

HB0043S01 compared with HB0043

~~{deleted text}~~ shows text that was in HB0043 but was deleted in HB0043S01.

inserted text shows text that was not in HB0043 but was inserted into HB0043S01.

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Representative A. Cory Maloy proposes the following substitute bill:

CHARITABLE SOLICITATIONS ACT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Curtis S. Bramble

LONG TITLE

~~{Committee Note:~~

~~———— The Business and Labor Interim Committee recommended this bill.~~

~~———— Legislative Vote: 12 voting for 0 voting against 9 absent~~

~~}~~General Description:

This bill amends provisions related to charitable solicitations.

Highlighted Provisions:

This bill:

- ▶ ~~{consolidates requirements for information a}~~ defines terms;
- ▶ removes a requirement that charitable ~~{organization submits to}~~ organizations register with the Division of Consumer Protection ~~{and}~~;
- ▶ requires a charitable organization to provide certain tax documents in a manner described by the Division of ~~{Corporations}~~ Consumer Protection;

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- ▶ prohibits deceptive acts ~~{and diversion of funds}~~ related to charitable solicitations;
- ▶ adds regulations and filing requirements for professional fund raisers and professional fund raising campaigns;
- ▶ ~~{defines terms}~~ grants rulemaking authority; and
- ▶ makes technical ~~{and conforming}~~ changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~13-2-6~~, as last amended by Laws of Utah 2021, Chapter 226

~~13-11-4~~, as last amended by Laws of Utah 2021, Chapters 138, 154

~~13-22-2~~, as last amended by Laws of Utah 2023, Chapter 17

~~13-22-3~~, as last amended by Laws of Utah 2008, Chapter 382

~~{13-22-6}~~ ~~13-22-4~~, as last amended by Laws of Utah 1994, Chapter 185

~~13-22-5~~, as last amended by Laws of Utah ~~{2020}~~ 2018, Chapter ~~{419}~~ 267

~~13-22-9~~, as last amended by Laws of Utah 2018, Chapter 267

~~{13-22-15}~~ ~~13-22-11~~, as last amended by Laws of Utah 2016, Chapter 377

~~13-22-12~~, as last amended by Laws of Utah 2008, Chapter 382

~~13-22-13~~, as last amended by Laws of Utah 1994, Chapter 185

~~13-22-14~~, as last amended by Laws of Utah 2001, Chapter 210

~~13-22-16~~, as last amended by Laws of Utah 2015, Chapter 120

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

~~13-22-22~~, as enacted by Laws of Utah 2001, Chapter 210

~~13-25a-102~~, as last amended by Laws of Utah 2022, Chapter 324

~~13-25a-111~~, as last amended by Laws of Utah 2010, Chapter 379

~~16-6a-102~~, as last amended by Laws of Utah 2023, Chapter 503

~~16-6a-203~~, as last amended by Laws of Utah 2015, Chapter 240

~~16-6a-1503~~, as last amended by Laws of Utah 2008, Chapters 249, 364

~~42-2-6.6~~, as last amended by Laws of Utah 2023, Chapter 458

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ENACTS:

13-22-24, Utah Code Annotated 1953

~~{ **13-22-25**, Utah Code Annotated 1953~~

~~— **13-22-26**, Utah Code Annotated 1953~~

REPEALS AND REENACTS:

13-22-15, as last amended by Laws of Utah 2015, Chapter 120

REPEALS:

13-22-6, as last amended by Laws of Utah 2020, Chapter 419

13-22-8, as last amended by Laws of Utah 2023, Chapter 17

13-22-21, as last amended by Laws of Utah 2018, Chapter 267

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

Section 1. Section 13-2-6 is amended to read:

13-2-6. Enforcement powers.

(1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall have authority to convene administrative hearings, issue cease and desist orders, and impose fines under all the chapters identified in Section 13-2-1.

(2) ~~[Any]~~A person who intentionally violates a final cease and desist order entered by the division of which the person has notice is guilty of a third degree felony.

(3) If the division has reasonable cause to believe that ~~[any]~~a person has violated or is violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator a citation signed by the division's director or the director's designee.

(a) Each citation shall be in writing and shall:

(i) set forth with particularity the nature of the violation, including a reference to the statutory or administrative rule provision violated;

(ii) state that ~~[any]~~a request for review of the citation shall be made in writing and be received by the division no more than 20 calendar days after the day on which the division issues the citation;

(iii) state the consequences of failing to make a timely request for review; and

(iv) state all other information required by Subsection 63G-4-201(2).

(b) In computing ~~[any]~~a time period ~~[prescribed by]~~under this section, the following

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days may not be included:

(i) the day on which the division issues a citation; and

(ii) the day on which the division receives a request for review of a citation.

(c) (i) Except as provided in Subsection (3)(c)(iii), if the presiding officer finds that there is not substantial evidence that the recipient violated a chapter listed in Section 13-2-1:

(A) the citation may not become final; and

(B) the division shall immediately vacate the citation and promptly notify the recipient in writing.

(ii) Except as provided in Subsection (3)(c)(iv), if the presiding officer finds that there is substantial evidence that the recipient violated a chapter listed in Section 13-2-1:

(A) the citation shall become final; and

(B) the division may enter a cease and desist order against the recipient.

(iii) For a citation issued for a violation of Chapter 41, Price Controls During Emergencies Act, if the presiding officer finds that there is not clear and convincing evidence that the recipient violated the chapter:

(A) the citation may not become final; and

(B) the division shall immediately vacate the citation and promptly notify the recipient in writing.

(iv) For a citation issued for a violation of Chapter 41, Price Controls During Emergencies Act, if the presiding officer finds that there is clear and convincing evidence that the recipient violated the chapter:

(A) the citation shall become final; and

(B) the division may enter a cease and desist order against the recipient.

(d) (i) A citation issued under this chapter may be personally served upon any a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure.

(ii) A citation also may be served by first-class mail, postage prepaid.

(e) (i) If the recipient fails to make a request for review within 20 calendar days after the day on which the division issues the citation, the citation shall become the final order of the division.

(ii) The period to contest the citation may be extended by the director for good cause

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shown.

(f) If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.

(4) (a) A person who has violated, is violating, or has attempted to violate a chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:

(i) the violation or attempted violation is committed wholly or partly within the state;

(ii) conduct committed outside the state constitutes an attempt to commit a violation within the state; or

(iii) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.

(b) As used in this section, "transactional resources" means:

(i) [any] a mail drop or mail box, regardless of whether the mail drop or mail box is located on the premises of a United States Post Office;

(ii) [any] a telephone or facsimile transmission device;

(iii) [any] an Internet connection by a resident or inhabitant of this state with a resident- or nonresident-maintained Internet site;

(iv) [any] a business office or private residence used for a business-related purpose;

(v) [any] an account with or services of a financial institution;

(vi) the services of a common or private carrier; or

(vii) the use of [any] a city, county, or state asset or facility, including [any] a road or highway.

(5) The director or the director's designee, for the purposes outlined in [any] a chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, conduct audits, compel sworn responses to written questions, or compel the production of papers, books, accounts, documents, or evidence.

(6) (a) An administrative action filed under this chapter or a chapter listed in Section 13-2-1 shall be commenced no later than 10 years after the day on which the alleged violation occurs.

(b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be commenced no later than five years after the day on which the alleged violation occurs.

(c) The provisions of this Subsection (6) control over the provisions of Title 78B,

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Chapter 2, Statutes of Limitations.

