional fund raising counsel or consultant and the charity, its
275 parent foundation, if any, are registered and in compliance with this chapter; and

276 (xiv) any additional information the division may require by rule.

277 (2) If any information contained in the application for a permit becomes incorrect or
278 incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect
279 or incomplete, correct the application or file the complete information required by the division.

280 (3) In addition to the permit fee, an applicant failing to file a permit application or renewal
281 by the due date or filing an incomplete permit application or renewal shall pay an additional fee
282 of \$25 for each month or part of a month after the date on which the permit application or renewal
283 were due to be filed.

284 ~~[(4) (a) Each applicant shall provide proof that the applicant is either bonded or provide
285 a letter of credit in the amount of at least \$25,000.]~~

286 ~~[(b) The bond or letter or credit shall be payable to the state for the benefit of parties who
287 may be damaged by any violation of this chapter.]~~

288 ~~[(c) (i) The issuer of a bond shall be a surety authorized to transact surety business in this
289 state.]~~

290 ~~[(ii) The letter of credit shall be from a federally insured depository institution.]~~

291 ~~[(d) The applicant shall maintain the bond or letter of credit for the entire duration of the
292 permit and for a period of not less than one year after the division received notice in writing from
293 the professional fund raiser or professional fund raising counsel or consultant that all activities in
294 the state have ceased.]~~

295 ~~[(e) The division may prescribe rules under which parties may recover on the bond or letter
296 of credit.]~~

297 Section 5. Section **13-22-12** is amended to read:

298 **13-22-12. Grounds for denial, suspension, or revocation.**

299 (1) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures
300 Act, issue an order to deny, suspend, or revoke an application, registration, permit, or information
301 card, upon a finding that the order is in the public interest and that:

302 (a) the application for registration or renewal is incomplete or misleading in any material
303 respect;

304 (b) the applicant or registrant or any officer, director, agent, or employee of the applicant
305 or registrant has:

306 (i) violated this chapter or committed any of the prohibited acts and practices described

307 in this chapter;

308 (ii) been enjoined by any court, or is the subject of an administrative order issued in this
309 or another state, if the injunction or order includes a finding or admission of fraud, breach of
310 fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of
311 lack of integrity, truthfulness, or mental competence of the applicant;

312 (iii) been convicted of a crime involving moral turpitude;

313 (iv) obtained or attempted to obtain a registration or a permit by misrepresentation;

314 (v) materially misrepresented or caused to be misrepresented the purpose and manner in
315 which contributed funds and property will be used in connection with any solicitation;

316 (vi) caused or allowed any paid solicitor to violate any rule made or order issued under this
317 chapter by the division;

318 (vii) failed [~~reasonably to supervise his agents, employees, paid solicitors or, in the case~~
319 ~~of an organization, its professional fund raisers or professional fund raising counsels or~~
320 ~~consultants] to take corrective action with its solicitors who have violated this chapter or
321 committed any of the prohibited acts and practices of this chapter;~~

322 (viii) used, or attempted to use a name that either is deceptively similar to a name used by
323 an existing registered or exempt charitable organization, or appears reasonably likely to cause
324 confusion of names;

325 (ix) failed to timely file with the division any report required in this chapter or by rules
326 made under this chapter; or

327 (x) failed to pay a fine imposed by the division in accordance with Section 13-22-3; or

328 [~~(e) a professional fund raiser or professional fund raising counselor or consultant does not~~
329 ~~have a bond or letter of credit in force as required by Subsection 13-22-9(4); or]~~

330 [~~(d)~~] (c) the applicant for registration or renewal has no charitable purpose.

331 (2) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures
332 Act, issue an order to revoke or suspend a claim of exemption filed under Subsection 13-22-8(4),
333 upon a finding that the order is in the public interest and that:

334 (a) the notice of claim of exemption is incomplete or false or misleading in any material
335 respect; or

336 (b) any provision of this chapter, or any rule made or order issued by the division under
337 this chapter has been violated in connection with a charitable solicitation by any exempt

338 organization.

339 Section 6. Section **13-22-14** is amended to read:

340 **13-22-14. Accuracy not guaranteed.**

341 (1) By issuing a permit [~~or by providing forms for an information card~~], the state does not
342 guarantee the accuracy of any representation contained in the permit [~~or information card~~], nor
343 does it warrant that any statement made by the holder of the permit [~~or information card~~] is
344 truthful. The state makes no certification as to the charitable worthiness of any organization on
345 whose behalf a solicitation is made nor as to the moral character of the holder of the permit [~~or~~
346 ~~information card~~].

