

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

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

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

34 (C) established for any charitable purpose;

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

36 or

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

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

42 (c) "Charitable organization" does not include a charitable facilitator.

43 [~~(2)~~] (3) "Charitable purpose" means any benevolent, educational, philanthropic, humane,
44 patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental,
45 conservation, civic, or other charitable objective or for the benefit of a public safety, law
46 enforcement, or firefighter fraternal association.

47 [~~(3)~~] (4) "Charitable solicitation" or "solicitation" means any request, directly or indirectly,
48 for money, credit, property, financial assistance, or any other thing of value on the plea or
49 representation that it will be used for a charitable purpose. A charitable solicitation may be made
50 in any manner, including:

51 (a) any oral or written request, including any request by telephone, radio or television, or
52 other advertising or communications media;

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

55 (c) the sale of, offer or attempt to sell, or request of donations in exchange for any
56 advertisement, book, card, chance, coupon, device, magazine, membership, merchandise,
57 subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any
58 other article in connection with which any appeal is made for any charitable purpose, or the use

59 of the name of any charitable organization or movement as an inducement or reason for making
60 any purchase donation, or, in connection with any sale or donation, stating or implying that the
61 whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable
62 purpose.

63 ~~[(4)]~~ (5) "Charitable sales promotion" means an advertising or sales campaign, conducted
64 by a commercial co-venturer, which represents that the purchase or use of goods or services
65 offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization
66 or purpose.

67 ~~[(5)]~~ (6) "Commercial co-venturer" means a person who for profit is regularly and
68 primarily engaged in trade or commerce other than in connection with soliciting for charitable
69 organizations or purposes.

70 ~~[(6)]~~ (7) (a) "Contribution" means the pledge or grant for a charitable purpose of any
71 money or property of any kind, including any of the following:

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

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

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

77 (b) "Contribution" does not include:

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

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

82 ~~[(7)]~~ (8) "Contributor" means any donor, pledgor, purchaser, or other person who makes
83 a contribution.

84 ~~[(8)]~~ (9) "Director" means the director of the Division of Consumer Protection.

85 ~~[(9)]~~ (10) "Division" means the Division of Consumer Protection of the Department of
86 Commerce.

87 ~~[(10)]~~ (11) "Material fact" means information that a person of ordinary intelligence and
88 prudence would consider relevant in deciding whether or not to make a contribution in response
89 to a charitable solicitation.

90 ~~[(11)]~~ (12) (a) "Professional fund raiser," except as provided in Subsection ~~[(11)]~~ (12)(b),
91 means any person who:

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

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

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

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

101 (b) "Professional fund raiser" does not include:

102 (i) a bona fide officer, director, volunteer, or full-time employee of a charitable
103 organization[-]; or

104 (ii) a bona fide officer, director, volunteer, independent contractor, or full-time employee
105 of a charitable facilitator.

106 ~~[(12)]~~ (13) (a) "Professional fund raising counsel or consultant" or other comparable
107 designation or title means a person who:

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

111 (ii) does not solicit contributions; and

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

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

117 ~~[(13)]~~ (14) "Vending device" means a container used by a charitable organization or
118 professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or
119 donation whether or not the device offers a product or item in return for the contribution or
120 donation. "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other

121 container.

122 [~~(14)~~] (15) "Vending device decal" means any decal, tag, or similar designation material
123 that is attached to a vending device, whether or not used or placed by a charitable organization or
124 professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase
125 of items from the vending device will go to a specific charitable organization.

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

127 **13-22-6. Application for registration.**

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

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

131 (b) submit a written application, verified under oath, on a form approved by the division
132 which shall include:

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

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

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

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

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

142 (vi) the method by which the solicitation will be conducted and the projected length of
143 time it is to be conducted;

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

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

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

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

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

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

159 (xiii) a statement of whether or not the charity, or its parent foundation, will be using the
160 services of a professional fund raiser or of a professional fund raising counsel or consultant;

161 (xiv) if either the charity or its parent foundation will be using the services of a
162 professional fund raiser or a professional fund raising counsel or consultant:

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

164 (B) an acknowledgment that fund raising in the state will not commence until both the
165 charitable organization, its parent foundation, if any, and the professional fund raiser or
166 professional fund raising counsel or consultant are registered and in compliance with this chapter;
167 and

168 (xv) any additional information the division may require by rule.