Section 2. Section 13-11-4 is amended to read:

13-11-4. Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;

(d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist, including any of the following reasons falsely used in an advertisement:

(i) "going out of business";

(ii) "bankruptcy sale";

(iii) "lost our lease";

(iv) "building coming down";

(v) "forced out of business";

(vi) "final days";

(vii) "liquidation sale";

(viii) "fire sale";

(ix) "quitting business"; or

(x) an expression similar to any of the expressions in Subsections (2)(d)(i) through (ix);

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

(f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

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(g) indicates that replacement or repair is needed, if it is not;

(h) indicates that a specific price advantage exists, if it does not;

(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;

(j) (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or

(ii) fails to honor a warranty or a particular warranty term;

(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or

(ii) extend the shipping date to a specific date proposed by the supplier;

(m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if:

(i) the sale is made other than at the supplier's established place of business pursuant to the supplier's personal contact, whether through mail, electronic mail, facsimile transmission, telephone, or any other form of direct solicitation; and

(ii) the sale price exceeds \$25;

(n) promotes, offers, or grants participation in a pyramid scheme as defined under Title 76, Chapter 6a, Pyramid Scheme Act;

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~~[(o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a particular organization, if the representation is false;]~~

(o) in connection with a charitable solicitation:

(i) falsely indicates that:

(A) the supplier is affiliated with a charitable organization;

(B) the supplier is an employee, officer, or representative of a public safety agency;

(C) the supplier has sponsorship or approval of a given charitable organization;

(D) a charitable contribution will be provided to a given charitable organization;

(E) providing a charitable contribution has an additional benefit, including a tax

benefit; or

(F) the recipient of the solicitation has previously contributed to a given charitable organization;

(ii) uses a fictitious name or a name the supplier is not authorized to use; or

(iii) with intent to deceive:

(A) uses a name that is substantially similar to that of another charitable organization;

or

(B) falsely indicates that a charitable contribution will be used for a particular purpose;

(p) if a consumer indicates the consumer's intention of making a claim for a motor vehicle repair against the consumer's motor vehicle insurance policy:

(i) commences the repair without first giving the consumer oral and written notice of:

(A) the total estimated cost of the repair; and

(B) the total dollar amount the consumer is responsible to pay for the repair, which dollar amount may not exceed the applicable deductible or other copay arrangement in the consumer's insurance policy; or

(ii) requests or collects from a consumer an amount that exceeds the dollar amount a consumer was initially told the consumer was responsible to pay as an insurance deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or other copay arrangement, unless:

(A) the consumer's insurance company denies that coverage exists for the repair, in

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which case, the full amount of the repair may be charged and collected from the consumer; or

(B) the consumer misstates, before the repair is commenced, the amount of money the insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which case, the supplier may charge and collect from the consumer an amount that does not exceed the amount the insurance policy requires the consumer to pay as a deductible or other copay arrangement;

(q) includes in any contract, receipt, or other written documentation of a consumer transaction, or any addendum to any contract, receipt, or other written documentation of a consumer transaction, any confession of judgment or any waiver of any of the rights to which a consumer is entitled under this chapter;

(r) charges a consumer for a consumer transaction or a portion of a consumer transaction that has not previously been agreed to by the consumer;

(s) solicits or enters into a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of:

(i) the consumer transaction; or

(ii) the person's ability to benefit from the consumer transaction;

(t) solicits for the sale of a product or service by providing a consumer with an unsolicited check or negotiable instrument the presentment or negotiation of which obligates the consumer to purchase a product or service, unless the supplier is:

(i) a depository institution under Section 7-1-103;

(ii) an affiliate of a depository institution; or

(iii) an entity regulated under Title 7, Financial Institutions Act;

(u) sends an unsolicited mailing to a person that appears to be a billing, statement, or request for payment for a product or service the person has not ordered or used, or that implies that the mailing requests payment for an ongoing product or service the person has not received or requested;

(v) issues a gift certificate, instrument, or other record in exchange for payment to provide the bearer, upon presentation, goods or services in a specified amount without printing in a readable manner on the gift certificate, instrument, packaging, or record any expiration date or information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record;

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(w) misrepresents the geographical origin or location of the supplier's business;

(x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal provisions;

(y) violates Section 13-59-201; ~~[or]~~

(z) fails to comply with the restrictions of Subsection 13-54-202(2)~~[-]; or~~

(aa) states or implies that a registration or application administered or enforced by the division is an endorsement, sanction, or approval by the division or a governmental agency or office.

(3) (a) The notice required by Subsection (2)(m) shall:

(i) be a conspicuous statement written in dark bold with at least 12-point type on the first page of the purchase documentation; and

(ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER."

(b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's cancellation policy:

(i) is communicated to the buyer; and

(ii) offers greater rights to the buyer than Subsection (2)(m).

(4) (a) A gift certificate, instrument, or other record that does not print an expiration date in accordance with Subsection (2)(v) does not expire.

(b) A gift certificate, instrument, or other record that does not include printed information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee.

(c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other record useable at multiple, unaffiliated sellers of goods or services if an expiration date is printed on the gift certificate, instrument, or other record.

Section 3. Section 13-22-2 is amended to read:

13-22-2. Definitions.

As used in this chapter:

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(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:

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(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

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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)]~~ (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.

~~[(11)]~~ (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.

~~[(12)]~~ (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, ~~["counsels,"]~~ consults, or prepares material for, or with respect to, the solicitation of contributions for a

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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; ~~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~~[-]; or~~

(iv) a political organization.

~~(13)~~ (17) (a) "Professional fund raising ~~counsel or~~ consultant" means a person who:

(i) for compensation or any other consideration, plans, manages, ~~counsels,~~ 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:

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- (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.

~~[(14)]~~ 1(18) "Public grant" means the same as the term "grant" is defined in Section 63G-6a-103.

~~[(15)]~~ 1(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.

~~[(16)]~~ 1(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.

Section ~~{1}~~ 4. Section **13-22-3** is amended to read:

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) ~~{The}~~ Upon request, the attorney general shall ~~{, upon request,}~~ 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 ~~make any { audit or} investigation it considers~~ audit or investigate as necessary to determine whether ~~[any]~~ a person is violating, has violated, or is

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about to violate [any] a provision of this chapter or [any] 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 [their attendance] a witness to attend, compel sworn responses to written questions, take evidence, and examine under oath [any] a person in connection with an investigation; and

(c) require the production of [any] books, papers, documents, merchandise, or other material relevant to the investigation.

~~[(2) (4)]~~ ~~Whenever it appears to the director that substantial evidence exists that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may do any of the following in addition to other specific duties under this chapter:~~ [In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:]

~~[(a)]~~ ~~in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the director may issue an order to cease and desist from engaging in the act or practice or from doing any act in furtherance of the activity;~~ [the director may impose an administrative fine of up to \$2,500 for each violation of this chapter;] or

~~[(b) the director]~~ [division] may bring an action in ~~the~~ appropriate district court of this state [a court of competent jurisdiction] to enjoin the acts or practices constituting the violation or to enforce compliance with this chapter or any rule made or order issued under this chapter.

~~[(3) Whenever it appears to the director by a preponderance of the evidence that a person has engaged in or is engaging in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may assess an administrative fine of up to \$500 per violation up to \$10,000 for any series of violations arising out of the same operative facts:]~~

~~[(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

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(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 [(2)(b)] (4)(b) may:

- (a) issue an injunction;
- (b) enter a declaratory judgment;
- (c) appoint a receiver for the defendant or the defendant's assets and order the defendant to pay the expenses of the receiver;
- (d) order disgorgement of any money received in violation of this chapter;
- (e) order rescission of agreements violating this chapter;
- (f) impose ~~a fine of {} not more than \$2,000~~ up to \$2,500 ~~for each violation of this chapter; {} and {} or~~ for each violation of this chapter; {} and {} or
- (g) impose a civil penalty ~~;~~ or any other relief the court ~~considers just~~ determines reasonable and necessary.

