

90 course of business; or

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

93 (8) "Contributor" means a donor, pledgor, purchaser, or other person who makes a  
94 contribution.

95 (9) "Director" means the director of the Division of Consumer Protection.

96 (10) "Division" means the Division of Consumer Protection of the Department of  
97 Commerce.

98 (11) "Material fact" means information that a person of ordinary intelligence and  
99 prudence would consider relevant in deciding whether or not to make a contribution in  
100 response to a charitable solicitation.

101 (12) (a) "Professional fund raiser" means a person who:

102 (i) for compensation or any other consideration, [~~solicits contributions for charitable~~  
103 ~~purposes, or plans or manages~~] for or on behalf of a charitable organization or any other  
104 person:

105 (A) solicits contributions; or

106 (B) promotes or sponsors the solicitation of contributions [~~for or on behalf of any~~  
107 ~~charitable organization or any other person~~];

108 (ii) (A) for compensation or any other consideration, plans, manages, counsels,  
109 consults, or prepares material for, or with respect to, the solicitation of contributions for a  
110 charitable organization or any other person; and

111 (B) at any time has custody of a contribution for the charitable organization;

112 [~~(i)~~] (iii) engages in, or represents being independently engaged in, the business of  
113 soliciting contributions for a charitable organization;

114 [~~(ii)~~] (iv) manages, supervises, or trains any solicitor whether as an employee or  
115 otherwise; or

116 [~~(iii)~~] (v) uses a vending device or vending device decal for financial or other  
117 consideration that implies a solicitation of contributions or donations for any charitable  
118 organization or charitable purposes.

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

120 (i) ~~H~~→ an individual acting in the individual's capacity as ←~~H~~ a bona fide officer,  
120a director, volunteer, or full-time employee of a charitable

121 organization[-];

122 (ii) an attorney, investment counselor, or banker who, in the conduct of that person's  
 123 profession, advises a client regarding legal, investment, or financial advice; or

124 (iii) a person who tangentially prepares materials, including a person who:

125 (A) makes copies;

126 (B) cuts or folds flyers; or

127 (C) creates a graphic design or other artwork without providing strategic or  
 128 campaign-related input.

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

131 (i) for compensation or any other consideration, plans, manages, [~~advises;~~] counsels,  
 132 consults, or prepares material for, or with respect to, the solicitation [~~in this state~~] of  
 133 contributions for a charitable organization[~~, whether or not at any time the person has custody~~  
 134 ~~of contributions from a solicitation~~] or any other person;

135 (ii) does not solicit contributions; [~~and~~]

136 (iii) does not at any time have custody of a contribution from solicitation; and

137 [~~(iii)~~] (iv) does not employ, procure, or engage any compensated person to solicit or  
 138 receive contributions.

139 (b) "Professional fund raising counsel or consultant" does not include:

140 (i) ~~H~~→ **an individual acting in the individual's capacity as** ~~H~~ a bona fide officer,  
 140a director, volunteer, or full-time employee of a charitable  
 141 organization;

142 (ii) an attorney, investment counselor, or banker who, in the conduct of that person's  
 143 profession, advises a client [~~when actually engaged in the giving of~~] regarding legal,  
 144 investment, or financial advice[-]; or

145 (iii) a person who tangentially prepares materials, including a person who:

146 (A) makes copies;

147 (B) cuts or folds flyers; or

148 (C) creates a graphic design or other artwork without providing strategic or  
 149 campaign-related input.

150 (14) (a) "Vending device" means a container used by a charitable organization or  
 151 professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or



400 (c) the date the charitable campaign commenced; and  
 401 (d) the purpose to which the collected contributions are to be applied.  
 402 (2) Notice under Subsection (1) is due within 10 days after commencing the appeal or  
 403 collecting in excess of  ~~\$ → [\$1,000] H → [\$10,000] ← H ← \$ H → \$5,000 ← H~~ , whichever is later .

404 (3) If the organizer fails to file timely notice, the division shall inform the organizer of  
 405 the notice requirement and give the organizer 10 additional days as a grace period within which  
 406 to file the notice. If the organizer fails to file the notice within the grace period, the division  
 407 may issue a cease and desist order against the organizer.

408 (4) If, at any time, the division has reasonable cause to believe that the organizer is  
 409 perpetrating a fraud against the public, or in any other way intends to profit from harming the  
 410 public through the charitable campaign, it shall issue a cease and desist order against the  
 411 organizer.

412 **Section 6. Effective date.**

413 If approved by two-thirds of all the members elected to each house, this bill takes effect  
 414 upon approval by the governor, or the day following the constitutional time limit of Utah  
 415 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
 416 the date of veto override.

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**