169 (2) An applicant for registration or renewal of registration as a charitable facilitator shall:

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

171 (b) submit a written application, verified under oath, on a form approved by the division
172 which shall include:

173 (i) the charitable facilitator's facsimile number, if any, name, address, telephone number,
174 and the names and addresses of any organizations or persons controlled by, or controlling, the
175 applicant;

176 (ii) the specific legal nature of the charitable facilitator, whether it is an individual, joint
177 venture, partnership, limited liability company, corporation, association, or other entity;

178 (iii) the names and residence addresses of the officers and directors of the charitable
179 facilitator;

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

182 (v) the general purpose of the contributions to be made by customers and clients of the

183 charitable facilitator;

184 (vi) the methods by which contributed goods will be distributed to charitable
185 organizations;

186 (vii) a statement of total contributions made or delivered by the charitable facilitator in
187 behalf of customers and clients within the calendar year immediately preceding the date of the
188 application;

189 (viii) a list of names and addresses of all independent contractors of the charitable
190 facilitator;

191 (ix) disclosure of any injunction, judgment, or administrative order or conviction of any
192 crime involving moral turpitude with respect to any officer, director, manager, operator, or
193 principal of the charitable facilitator;

194 (x) a copy of any agreements to which the applicant is, or proposes to be, a party with a
195 charitable organization;

196 (xi) a copy of terms, conditions, policies, and procedures agreed to by independent
197 contractors that broker goods marketed by the charitable facilitator; and

198 (xii) any additional information the division may require by rule.

199 [~~2~~] (3) If any information contained in [~~the~~] an application for registration becomes
200 incorrect or incomplete, the applicant or registrant shall, within 30 days after the information
201 becomes incorrect or incomplete, correct the application or file the complete information required
202 by the division.

203 [~~3~~] (4) In addition to the registration fee, an organization or charitable facilitator failing
204 to file a registration application or renewal by the due date or filing an incomplete registration
205 application or renewal shall pay an additional fee of \$25 for each month or part of a month after
206 the date on which the registration application or renewal were due to be filed.

207 Section 3. Section **13-22-15.1** is enacted to read:

208 **13-22-15.1. Financial reports required -- Charitable facilitator.**

209 (1) Each charitable facilitator registered under this chapter shall file an annual financial
210 report. The financial report shall be filed with the division within 30 days after the end of the year
211 reported. If an annual financial report is not available during its first year of registration, the
212 charitable facilitator shall provide quarterly financial reports to the division within 30 days after
213 the end of the quarter reported.

214 (2) Each financial report shall disclose:
215 (a) the amount of goods directed by customers or clients to be contributed to charitable
216 organizations;
217 (b) the amount of contributions delivered, or to be delivered to, charitable organizations;
218 and
219 (c) the names and addresses of all independent contractors of the charitable facilitator.
220 (3) In order to investigate a complaint regarding a charitable facilitator or one of its
221 independent contractors, the division may periodically request from a charitable facilitator an
222 interim report updating the charitable facilitator's annual report under Subsection (1).
223 (4) Each report required under this section shall be signed under oath by an officer or
224 principal of the charitable facilitator.
225 (5) The registration of any charitable facilitator that fails to file a timely report as required
226 in this section or files an incomplete report is automatically suspended pending a final order of the
227 division under Section 13-22-12. The division may reinstate the registration after receiving:
228 (a) a report fulfilling the requirements of this section;
229 (b) an application for renewed registration; and
230 (c) a penalty of \$25 for each month or part of a month after the date on which the report
231 was due to be filed.
232 Section 4. **Effective date.**
233 If approved by two-thirds of all the members elected to each house, this act takes effect
234 upon approval by the governor, or the day following the constitutional time limit of Utah
235 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
236 date of veto override.

Legislative Review Note

as of 2-6-02 9:59 AM

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

Office of Legislative Research and General Counsel