(6) If a court ~~of competent~~ 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.

[(5)] (7) [(a)] In assessing the amount of a fine or penalty under Subsection [(3); (4)(f), or (4)(g)] ~~Subsection {}(4)(a), {}(5)(f), or {}(5)(g)~~, the director or court imposing the fine or penalty ~~shall~~ may consider the gravity of the violation ~~[and the intent of the violator].~~

[(b) If it does not appear by a preponderance of the evidence that the violator acted in bad faith {} or with intent to harm the public {}, the director or court shall excuse payment of the fine or penalty.]

(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 ~~no more than~~ up to \$5,000 for each violation.

(b) A court may impose a civil penalty authorized under this section ~~may be imposed~~ in ~~any~~ a civil action brought by the attorney general on behalf of the division.

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~~[(6)]~~ (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.

~~13-22-4. Violation a misdemeanor -- Damages:~~

~~—— (1) A person who willfully violates any provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in the chapter, is guilty of a class B misdemeanor. Each day the violation is committed or permitted to continue constitutes a separate punishable offense.~~

~~—— (2) (10) Nothing in this section precludes any person damaged as a result of a charitable solicitation from maintaining a civil action for damages or injunctive relief.~~

~~—— (3) The division may maintain an action for damages or injunctive relief on behalf of itself or any other person to enforce compliance with this chapter.~~

~~13-22-5. Registration or permit required:~~

~~—— (1) (a) An organization may not engage in an activity described in Subsection (1)(b) unless the organization is:~~

~~—— (i) exempt under Section 13-22-8; or~~

~~—— (ii) registered with the division in accordance with this chapter.~~

~~—— (b) Unless an organization meets the requirements of Subsection (1)(a), the organization may not knowingly solicit, promote, or sponsor a charitable solicitation if the charitable solicitation:~~

~~—— (i) originates in Utah;~~

~~—— (ii) is received in Utah; or~~

~~—— (iii) is caused to be made through business operations in Utah.~~

~~—— (2) Subsection (1) does not prohibit an organization from receiving an unsolicited~~

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contribution:

~~— (3) (a) Unless a person acting as a professional fund raiser obtains a permit in accordance with Section 13-22-9, the person may not:~~

~~— (i) make or facilitate a solicitation either directed toward the state or originating from the state; or~~

~~— (ii) maintain a place of business in the state or employ an individual located in the state.~~

~~— (b) Subsection (3)(a) applies regardless of whether a charitable organization receiving the services of a professional fund raiser is required to register under this chapter.~~

~~— (4) (a) Unless a person acting as a professional fund raising counsel or consultant obtains a permit in accordance with Section 13-22-9, the person may not:~~

~~— (i) maintain a place of business in the state or employ an individual located in the state; or~~

~~— (ii) provide any service of a professional fund raising counsel or consultant to or for a charitable organization, or any other person, over which the state has general jurisdiction.~~

~~— (b) Subsection (4)(a) applies regardless of whether a charitable organization receiving the services of a professional fund raising counsel or consultant is required to register under this chapter.~~

~~— (5) A person required to obtain a permit under Subsection (3) or (4) may not provide any service to or on behalf of an organization required to register under Subsection (1) if the organization is not registered in accordance with Section 13-22-6.~~

~~— Section 2} chapter limits other available rights or remedies authorized under the laws of this state or the United States.~~

Section 5. Section ~~{13-22-6}~~13-22-4 is amended to read:

~~{13-22-6}~~13-22-4. ~~{Application}~~Action for ~~{registration}~~.

~~— (1) An applicant for registration or renewal of registration as}~~damages.

~~[(1) A person who willfully violates any provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in the chapter, is guilty of a class B misdemeanor. Each day the violation is committed or permitted to continue constitutes a separate punishable offense. (2)]~~ Nothing in this [section] chapter precludes any person damaged as a result of a charitable solicitation from maintaining a civil action for damages or

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injunctive relief.

~~[(3) The division may maintain an action for damages or injunctive relief on behalf of itself or any other person to enforce compliance with this chapter.]~~

Section 6. Section 13-22-5 is amended to read:

13-22-5. Registration required.

~~[(1) (a) An organization may not engage in an activity described in Subsection (1)(b) unless the organization is:]~~

~~[(i) exempt under Section 13-22-8; or]~~

~~[(ii) registered with the division in accordance with this chapter.]~~

~~[(b) Unless an organization meets the requirements of Subsection (1)(a), the organization may not knowingly solicit, promote, or sponsor a charitable solicitation if the charitable solicitation:]~~

~~[(i) originates in Utah;]~~

~~[(ii) is received in Utah; or]~~

~~[(iii) is caused to be made through business operations in Utah.]~~

~~[(2) Subsection (1) does not prohibit an organization from receiving an unsolicited contribution.]~~

~~[(3) (1) [(a)] Unless a person acting as a professional fund raiser [obtains a permit] is registered with the division in accordance with Section 13-22-9, the person may not:~~

~~[(i)] (a) make or facilitate a solicitation either directed toward the state or originating from the state; or~~

~~[(ii)] (b) maintain a place of business in the state or employ an individual located in the state.~~

~~[(b) Subsection (3)(a) applies regardless of whether a charitable organization { shall:~~

~~— (a) pay an application fee as determined under Section 63J-1-504; and~~

~~— (b) submit an application on a form approved by the division which shall include:~~

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

~~— [(ii) the specific legal nature of the organization, that is, whether the organization is an individual, joint venture, partnership, limited liability company, corporation, association, or~~

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~~other entity;]~~

~~—— [(iii) the names and residence addresses of the officers and directors of the organization;]~~

~~—— [(iv) the name and address of the registered agent for service of process and a consent to service of process;]~~

~~—— [(v)] (i) the purpose of the solicitation and use of the contributions to be solicited, if different from the purposes for which the nonprofit corporation is organized as required in the articles of incorporation under Section 16-6a-202;~~

~~—— [(vi) the method by which the solicitation will be conducted and the projected length of time the solicitation is to be conducted;]~~

~~—— [(vii) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;]~~

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

~~—— [(ix) a statement of total contributions collected or received by the organization 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;]~~

~~—— [(x) a copy of any written agreements with any professional fund raiser involved with the solicitation;]~~

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

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

~~—— [(xiii) a statement of whether the charitable organization, or the charitable organization's parent foundation, will be using} receiving the services of a professional fund raiser {or} is required to register under this chapter.]~~

[(4)] (2) [(a)] Unless a person acting as a professional fund raising [counsel or] consultant [obtains a permit] is registered with the division in accordance with Section

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13-22-9, the person may not:

[(i)] (a) maintain a place of business in the state or employ an individual located in the state; or

[(ii)] (b) provide any service of a professional fund raising [counsel or] consultant to or for a charitable organization, or any other person, over which the state has general jurisdiction.

[(b) Subsection (4)(a) applies regardless of whether a charitable organization receiving the services of a professional fund raising counsel or consultant {;}]

~~— [(xiv) if either the charitable organization or the charitable organization's parent foundation will be using the services of a professional fund raiser or a professional fund raising counsel or consultant;]~~

~~— [(A) a copy of all agreements related to the services; and]~~

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

~~— [(xv)] [(i)] any documents required under Section 13-22-15; and~~

~~— [(xvi)] [(ii)] any additional information the division may require by rule.~~

~~— (2) If any 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,} is required to register under this chapter.]~~

[(5) A person required to obtain a permit under Subsection (3) or (4) may not provide any service to or on behalf of an organization {failing to file a registration application or renewal by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration application or renewal were due to be filed.

~~— Section 3} required to register under Subsection (1) if the organization is not registered in accordance with Section 13-22-6.]~~

Section 7. Section 13-22-9 is amended to read:

13-22-9. Professional fund raiser's or fund raising {counsel's or} consultant's

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~~{permit}~~registration.

(1) A person applying for or renewing a ~~[permit]~~registration as a professional fund raiser or a professional fund raising ~~[counselor]~~ 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 ~~[any]~~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 ~~[any officer or director of the applicant]~~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 ~~[any other items]~~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;

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(viii) if a professional fund raising ~~["counsel or"]~~ consultant:

(A) the purpose of the plan, management, advice, ~~["counsel"]~~ 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, ~~["counsel"]~~ 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, ~~["counsel"]~~ or preparation of materials for, or with respect to, the solicitation, including all commissions, costs of collection, salaries, and ~~["any other items"]~~ 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, ~~["counsel"]~~ 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, ~~["counseling"]~~ 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 ~~["any crime involving {f} moral turpitude"]~~ a crime involving a charitable {solicitations} solicitation or a felony involving fraud, dishonesty, a false {statements} statement, forgery, or theft;

~~[(x) a copy of any written agreements with any charitable organization, {~~

~~(xi) the}]~~

(x) each written agreement the applicant has with a charitable organization;

(xi) [the] disclosure of any injunction, judgment, or administrative order or conviction of ~~["any crime involving {f} moral turpitude"]~~ a crime involving a charitable

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~~{solicitations}~~solicitation or a felony involving fraud, dishonesty, a false ~~{statements}~~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 ~~[counsel or]~~ consultant and the charity, and its parent foundation, if any, are registered and in compliance with this chapter; ~~{}~~and~~{}~~

~~_____ (xiv) evidence that the applicant has obtained and maintained a performance bond issued by a surety authorized to transact surety business in this state:~~

~~_____ (A) in the amount of \$25,000; and~~

~~_____ (B) payable to the division for the benefit of any consumer who incurs damages as a result of the applicant's violation of this chapter; and~~

~~_____ [(xiv)] (xv) any}~~

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

(2) If [any] information contained in the application for [a permit] 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 [permit] registration fee, an applicant failing to file [a permit application] an application for registration or renewal by the due date or filing an incomplete [permit application] 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 [permit application] application for registration or renewal [were] was due to be filed.

Section 8. Section 13-22-11 is amended to read:

13-22-11. Expiration of registration~~{ and permits}~~.

~~[(1) Each charitable organization registration issued under this chapter expires annually on the earlier of January 1, April 1, July 1, or October 1 following the completion of 12 months after the date of initial issuance.]~~

~~[(2)] (1) Each professional fund raiser's [permit] registration issued under this chapter expires annually on the date of issuance.~~

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~~[(3)]~~ [(2)] Each professional fund raising ~~[counsel's or]~~ consultant's ~~[permit]~~ registration issued under this chapter expires annually on the date of issuance.

~~[(4)]~~ [(3)] A registration ~~[or permit]~~ may be renewed only by complying with the requirements for obtaining the original registration ~~[or permit]~~.

Section 9. Section 13-22-12 is amended to read:

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

~~[(1)]~~ [(1)] The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application~~[-, registration, permit, or information card]~~ or registration, upon a finding that the order is in the public interest and that:

~~[(a)]~~ [(1)] the application for registration or renewal is incomplete or misleading in any material respect;

~~[(b)]~~ [(2)] the applicant or registrant or ~~[any]~~ an officer, director, agent, or employee of the applicant or registrant has:

~~[(i)]~~ [(a)] violated this chapter or committed ~~[any of the prohibited acts and practices]~~ a prohibited act or practice described in this chapter;

~~[(ii)]~~ [(b)] been enjoined by ~~[any]~~ 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;

~~[(iii)]~~ [(c)] been convicted of a crime involving ~~{moral turpitude;~~

~~[(iv)]~~ [(d)] ~~[moral turpitude]~~ fraud, dishonesty, a false statement, forgery, or theft;

~~[(iv)]~~ [(d)] obtained or attempted to obtain a registration ~~[or a permit]~~ by misrepresentation;

~~[(v)]~~ [(e)] materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with ~~[any]~~ a solicitation;

~~[(vi)]~~ [(f)] caused or allowed ~~[any]~~ a paid solicitor to violate ~~[any]~~ a rule made or order issued under this chapter by the division;

~~[(vii)]~~ [(g)] failed to take corrective action with ~~[its solicitors who have]~~ a solicitor that has violated this chapter or committed ~~[any of the prohibited acts and practices of]~~ an act or

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practice prohibited by this chapter;

~~[(viii)]~~ (h) used, or attempted to use a name that ~~[either is deceptively similar to a name used by an existing registered or exempt charitable organization, or appears]~~ is deceptive or is reasonably likely to cause confusion ~~[of names]~~;

~~[(ix)]~~ (i) failed to timely file with the division ~~[any]~~ a report or information required in this chapter or by rules made under this chapter; or

~~[(x)]~~ (j) failed to pay a fine imposed by the division in accordance with Section 13-22-3~~;~~ or.

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

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

~~[(a) the notice of claim of exemption is incomplete or false or misleading in any material respect; or]~~

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

Section 10. Section 13-22-13 is amended to read:

13-22-13. Prohibited practices.

In connection with ~~[any]~~ 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 ~~[any]~~ a governmental entity;

(2) violating ~~[any of the requirements]~~ a requirement of this chapter or ~~[any rule]~~ a rule made under this chapter;

(3) making ~~[any untrue]~~ 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 ~~[Subsection 13-22-3(2) or (3)]~~

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Section 11. Section 13-22-14 is amended to read:

13-22-14. Accuracy not guaranteed.

(1) By issuing a [permit] registration, the state does not guarantee the accuracy of any representation contained in the [permit] registration, nor does it warrant that any statement made by the holder of the [permit] 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 [permit] registration.

(2) The following statement shall appear on each [permit] 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 [PERMIT] REGISTRATION."