347 (2) The following statement shall appear on each permit [~~and information card in~~
348 ~~uppercase letters, in close proximity to the seal or acknowledgment required under Subsection~~
349 ~~13-22-10(3)(b): "THE STATE OF UTAH DOES NOT WARRANT THAT THE INFORMATION~~
350 ~~CONTAINED ON THIS CARD IS TRUE."]; "THE STATE OF UTAH MAKES NO
351 CERTIFICATION AS TO THE CHARITABLE WORTHINESS OF ANY ORGANIZATION ON
352 WHOSE BEHALF A SOLICITATION IS MADE NOR AS TO THE MORAL CHARACTER OF
353 THE HOLDER OF THE PERMIT."~~

354 (3) No solicitation for charitable purposes shall use the fact or requirement of registration
355 or of the filing of any report with the division pursuant to this chapter with the intent to cause or
356 in a manner tending to cause any person to believe that the solicitation, the manner in which it is
357 conducted, its purposes, any use to which the proceeds will be applied or the person or
358 organization conducting it has been or will be in any way endorsed, sanctioned, or approved by the
359 division or any governmental agency or office.

360 Section 7. Section **13-22-15** is amended to read:

361 **13-22-15. Financial reports required.**

362 (1) Each charitable organization registered under this chapter shall [~~during its first year~~
363 ~~of registration, provide quarterly financial reports to] file each year of registration an annual
364 financial report or an IRS Form 990, 990EZ, or 990 PF. The financial report or IRS Form 990,
365 990EZ, or 990 PF shall be filed with the division within 30 days after the end of the [quarter] year
366 reported. [Each] If an annual financial report or IRS Form 990, 990EZ, or 990PF are not available
367 during its first year of registration, the charitable organization shall provide quarterly financial
368 reports to the division within 30 days after the end of the quarter reported.~~

369 (2) Each financial report shall disclose:

370 (a) the gross amount of contributions received;

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

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

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

375 (e) the name and address of any [~~paid solicitor~~] professional fund raiser used by the
376 organization.

377 [~~(2) After the first year of continuous registration, a charitable organization shall file an~~
378 ~~annual financial report or IRS Form 990 on an annual basis within 30 days after the end of the year~~
379 ~~reported.~~]

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

382 (4) The registration of any organization that fails to file a timely report or IRS Form 990,
383 990EZ, or 990PF as required in this section or files an incomplete report or IRS Form 990, 990EZ,
384 or 990PF is automatically suspended pending a final order of the division under Section 13-22-12.

385 The division may reinstate the registration after receiving:

386 (a) a report or IRS Form 990, 990EZ, or 990PF fulfilling the requirements of this section;

387 (b) an application for renewed registration; and

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

390 Section 8. Section **13-22-16** is amended to read:

391 **13-22-16. Separate accounts and receipts required.**

392 (1) Each organization required to be registered under this chapter and each professional
393 fund raiser [~~and paid solicitor~~] shall segregate and maintain all contributed funds in an account
394 held separately from its operating account. [~~The account shall be held in Utah at a depository~~
395 ~~institution regulated by the Department of Financial Institutions.~~] Each contribution in the control
396 or custody of the professional solicitor shall, in its entirety and within ten days of its receipt, be
397 deposited in an account at a bank or other federally insured financial institution which shall be in
398 the name of the charitable organization. The charitable organization shall maintain and administer
399 the account and shall have sole control of all withdrawals.

400 (2) Each organization required to be registered under this chapter and each professional
401 fund raiser [~~and paid solicitor~~] shall maintain and use duplicate receipts for contributions of
402 money, securities, and cash equivalents so that one receipt is issued to each contributor and one
403 is maintained by the charitable organization.

404 Section 9. Section **13-22-22** is enacted to read:

405 **13-22-22. Charitable sales promotions.**

406 (1) Every charitable organization which agrees to permit a charitable sales promotion to
407 be conducted by a commercial co-venturer on its behalf shall file with the division a notice of the
408 promotion prior to its commencement within this state. The notice shall state:

409 (a) the names of the charitable organization and commercial co-venturer;

410 (b) that the charitable organization and the commercial co-venturer will conduct a
411 charitable sales promotion; and

412 (c) the date the charitable sales promotion is expected to commence.

413 (2) Prior to the commencement of a charitable sales promotion within this state, every
414 charitable organization which agrees to permit a charitable sales promotion to be conducted in its
415 behalf, shall obtain a written agreement, containing such terms as may be required by rule of the
416 division, from the commercial co-venturer which shall be available to the division upon request.

417 (3) A commercial co-venturer shall keep the final accounting for each charitable sales
418 promotion conducted in this state for three years after the final accounting date and make the
419 accounting available to the division upon request.

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

423 Section 10. Section **13-22-23** is enacted to read:

424 **13-22-23. Fiduciary capacity.**

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

429 Section 11. **Repealer.**

430 This act repeals:

431 Section 13-22-10, Obtaining, use and display of permits and information cards.

Legislative Review Note
as of 1-15-01 8:23 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel