

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

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Legislative Document

No. 625

H. P. 450

House of Representatives, February 7, 1967

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Ross of Bath.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-SEVEN

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AN ACT Relating to Charitable Solicitations.

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 22, c. 854, additional. Title 22 of the Revised Statutes is amended by adding a new chapter 854, as follows:

CHAPTER 854

CHARITABLE SOLICITATIONS

§ 3161. Definitions

The following words and phrases as used in this chapter shall have the following meanings:

1. Charitable organizations. "Charitable organizations" shall mean any benevolent, philanthropic, patriotic or eleemosynary person or persons appealing to the public for contributions.

2. Contribution. "Contribution" shall mean the promise or grant of any money or property of any kind or value, except payments by members of an organization for membership fees, dues, fines or assessments, or for services rendered to individual members if membership in such organizations confers a bona fide right, privilege, professional standing, honors or other direct benefit.

3. Person. "Person" shall mean any individual, organization, group, association, trust, society, partnership, corporation or any combination of them.

4. Professional fund raiser. "Professional fund raiser" shall mean any person who, for compensation or other consideration, plans, constructs, manages or

carries on any drive or campaign in this State for or on behalf of any charitable organization or any other person or who engages in the business of or holds himself out to persons in this State as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization shall not be deemed a professional fund raiser.

5. Professional solicitor. "Professional solicitor" shall mean any person who is employed or retained for compensation by any person or charitable organization to solicit contributions for charitable purposes from persons in this State, but shall not include bona fide employees of charitable organizations unless such an employee is compensated on a percentage or commission arrangement based upon the amount of charitable contributions received.

## § 3162. Charitable organizations

### 1. Registration.

A. Every charitable organization, except those granted exemption in subsection 2, which intends to solicit contributions from the people of this State or have contributions solicited on its behalf, shall annually file a registration application with the Secretary of State upon prescribed forms, and shall at the time pay a fee of \$10 for each registration. Applications for the initial registration, except the applications of a new charitable organization which has not solicited contributions during the immediately preceding fiscal year, shall include in addition to the information required on the annual registration applications, a fiscal report which shall truly and clearly set forth the financial status of the organization and its operation during the immediate fiscal year just past, including its assets and liabilities, its gross income, its expenses and the net income which inured to the benefit of the charity. For this purpose, for those who use it, the Uniform Accounting and Public Financial Reporting Form established for voluntary health and welfare organizations reporting by the National Health Council, or any similar subsequent form so devised by that organization for the purpose, shall be acceptable and suffice as long as it is signed by an independent public accountant.

B. All applications for registration, including the initial application, shall provide the following information:

- (1) The name of the organization and the name or names under which it intends to solicit contributions;
- (2) The addresses of the organization and the addresses of any offices in this State, or if the organization does not maintain an office, the name and address of the individual having custody of its financial records;
- (3) Where and when the organization was legally established, the form of its organization and its tax exempt status, and its fiscal year;
- (4) The purposes for which the organization is established and the purpose or purposes for which the contributions to be solicited will be used;
- (5) The names and addresses of any professional fund raisers or professional solicitors, who are acting or have agreed to act on behalf of the or-

ganization, and with copies attached of any contract or agreement entered into between the organization and the professional fund raisers or any professional solicitors.

C. In addition, appended to each registration application, the applying charitable organization shall include:

(1) A list of the names and addresses of the officers, directors, trustees and executive personnel of the organization;

(2) A copy of a balance sheet and income and expense statement of the organization's total financial operations for the immediately preceding fiscal year signed by an independent public accountant. The Uniform Accounting and Public Reporting Forms for voluntary health and welfare organizations developed by the National Health Council shall be acceptable and suffice for those organizations using the system. This paragraph shall not apply to a new charitable organization which has not solicited contributions for the immediately preceding fiscal year.

D. The registration application shall be signed by the president or other authorized officer of the organization.

E. Registration applications, required reports, professional fund raisers' contracts and other documents required to be filed pursuant to this chapter shall become public records in the office of the Secretary of State. Registrations shall be complete on receipt by the Secretary of State of the completed application and fee. Registration shall not be deemed an endorsement by the State of Maine of any person. Professional fund raisers, professional solicitors and charitable organizations may not advertise the fact of registration as an endorsement.

F. Any solicitations of contributions by an unregistered charitable organization or by persons acting for it or on its behalf except those organizations exempted under subsection 2, paragraphs A and B, shall be unlawful and shall be dealt with as provided in section 3164.

## 2. Exemptions.

A. This chapter shall not apply to any church or related religious organizations or societies which operate under the auspices or sponsorship of an established church or religion.

B. The following persons shall not be required to register:

(1) Educational institutions which by ruling of the United States Treasury Department are exempted from federal income taxation;

(2) Organizations which solicit solely from within their own membership;

(3) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all the contributions collected, without any deductions whatever, are turned over to the named beneficiary for his use;

- (4) Persons who solicit contributions solely from charitable foundations;
- (5) Charitable organizations which do not intend to solicit and receive, and do not actually receive contributions in excess of \$5,000 during a calendar year or do not receive contributions from more than 10 persons during a calendar year, if all of their functions, including fund raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of any officer, member or employee, provided if the contributions raised are in excess of \$5,000 during any calendar year, they shall, within 30 days after the date they have received total contributions in excess of \$5,000, register with the Secretary of State as required by subsection 1.