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

Section ~~{4}~~12. Section 13-22-15 is ~~{amended}~~repealed and reenacted to read:

13-22-15. ~~{}~~ Financial reports required~~{}~~

~~———— (1) (a) Except as provided in Subsection (1)(c), as part of a charitable organization's application for registration or renewal of registration described in Section 13-22-6, each charitable organization shall file:~~

~~———— (i) an annual financial report on a form prescribed by the division;~~

~~———— (ii) an IRS Form 990, 990EZ, 990N, or 990PF; or~~

~~———— (iii) both the documents described in Subsections (1)(a)(i) and (ii).~~

~~———— (b) The division shall instruct each applicant for registration or renewal of registration as} -- Rulemaking.~~

(1) (a) Beginning January 1, 2025, and subject to Subsection (2), a charitable organization ~~{on which documents to file under Subsection (1)(a):~~

~~———— (c) If a document required under Subsections (1)(a) and (b) is not available during the charitable organization's first year of registration, upon request from the division, the charitable~~

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~~organization shall provide a quarterly financial report to the division within 30 days after the day on which the division requests the quarterly financial report.~~

~~— (2) Each annual or quarterly financial report shall disclose:~~

~~— (a) the gross amount of contributions received;~~

~~— [(b) the amount of contributions disbursed or to be disbursed to each charitable organization or charitable purpose represented;]~~

~~— [(c)] (b) aggregate amounts paid to any professional fund raiser;~~

~~— [(d)] (c) amounts spent for overhead, expenses, commissions, and similar purposes;~~

~~and~~

~~— [(e)] (d) unless disclosed in another part} that is a nonprofit corporation, or that is a foreign nonprofit corporation, shall file an unredacted copy of the charitable organization's ~~{application for registration or renewal of registration, the name and address of any professional fund raiser used by the charitable organization.~~~~

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

~~— (4) (a) If} 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 ~~{fails to timely file a quarterly financial report}~~ 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 ~~{Subsection (1)(c), the}~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:~~

~~(i) the manner in which a charitable ~~{organization's registration is immediately and automatically suspended pending a final order of the division under Section 13-22-12.~~~~

~~— (b) The division may reinstate the} ~~organization is required to file the forms described in Subsection (1); and~~~~

~~(ii) the process by which a charitable ~~{organization's registration after the division receives:~~~~

~~— (i) the quarterly financial report requested in accordance with Subsection (1)(c); and~~

~~— (ii) a penalty of \$25 for each full or partial calendar month after the day on which the~~

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~~quarterly report was due.~~ organization is required to file the forms described in Subsection (1).

Section 13. Section 13-22-16 is amended to read:

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 ~~[organization required to be registered under this chapter and 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) ~~[An organization required to be registered under this chapter and each]~~ 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.

Section 14. Section 13-22-17 is amended to read:

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 ~~[counsel or]~~ 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 ~~[counsel or]~~ consultant through written agreement.

(4) A professional fund raiser or professional fund raising consultant shall file each

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agreement described in this section with its application for registration.

~~[(4) Copies of the agreement required by this section shall be attached to all applications for registration and or a permit.]~~

Section 15. Section 13-22-22 is amended to read:

13-22-22. Charitable sales promotions.

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

~~[(a) the names of the charitable organization and commercial co-venturer;]~~

~~[(b) that the charitable organization and the commercial co-venturer will conduct a charitable sales promotion; and]~~

~~[(c) the date the charitable sales promotion is expected to commence.]~~

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

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

~~[(4) The 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.~~

Section ~~{5}~~16. Section 13-22-24 is enacted to read:

~~{~~ **13-22-24. Deceptive acts or practices prohibited -- Prohibited telephone solicitations.**

~~_____ (1) A deceptive act or practice by a person in connection with a charitable solicitation is a violation of this chapter.~~

~~_____ (2) Without limiting the scope of Subsection (1), a person commits a deceptive act or practice if the person knowingly or intentionally:~~

~~_____ (a) indicates that the person is affiliated with a charitable organization, if it is not;~~

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~~_____ (b) indicates that the person is an employee, officer, or representative of a public safety agency, if it is not;~~

~~_____ (c) indicates that the person has sponsorship or approval of a given charitable organization, if it has not;~~

~~_____ (d) indicates that a given portion of a solicitation is provided to a charitable organization, if it is not;~~

~~_____ (e) indicates that providing a solicitation has an additional benefit, if it does not;~~

~~_____ (f) indicates that providing a solicitation is tax deductible, if it is not;~~

~~_____ (g) indicates that providing a solicitation is connected to a tax credit, if it is not;~~

~~_____ (h) indicates that the offeror of a solicitation has previously given a solicitation to the charitable organization, if it has not; or~~

~~_____ (i) with the intent to deceive, uses a name that is substantially similar to another charitable organization;~~

~~_____ (3) A deceptive act or practice by a professional fund raiser or professional fund raising counsel or consultant is a violation of this chapter;~~

~~_____ (4) Without limiting the scope of Subsection (3), a professional fund raiser or professional fund raising counsel or consultant commits a deceptive act or practice if the professional fund raiser or professional fund raising counsel or consultant knowingly or intentionally;~~

~~_____ (a) indicates the name of the professional fund raiser or professional fund raising counsel or consultant, if it is not;~~

~~_____ (b) indicates that the professional fund raiser or professional fund raising counsel or consultant is conducting a solicitation on behalf of a given charitable organization, if it is not;~~

~~or~~

~~_____ (c) indicates that a given portion of a solicitation is provided to a charitable organization, if it is not;~~

~~_____ (5) (a) A charitable organization shall maintain a list of persons in the state who request not to be contacted by telephone in connection with a charitable solicitation;~~

~~_____ (b) A person in connection with a charitable solicitation, a professional fund raiser, or a professional fund raising counsel or consultant may not make or cause to be made an unsolicited phone call to a person;~~

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~~— (i) located in the state; and~~

~~— (ii) who requests to be placed on the charitable organization's list described in Subsection (5)(a):~~

~~— (c) (i) It is a violation of this chapter to make an unsolicited telephone call in violation of this Subsection (5):~~

~~— (ii) Each unsolicited telephone call in violation of this Subsection (5) is a separate violation of this chapter:~~

~~— Section 6. Section 13-22-25 is enacted to read:~~

~~— **13-22-25. Diversion of funds prohibited:**~~

~~— (1) Diverting funds from a charitable purpose is a violation of this chapter:~~

~~— (2) Without limiting the scope of Subsection (1), a person or professional fund raiser or fund raising counsel or consultant diverts funds from a charitable purpose if the person:~~

~~— (a) appropriates solicited funds to a person other than the person to which the funds were solicited;~~

~~— (b) appropriates solicited funds for a purpose other than the purpose for which the funds were solicited;~~

~~— (c) appropriates solicited funds for any compensation in excess of a reasonable allowance for salaries or other compensation for services rendered;~~

~~— (d) appropriates solicited funds for any fees in excess of a reasonable allowance for travel, entertainment, legal, professional, or services of a similar nature; or~~

~~— (e) uses solicited funds for any purpose prohibited by 26 U.S.C. Sec. 501(c)(3):~~

~~— Section 7. Section 13-22-26 is enacted to read:~~

~~† **~~13-22-26~~13-22-24. Fund raising campaign registration required.**~~

~~(1) As used in this section, "fund raising campaign" means charitable solicitation activities activity that a professional fund raiser engages in on behalf of a charitable organization~~†~~:~~

~~— (a) through a written agreement required under Section 13-22-17; and~~

~~— (b) for a definite period~~†~~ where the professional fund raiser receives a portion of the funds raised or other compensation in exchange for services.~~

~~(2) Before ~~the commencement of~~ commencing a fund raising campaign, a professional fund raiser shall submit to the division:~~

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- (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 ~~{approves}~~ has approved the solicitation materials to be used in the fund raising campaign; and
 - (e) names and contact information for the ~~{individual or }~~ 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 ~~{of}~~ detailing:
- (a) all contributions collected ~~{and expenses}~~ during the fund raising campaign;
 - (b) all contributions paid to the charitable organization ~~{during}~~ 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 ~~{of a fund raising campaign}~~ related to the information described in Subsection (2) for five years after the ~~{date}~~ day on which the fund raising campaign ends.

Section ~~{8}~~ 17. Section **13-25a-102** is amended to read:

13-25a-102. Definitions.

