

1 **CHARITABLE ORGANIZATION REGISTRATION**

2 **AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses charitable organization registration requirements.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ creates and modifies definitions;
- 14 ▶ provides that an entity's application for a public grant is not a charitable solicitation;
- 15 ▶ exempts certain federal income tax exempt charitable organizations from registering

16 as a charitable organization in Utah; and

- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides a special effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **13-22-2**, as last amended by Laws of Utah 2018, Chapter 267

25 **13-22-8**, as last amended by Laws of Utah 2018, Chapters 267 and 415

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

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

29 **13-22-2. Definitions.**

30 As used in this chapter:

31 (1) "Chapter" means a chapter, branch, area, office, or similar affiliate of a charitable
32 organization.

33 (2) (a) "Charitable organization" or "organization" means any person, joint venture,
34 partnership, limited liability company, corporation, association, group, or other entity:

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

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

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

41 (C) established for any charitable purpose;

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

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

47 (b) "Charitable organization" includes a chapter or a person who solicits contributions
48 within the state for a charitable organization.

49 (3) "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 (4) "Charitable sales promotion" means an advertising or sales campaign, conducted by
54 a commercial co-venturer, which represents that the purchase or use of goods or services
55 offered by the commercial co-venturer will benefit, in whole or in part, a charitable

56 organization or purpose.

57 (5) (a) "Charitable solicitation" or "solicitation" means any request, directly or
58 indirectly, for money, credit, property, financial assistance, or any other thing of value on the
59 plea or representation that it will be used for a charitable purpose.

60 (b) "Charitable solicitation" or "solicitation" includes:

61 (i) any of the following done, or purporting to be done, for a charitable purpose:

62 (A) any oral or written request, including any request by telephone, radio, television, or
63 other advertising or communications media;

64 (B) the distribution, circulation, or posting of any handbill, written advertisement, or
65 publication; or

66 (C) an application or other request for a ~~[grant]~~ a private grant or, if made by an
67 individual, a public grant; or

68 (ii) the sale of, offer or attempt to sell, or request of donations in exchange for any
69 advertisement, membership, subscription, or other article in connection with which any appeal
70 is made for any charitable purpose, or the use of the name of any charitable organization or
71 movement as an inducement or reason for making any purchase donation, or, in connection
72 with any sale or donation, stating or implying that the whole or any part of the proceeds of any
73 sale or donation will go to or be donated to any charitable purpose.

74 (c) "Charitable solicitation" or "solicitation" does not include an entity's application or
75 other request for a public grant.

76 (6) "Commercial co-venturer" means a person who for profit is regularly and primarily
77 engaged in trade or commerce other than in connection with soliciting for a charitable
78 organization or purpose.

79 (7) (a) "Contribution" means the pledge or grant for a charitable purpose of any money
80 or property of any kind, including any of the following:

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

82 (ii) a contract, promise, or agreement, express or implied, whether or not legally

83 enforceable, to make a contribution for charitable purposes; or

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

86 (b) "Contribution" does not include:

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

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

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

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

94 (10) "Division" means the Division of Consumer Protection of the Department of
95 Commerce.

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

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

100 (i) for compensation or any other consideration, for or on behalf of a charitable
101 organization or any other person:

102 (A) solicits contributions; or

103 (B) promotes or sponsors the solicitation of contributions;

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

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

108 (iii) engages in, or represents being independently engaged in, the business of soliciting
109 contributions for a charitable organization;

110 (iv) manages, supervises, or trains any solicitor whether as an employee or otherwise;

111 or

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

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

116 (i) an individual acting in the individual's capacity as a bona fide officer, director,
117 volunteer, or full-time employee of a charitable organization;

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

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

121 (A) makes copies;

122 (B) cuts or folds flyers; or

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

125 (13) (a) "Professional fund raising counsel or consultant" means a person who:

126 (i) for compensation or any other consideration, plans, manages, counsels, consults, or
127 prepares material for, or with respect to, the solicitation of contributions for a charitable
128 organization or any other person;

129 (ii) does not solicit contributions;

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

131 (iv) does not employ, procure, or engage any compensated person to solicit or receive
132 contributions.

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

134 (i) an individual acting in the individual's capacity as a bona fide officer, director,
135 volunteer, or full-time employee of a charitable organization;

136 (ii) an attorney, investment counselor, or banker who, in the conduct of that person's

137 profession, advises a client regarding legal, investment, or financial advice; or
138 (iii) a person who tangentially prepares materials, including a person who:
139 (A) makes copies;
140 (B) cuts or folds flyers; or
141 (C) creates a graphic design or other artwork without providing strategic or
142 campaign-related input.

143 (14) "Public grant" means the same as the term "grant" is defined in Section
144 63G-6a-103.

145 [~~(14)~~] (15) (a) "Vending device" means a container used by a charitable organization or
146 professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or
147 donation whether or not the device offers a product or item in return for the contribution or
148 donation.

149 (b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any
150 other container.

151 [~~(15)~~] (16) "Vending device decal" means any decal, tag, or similar designation
152 material that is attached to a vending device, whether or not used or placed by a charitable
153 organization or professional fund raiser, that would indicate that all or a portion of the proceeds
154 from the purchase of items from the vending device will go to a specific charitable
155 organization.

156 Section 2. Section **13-22-8** is amended to read:

157 **13-22-8. Exemptions.**

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

159 (a) 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

164 physical place of worship, at which nonprofit religious services and activities are regularly
165 conducted and 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) that is not required to file an IRS Form 990 under any circumstance; 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
172 by funds solicited outside the group's or corporation's own membership or congregation;

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

175 (c) subject to Subsection 13-22-21(1), an individual soliciting a contribution for the
176 relief or benefit of another individual, who is specified by name at the time of the solicitation,
177 if:

178 (i) all contributions are turned over to the named beneficiary after deducting actual
179 expenses necessary for the cost of solicitation, if any; and

180 (ii) all individuals that carry out any fund-raising function for the benefit of the named
181 individual are unpaid, directly or indirectly, for services rendered;

182 (d) a political party authorized to transact the political party's affairs within this state
183 and any candidate and campaign worker of the political party if the content and manner of any
184 solicitation make clear that the solicitation is for the benefit of the political party or candidate;

185 (e) a political action committee or group soliciting funds relating to issues or
186 candidates on the ballot if the committee or group is required to file financial information with
187 a federal or state election commission;

188 (f) (i) a public school;

189 (ii) a public institution of higher learning;

190 (iii) a school accredited by an accreditation body recognized within the state or the

191 United States;

192 (iv) an institution of higher learning accredited by an accreditation body recognized
193 within the state or the United States;

194 (v) an organization within, and authorized by, an entity described in Subsections
195 (1)(f)(i) through (iv); or

196 (vi) a parent organization, teacher organization, or student organization authorized by
197 an entity described in Subsection (1)(f)(i) or (iii) if:

198 (A) the parent organization, teacher organization, or student organization is a branch
199 of, or is affiliated with, a central organization;

200 (B) the parent organization, teacher organization, or student organization is subject to
201 the central organization's general control and supervision;

202 (C) the central organization holds a United States Internal Revenue Service group tax
203 exemption that covers the parent organization, teacher organization, or student organization;
204 and

205 (D) the central organization is registered with the division under this chapter;

206 (g) a public or higher education foundation established under Title 53E, Public
207 Education System -- State Administration, Title 53G, Public Education System -- Local
208 Administration, or Title 53B, State System of Higher Education;

209 (h) a television station, radio station, or newspaper of general circulation that donates
210 air time or print space for no consideration as part of a cooperative solicitation effort on behalf
211 of a charitable organization, whether or not that organization is required to register under this
212 chapter;

213 (i) a volunteer fire department, rescue squad, or local civil defense organization whose
214 financial oversight is under the control of a local governmental entity;

215 (j) any governmental unit of any state or the United States;

216 (k) any corporation:

217 (i) established by an act of the United States Congress; and

218 (ii) that is required by federal law to submit an annual report:
219 (A) on the activities of the corporation, including an itemized report of all receipts and
220 expenditures of the corporation; and
221 (B) to the United States Secretary of Defense to be:
222 (I) audited; and
223 (II) submitted to the United States Congress;
224 ~~[(1) a solicitation by an applicant for a grant offered by a state agency if:]~~
225 ~~[(i) the terms of the grant provide that the state agency monitors a grant recipient to~~
226 ~~ensure that grant funds are used in accordance with the grant's purpose; and]~~
227 ~~[(ii) the sum of the amount available to the applicant under grants offered by a state~~
228 ~~agency that the applicant applies for in a calendar year is less than or equal to \$1,500;]~~
229 ~~[(m)]~~ (l) a chapter of a charitable organization or a person who solicits contributions
230 for a charitable organization, if the charitable organization is registered with the division
231 pursuant to Section 13-22-5 or is exempt from registration under this section, and:
232 (i) all contributions solicited by the chapter or person are delivered directly to the
233 control of the charitable organization; or
234 (ii) (A) the charitable organization holds a United States Internal Revenue Service
235 group tax exemption that covers the chapter;
236 (B) the charitable organization provides a list of its chapters to the division with its
237 registration or renewal of registration;
238 (C) the chapter is on the list provided under Subsection ~~[(1)(m)(ii)(B)]~~ (1)(l)(ii)(B);
239 (D) the chapter maintains the information required under Section 13-22-15 and
240 provides the information to the division upon request; and
241 (E) solicitations by the chapter or the person are limited to the collection of
242 membership-related fees, dues, or assessments from new and existing members;
243 ~~[(m)]~~ (m) a solicitation in an obituary; ~~[or]~~
244 ~~[(o)]~~ (n) a solicitation made exclusively to a family member of the individual making

245 the solicitation[-]; or

246 (o) an organization that holds federal income tax exempt status in accordance with 26
247 U.S.C. Sec. 501(c)(6).

248 (2) An organization claiming an exemption under this section bears the burden of
249 proving the organization's eligibility for, or the applicability of, the exemption claimed.

250 (3) An organization exempt from registration [~~pursuant to~~] under this section that
251 makes a material change in the organization's legal status, officers, address, or similar changes
252 shall file a report informing the division of the organization's current legal status, business
253 address, business phone, officers, and primary contact person within 30 days [~~of~~] after the day
254 on which the change is made.

255 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
256 Administrative Rulemaking Act:

257 (a) require an organization that is exempt from registration under this section to:

258 (i) file a notice of claim of exemption; and

259 (ii) file a renewal of a notice of claim of exemption;

260 (b) prescribe the contents of a notice of claim of exemption and a renewal of a notice
261 of claim of exemption; and

262 (c) require a filing fee for a notice of claim of exemption and a renewal of a notice of
263 claim of exemption as determined under Section 63J-1-504.

264 **Section 3. Effective date.**

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