As used in this chapter:

- (1) "Advertisement" means material offering for sale, or advertising the availability or quality of, any property, good, or service.
- (2) (a) "Automated telephone dialing system" means equipment used to:
 - (i) store or produce telephone numbers;
 - (ii) call a stored or produced number; and
 - (iii) connect the number called with a recorded message or artificial voice.
- (b) "Automated telephone dialing system" does not include a system used in an emergency involving the immediate health or safety of a person, including a burglar alarm system, voice messaging system, fire alarm system, or other similar system.
- (3) "Division" means the Division of Consumer Protection.

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(4) (a) "Established business relationship" means a relationship that:

(i) is based on inquiry, application, purchase, or transaction regarding products or services offered;

(ii) is formed by a voluntary two-way communication between a person making a telephone solicitation and a person to whom a telephone solicitation is made; and

(iii) has not been terminated by:

(A) an act by either person; or

(B) the passage of 18 months since the most recent inquiry, application, purchase, transaction, or voluntary two-way communication.

(b) "Established business relationship" includes a relationship with an affiliate as defined in Section 16-10a-102.

(5) "Facsimile machine" means equipment used for:

(a) scanning or encoding text or images for conversion into electronic signals for transmission; or

(b) receiving electronic signals and reproducing them as a duplicate of the original text or image.

(6) "Negative response" means a statement from a person stating the person does not wish to listen to the sales presentation or participate in the solicitation presented in the telephone call.

(7) "On-call emergency provider" means an individual who is required by an employer to be on call to respond to a medical emergency.

(8) "Telephone solicitation" means the initiation of a telephone call or message for a commercial purpose or to seek a financial donation, including calls:

(a) encouraging the purchase or rental of, or investment in, property, goods, or services, regardless of whether the transaction involves a nonprofit organization;

(b) soliciting a sale of or extension of credit for property or services to the person called;

(c) soliciting information that will be used for:

(i) the direct solicitation of a sale of property or services to the person called; or

(ii) an extension of credit to the person called for a sale of property or services;

(d) soliciting a charitable ~~donation involving the exchange of any premium, prize,~~

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~~gift, ticket, subscription, or other benefit in connection with any appeal made for a charitable purpose]~~ contribution; or

(e) encouraging the person called to sell real or personal property.

(9) "Telephone solicitor" means ~~[any]~~ an individual, firm, organization, partnership, association, or corporation who makes or causes to be made an unsolicited telephone call, including calls made by use of an automated telephone dialing system.

(10) "Unsolicited telephone call" means a telephone call for a commercial purpose or to seek a financial donation other than a call made:

(a) in response to an express request of the person called;

(b) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;

(c) to a person with whom the telephone solicitor has an established business relationship; or

(d) as required by law for a medical purpose.

Section ~~{9}~~ 18. Section **13-25a-111** is amended to read:

13-25a-111. Exemptions.

Notwithstanding any other provision of this chapter, Sections 13-25a-103 and 13-25a-108 do not apply to ~~{ a person who holds a license or registration }~~:

~~[(1) a telephone call made for a charitable purpose as defined in Section 13-22-2;]~~

~~[(2) a charitable solicitation as defined in Section 13-22-2; or]~~

~~[(3)]~~ 1 a person who holds and acts within the scope of a license or registration: ~~{ }~~

~~[(a)]~~ (1) under Title 31A, Insurance Code;

~~[(b)]~~ (2) issued by the Division of Real Estate established in Section 61-2-201; or

~~[(c)]~~ (3) issued by the National Association of Securities Dealers.

Section 19. Section 16-6a-102 is amended to read:

16-6a-102. Definitions.

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States Postal Service.

(b) "Address" includes:

(i) a post office box number;

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(ii) a rural free delivery route number; and

(iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Articles of incorporation" include:

(a) amended articles of incorporation;

(b) restated articles of incorporation;

(c) articles of merger; and

(d) a document of a similar import to the documents described in Subsections (3)(a) through (c).

(4) "Assumed corporate name" means a name assumed for use in this state:

(a) by a:

(i) foreign corporation ~~[pursuant to]~~ as described in Section 16-10a-1506; or

(ii) a foreign nonprofit corporation ~~[pursuant to]~~ as described in Section 16-6a-1506;

and

(b) because the corporate name of the foreign corporation described in Subsection (4)(a) is not available for use in this state.

(5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of a domestic or foreign nonprofit corporation.

(b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the board of directors because of a power delegated to that person ~~[pursuant to]~~ under Subsection 16-6a-801(2).

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted ~~[pursuant to]~~ under this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit corporation irrespective of the one or more names by which the codes of rules are designated.

(b) "Bylaws" includes:

(i) amended bylaws; and

(ii) restated bylaws.

(7) (a) "Cash" or "money" means:

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- (i) legal tender;
 - (ii) a negotiable instrument; or
 - (iii) other cash equivalent readily convertible into legal tender.
- (b) "Cash" and "money" are used interchangeably in this chapter.

(8) "Charitable organization" means the same as that term is defined in Section 13-22-2.

(8)1(9) (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution, redemption, transfer, or other characteristics.

(b) For purposes of Subsection (8)(a)1(9)(a), a right is considered the same if it is determined by a formula applied uniformly to a group of memberships.

(9)1(10) (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed the writing.

(b) "Conspicuous" includes printing or typing in:

- (i) italics;
- (ii) boldface;
- (iii) contrasting color;
- (iv) capitals; or
- (v) underlining.

(10)1(11) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:

- (a) the ownership of voting shares;
- (b) contract; or
- (c) a means other than those specified in Subsection (10)(a) or (b)1(11)(a) or (b).

(11)1(12) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter.

(12)1(13) "Corporate name" means:

(a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;

(b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;

(c) the name of a foreign corporation as stated in the foreign corporation's:

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- (i) articles of incorporation; or
- (ii) document of similar import to articles of incorporation; or
- (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit

corporation's:

- (i) articles of incorporation; or
- (ii) document of similar import to articles of incorporation.

~~[(13)]~~ [(14)] (a) "Corporate records" means the records described in Section 16-6a-1601.

(b) "Corporate records" does not include correspondence, communications, notes, or other similar information, regardless of format or method of storage, that are not an official decision, published document, or record of the corporation.

~~[(14)]~~ [(15)] "Corporation" or "domestic corporation" means a corporation for profit that:

- (a) is not a foreign corporation; and
- (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation

Act.

~~[(15)]~~ [(16)] "Delegate" means a person elected or appointed to vote in a representative assembly:

- (a) for the election of a director; or
- (b) on matters other than the election of a director.

~~[(16)]~~ [(17)] "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

~~[(17)]~~ [(18)] "Director" means a member of the board of directors.

~~[(18)]~~ [(19)] (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:

- (i) members;
- (ii) directors; or
- (iii) officers.
- (b) "Distribution" does not include a fair-value payment for:
 - (i) a good sold; or
 - (ii) a service received.

~~[(19)]~~ [(20)] "Division" means the Division of Corporations and Commercial Code.

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~~[(20)]~~[(21)] "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.

~~[(21)]~~[(22)] "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.

~~[(22)]~~[(23)] "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

~~[(23)]~~[(24)] (a) "Employee" includes an officer of a nonprofit corporation.

(b) (i) Except as provided in Subsection ~~[(23)(b)(i)]~~[(24)(b)(ii)], "employee" does not include a director of a nonprofit corporation.

(ii) Notwithstanding Subsection ~~[(23)(b)(i)]~~[(24)(b)(i)], a director may accept one or more duties that make that director an employee of a nonprofit corporation.

~~[(24)]~~[(25)] "Entity" includes:

- (a) a domestic or foreign corporation;
- (b) a domestic or foreign nonprofit corporation;
- (c) a limited liability company;
- (d) a profit or nonprofit unincorporated association;
- (e) a business trust;
- (f) an estate;
- (g) a partnership;
- (h) a trust;
- (i) two or more persons having a joint or common economic interest;
- (j) a state;
- (k) the United States; or
- (l) a foreign government.

~~[(25)]~~[(26)] "Executive director" means the executive director of the Department of Commerce.

~~[(26)]~~[(27)] "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

~~[(27)]~~[(28)] "Foreign nonprofit corporation" means an entity:

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- (a) incorporated under a law other than the laws of this state; and
- (b) that would be a nonprofit corporation if formed under the laws of this state.

~~[(28)]~~ [(29)] "Governmental entity" means:

- (a) (i) the executive branch of the state;
- (ii) the judicial branch of the state;
- (iii) the legislative branch of the state;
- (iv) an independent entity, as defined in Section 63E-1-102;
- (v) a political subdivision of the state;
- (vi) a state institution of higher education, as defined in Section 53B-3-102;
- (vii) an entity within the state system of public education; or
- (viii) the National Guard; or
- (b) any of the following that is established or controlled by a governmental entity listed

in Subsection ~~[(28)(a)]~~ [(29)(a)] to carry out the public's business:

- (i) an office;
- (ii) a division;
- (iii) an agency;
- (iv) a board;
- (v) a bureau;
- (vi) a committee;
- (vii) a department;
- (viii) an advisory board;
- (ix) an administrative unit; or
- (x) a commission.

~~[(29)]~~ [(30)] "Governmental subdivision" means:

- (a) a county;
- (b) a city;
- (c) a town; or
- (d) another type of governmental subdivision authorized by the laws of this state.

~~[(30)]~~ [(31)] "Individual" means:

- (a) a natural person;
- (b) the estate of an incompetent individual; or

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(c) the estate of a deceased individual.

~~[(31)]~~ (32) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

~~[(32)]~~ (33) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.

(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.

~~[(33)]~~ (34) (a) "Member" means one or more persons identified or otherwise appointed as a member of a domestic or foreign nonprofit corporation as provided:

- (i) in the articles of incorporation;
- (ii) in the bylaws;
- (iii) by a resolution of the board of directors; or
- (iv) by a resolution of the members of the nonprofit corporation.

(b) "Member" includes:

- (i) "voting member"; and
- (ii) a shareholder in a water company.

~~[(34)]~~ (35) "Membership" refers to the rights and obligations of a member or members.

~~[(35)]~~ (36) "Mutual benefit corporation" means a nonprofit corporation:

(a) that issues shares of stock to its members evidencing a right to receive distribution of water or otherwise representing property rights; or

(b) all of whose assets are contributed or acquired by or for the members of the nonprofit corporation or ~~[their]~~ the members' predecessors in interest to serve the mutual purposes of the members.

~~[(36)]~~ (37) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:

- (a) is not a foreign nonprofit corporation; and
- (b) is incorporated under or subject to this chapter.

~~[(37)]~~ (38) "Notice" means the same as that term is defined in Section 16-6a-103.

~~[(38)]~~ (39) "Party related to a director" means:

- (a) the spouse of the director;

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- (b) a child of the director;
- (c) a grandchild of the director;
- (d) a sibling of the director;
- (e) a parent of the director;
- (f) the spouse of an individual described in Subsections ~~[(38)(b) through (c)]~~ [(39)(b)

through (e);

- (g) an individual having the same home as the director;
- (h) a trust or estate of which the director or another individual specified in this

Subsection ~~[(38)]~~ [(39)] is a substantial beneficiary; or

- (i) any of the following of which the director is a fiduciary:

- (i) a trust;
- (ii) an estate;
- (iii) an incompetent;
- (iv) a conservatee; or
- (v) a minor.

~~[(39)]~~ [(40)] "Person" means an:

- (a) individual; or
- (b) entity.

~~[(40)]~~ [(41)] "Principal office" means:

(a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:

- (i) an annual report;
- (ii) an application for a certificate of authority; or
- (iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

~~[(41)]~~ [(42)] "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration;
- (c) mediation;

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- (d) a criminal action;
- (e) an administrative action; or
- (f) an investigatory action.

~~[(42)]~~ (43) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

- (a) by the domestic or foreign nonprofit corporation at:
 - (i) its registered office in this state; or
 - (ii) its principal office;
- (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or
- (c) by another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

~~[(43)]~~ (44) (a) "Record date" means the date established under Part 6, Members, or Part 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of the nonprofit corporation's members.

(b) The determination described in Subsection ~~[(43)](a)~~ (44)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~[(44)]~~ (45) "Registered agent" means the registered agent of:

- (a) a domestic nonprofit corporation; or
- (b) a foreign nonprofit corporation.

~~[(45)]~~ (46) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

~~[(46)]~~ (47) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:

- (a) the preparation and maintenance of:

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- (i) minutes of the meetings of:
 - (A) the board of directors; or
 - (B) the members; and
- (ii) the other records and information required to be kept by the nonprofit corporation

[pursuant to] as described in Section 16-6a-1601; and

- (b) authenticating records of the nonprofit corporation.

[~~(47)~~] (48) "Share" means a unit of interest in a nonprofit corporation.

[~~(48)~~] (49) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.

[~~(49)~~] (50) "State," when referring to a part of the United States, includes:

- (a) a state;
- (b) a commonwealth;
- (c) the District of Columbia;
- (d) an agency or governmental and political subdivision of a state, commonwealth, or

District of Columbia;

- (e) territory or insular possession of the United States; or

- (f) an agency or governmental and political subdivision of a territory or insular

possession of the United States.

[~~(50)~~] (51) "Street address" means:

- (a) (i) street name and number;
- (ii) city or town; and
- (iii) United States post office zip code designation; or

(b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection [~~(50)(a)~~] (51)(a) fixing as nearly as possible the actual physical location, but only if the information includes:

- (i) the rural free delivery route;
- (ii) the county; and
- (iii) the United States post office zip code designation.

[~~(51)~~] (52) "Tribal nonprofit corporation" means a nonprofit corporation:

- (a) incorporated under the law of a tribe; and

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(b) that is at least 51% owned or controlled by the tribe.

~~[(52)]~~ (53) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of ~~[their]~~ the tribe's status as Indians.

~~[(53)]~~ (54) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.

~~[(54)]~~ (55) "Vote" includes authorization by:

- (a) written ballot; and
- (b) written consent.

~~[(55)]~~ (56) (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

(b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

~~[(56)]~~ (57) (a) "Voting member" means a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

(b) A person is not a voting member solely because of:

- (i) a right the person has as a delegate;
- (ii) a right the person has to designate a director; or
- (iii) a right the person has as a director.

(c) Except as the bylaws may otherwise provide, "voting member" includes a "shareholder" if the nonprofit corporation has shareholders.

~~[(57)]~~ (58) "Water company" means:

- (a) the same as that term is defined in Subsection 16-4-102(5); or
- (b) a mutual benefit corporation, when the stock in the mutual benefit corporation represents a right to receive a distribution of water for beneficial use.

Section ~~{10}~~ 20. Section **16-6a-203** is amended to read:

16-6a-203. Incorporation -- Required filings.

~~{~~ (1) As used in this section:

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~~_____ (a) "Professional fund raiser" means the same as that term is defined in Section 13-22-2.~~

~~_____ (b) "Professional fund raising counsel or consultant" means the same as that term is defined in Section 13-22-2.~~

† ~~{(2)}~~ 1 A nonprofit corporation is incorporated, and its corporate existence begins:

(a) when the articles of incorporation are filed by the division; or

(b) if a delayed effective date is specified ~~[pursuant to]~~ as described in Subsection 16-6a-108(2), on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.

~~{(2)}~~ ~~{(3)}~~ Notwithstanding Subsection 16-6a-110(4), the filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:

(a) cancel or revoke the incorporation; or

(b) involuntarily dissolve the nonprofit corporation.

~~{(4)(a)3}~~ {A} Beginning January 1, 2025, a nonprofit corporation that is a charitable organization, unless exempted by Section 13-22-15, shall file with the division ~~any of the following that apply to the nonprofit corporation:~~

~~_____ (i) a copy of the nonprofit corporation's Internal Revenue Service determination letter qualifying the nonprofit corporation as being tax exempt under Section 501(c)(3), Internal Revenue Code;~~

~~_____ (ii) an unredacted IRS Form 990, 990EZ, 990N, or 990PF;~~

~~_____ (iii) a copy of any written agreement with a professional fund raiser or professional fund raising counsel or consultant; and~~

~~_____ (iv) disclosure of any injunction, judgment, administrative order, or felony conviction involving fraud, dishonesty, false statements, forgery, or theft with respect to an officer, director, manager, operator, or principal of the organization.~~

~~_____ (b) Except as provided in Subsection (4)(c), a nonprofit corporation shall make the filings required under Subsection (4)(a):~~

~~_____ (i) for a nonprofit corporation whose corporate existence begins on or after May 1, 2024, no later than 90 days after the date on which the nonprofit corporation's corporate existence begins; or~~

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~~(ii) for a nonprofit corporation in existence before May 1, 2024, no later than August 1, 2024.~~

~~(c) If a nonprofit corporation does not have} the information described {in Subsection (4)(a) during the time period described in Subsection (4)(b), the nonprofit corporation shall, no later than 30 days after the day on which the nonprofit corporation obtains the information, file the information required under Subsection (4)(a) with the division.~~

~~(d) If a document required under Subsections (4)(a)(i) and (ii) is not available during the time period described in Subsection (4)(b), upon request from the division, the nonprofit corporation shall provide a quarterly financial report to the division no later than 30 days after the day on which the division requests the quarterly financial report.~~

~~Section 11} by Section 13-22-15 in the form described in Section 13-22-15.~~

Section 21. Section **16-6a-1503** is amended to read:

16-6a-1503. Application for authority to conduct affairs.

(1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state by delivering to the division for filing an application for authority to conduct affairs setting forth:

- (a) its corporate name and its assumed corporate name, if any;
- (b) the name of the state or country under whose law it is incorporated;
- (c) its date of incorporation;
- (d) its period of duration;
- (e) the street address of its principal office;
- (f) the information required by Subsection 16-17-203(1);
- (g) the names and usual business addresses of its current directors and officers;
- (h) the date it commenced or expects to commence conducting affairs in this state;

~~{and}~~

~~(i) a copy of the foreign nonprofit corporation's Internal Revenue Service determination letter qualifying the nonprofit corporation as being tax exempt under Section 501(c)(3);~~
Internal Revenue Code;

~~(j) an unredacted IRS form 990, 990EZ, 990N, or 990PF;~~

~~(k) a copy of any written agreement with a professional fund raiser or professional fund raising counsel or consultant;~~

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~~(1) disclosure of any injunction, judgment, or administrative order or conviction of any felony involving fraud, dishonesty, false statements, forgery, or theft with respect to any officer, director, manager, operator, or principal of the organization; and~~

~~[(i)] (m);~~ and

(i) the additional information the division determines is necessary or appropriate to determine whether the application for authority to conduct affairs should be filed.

(2) With the completed application required by Subsection (1) the foreign nonprofit corporation shall deliver to the division for a certificate of existence, or a document of similar import that is:

(a) authenticated by the division or other official having custody of corporate records in the state or country under whose law it is incorporated; and

(b) dated within 90 days before the day on which the application for authority to conduct affairs is filed.

~~{ (3) If the foreign nonprofit corporation does not have the information described in Subsection (1)(i) through (l) at the time the foreign nonprofit corporation files the application, the foreign nonprofit corporation shall, no later than 30 days of the day on which the nonprofit corporation obtains the information, file the information with the division.~~

‡ ~~{(3)}{(4)}~~ The foreign nonprofit corporation shall include in the application for authority to conduct affairs, or in an accompanying document, written consent to appointment by its designated registered agent.

(4) Beginning January 1, 2025, a foreign nonprofit corporation that is a charitable organization, unless exempted by Section 13-22-15, shall file the information described in Section 13-22-15 in the form described in Section 13-22-15.

~~[(4)] (5)~~ (a) The division may permit a tribal nonprofit corporation to apply for authority to conduct affairs in this state in the same manner as a nonprofit corporation incorporated in another state.

(b) If a tribal nonprofit corporation elects to apply for authority to conduct affairs in this state, for purposes of this chapter, the tribal nonprofit corporation shall be treated in the same manner as a foreign nonprofit corporation incorporated under the laws of another state.

Section 22. Section 42-2-6.6 is amended to read:

42-2-6.6. Assumed name.

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(1) The assumed name:

(a) may not contain:

(i) [any] a word or phrase that indicates or implies that the business is organized for [any] a purpose other than a purpose contained in the business's application; or

(ii) for an assumed name that is changed or approved on or after May 4, 2022, the number sequence "911";

(b) shall be distinguishable from any registered name or trademark of record in the offices of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code [pursuant to] under Subsection (2);

(c) without the written consent of the United States Olympic Committee, may not contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) an assumed name authorized for use in this state on or after May 1, 2000, may not contain the words:

(i) "incorporated";

(ii) "inc."; or

(iii) a variation of "incorporated" or "inc."

(2) Notwithstanding Subsection [(1)(e)] (1)(d), an assumed name may contain a word listed in Subsection [(1)(e)] (1)(d) if the Division of Corporations and Commercial Code authorizes the use of the name by a corporation as defined in:

(a) Subsection [16-6a-102(26)] 16-6a-102(27);

(b) Subsection [16-6a-102(35)] 16-6a-102(36);

(c) Subsection 16-10a-102(11); or

(d) Subsection 16-10a-102(20).

(3) The Division of Corporations and Commercial Code shall authorize the use of the name applied for if:

(a) the name is distinguishable from one or more of the names and trademarks that are on the division's records; or

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(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) The assumed name, for purposes of recordation, shall be either translated into English or transliterated into letters of the English alphabet if the assumed name is not in English.

(5) The Division of Corporations and Commercial Code may not approve an application for an assumed name to [any] a person violating this section.

(6) The director of the Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(7) A name that implies by [any] a word in the name that the business is an agency of the state or [of any of the state's political subdivisions] a political subdivision of the state, if the business is not actually such a legally established agency, may not be approved for filing by the Division of Corporations and Commercial Code.

(8) Section 16-10a-403 applies to this chapter.

(9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a certificate of assumed and of true name with the Division of Corporations and Commercial Code on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, [any] a person who carries on, conducts, or transacts business in this state under an assumed name shall comply with the requirements of Subsection (1)(d).

Section 23. Repealer.

This bill repeals:

Section 13-22-6, Application for registration.

Section 13-22-8, Exemptions.

Section 13-22-21, Appeal on behalf of individual.

Section ~~{12}~~24. **Effective date.**

This bill takes effect on May 1, 2024.