C. The following persons shall register and shall be required to file annual registrations thereafter as set forth in subsection 1, but shall not be required to pay a registration fee:

- (1) Organizations which are located solely within the limits of any single city or town and which solicit only within the city or town in which they are located;
- (2) Community Chests, United Funds or other similar groups performing collective soliciting for the benefit of 2 or more local or regional charitable organizations, even though they may operate beyond the limits of a single city or town;
- (3) Foundations which solicit solely for the benefit of religious organizations and educational institutions which are exempted by this subsection, paragraphs A and B.
- (4) No charitable organization subject to this chapter shall pay or agree to pay a professional fund raiser or professional solicitor on the basis of a percentage of any contributions received by reason of such solicitation. Reimbursement of a professional fund raiser or professional solicitor shall be within normally accepted bounds. A determination by the Secretary of State, in accordance with section 3163, that a contract or arrangement with a professional fund raiser or professional solicitor is in excess of normally acceptable bounds shall be binding against a charitable organization.
- (5) The Secretary of State shall not issue a certificate of registration to any charitable organization which devotes less than 50% of its gross income to the charitable purposes of the organization unless it is determined by him, after investigation and an opportunity for a hearing by the organization before an adverse decision is made, that it would be in the public interest to allow the organization to solicit funds from the public, notwithstanding the fact that the general expenses of the charitable organization exceed 50%. For purposes of determining the proper status of fund raising costs of charitable organizations affiliated or joined with Community Chests, United Funds or similar joint fund raising groups in carrying out the intent of this subsection, the actual percent of the gross campaign costs of the Community Chest, United Fund or similar joint fund raising agency or agencies of which the charitable organization may be an affiliate or member agency, shall be

computed and reported proportionate to the total funds received by the charitable organizations from such sources, and shall be considered one of the proper costs in computing campaign expenses of any such affiliated or member charitable organization. The Community Chests, United Funds or other such similar joint fund raising groups, shall report this relation of fund raising cost to the total grants or distributions made of the total funds contributed in any joint fund raising combination to both the Secretary of State and to its member charitable organizations.

(6) Every charitable organization subject to this chapter which has its principal place of business without this State shall be deemed irrevocably to have appointed the Secretary of State as its agent for the service of any summons, subpoena duces tecum or other process in any action or proceeding brought under this chapter.

3. Application procedure. Every charitable organization subject to this chapter, except those exempted in subsection 2, paragraphs A and B, shall within 180 days from the close of each fiscal year of the charitable organization concerned, file with the Secretary of State an application for registration and which shall have attached and completed in proper order all reports and records required as set forth in subsection 1. A group of charitable organizations affiliated together for the same specific purpose or purposes, or a parent organization with local or regional chapters or branches, may file one report for the total organization, unless such affiliated members, chapters or branches are independently chartered by the State of Maine and are governed by an independent board of directors or comparable governing body, or have endowments, reserves, or other such funds held independently in their own name. If a charitable organization fails to carry out these requirements as set forth in this subsection, the Secretary of State shall declare registration terminated and so notify the charitable organization concerned. Reinstatement, provided all registration requirements are properly fulfilled, shall be granted upon payment of an additional fee of \$15.

4. Records maintained. Every charitable organization subject to this chapter shall keep such permanent books of account or records as are sufficient to establish the information required by this chapter. The books and records required by this subsection shall be kept at all times available for inspection by the authorized officers of the State.

#### § 3163. Professional fund raisers and professional solicitors

1. License required; fee; bond; hearing on disapproval.

A. Every professional fund raiser and every professional solicitor shall, as a prerequisite to the solicitation of contributions within this State, have a currently valid license therefor issued by the Secretary of State. Applications for license shall be in the form prescribed by the Secretary of State and shall contain such information as the Secretary of State may require.

B. Each application for license shall be accompanied by a fee of \$10.

C. The applicant shall, at the time of making application, file with and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of \$5,000 with one or more sureties satisfactory

to the Secretary of State whose liability in the aggregate shall, at least, equal said sum. Said bond shall run to the Secretary of State for the use of the State and to any person who may have a cause of action against the obligor of said bond for any malfeasance or misfeasance in the conduct of solicitation activities.

D. A license when granted shall run one year from date of issuance unless sooner revoked for cause. A license may be renewed by the filing of the application and bond and the payment of the fee as prescribed. Upon receipt of the application, bond and fee, the Secretary of State shall issue a license, unless in his discretion such issuance would be contrary to the public interest of the State. Any applicant who is denied a license may, within 15 days from the date of notification of such denial, request in writing a hearing before the Secretary of State, which hearing shall be held within 15 days from the date of such request.

2. Records filed with the Secretary of State. Every professional fund raiser and every professional solicitor shall file with the Secretary of State any contract or written statement of the nature of the arrangement to prevail in the absence of a contract between the professional solicitor or a professional fund raiser and the charitable organization, within 10 days after such contract or written arrangement is concluded. The Secretary of State shall examine the contract to ascertain whether the compensation to be paid is likely to exceed normally acceptable bounds or received as a result of the contract or arrangement. If the reasonable probabilities are that the compensation will exceed normally acceptable bounds, the Secretary of State shall notify the charitable organization and the professional fund raiser or professional solicitor of a probable violation of section 3162, subsection 1, and shall proceed as provided for.

3. Professional solicitors must carry and show written authorization. Every professional solicitor who solicits contributions within this State for an organization subject to this chapter shall have proper identification from such organization and shall show such identification upon request. Every person to whom subsection 1 applies shall show the license provided for in that subsection upon request. Noncompliance with this subsection shall result in revocation of license and in such further penalty as may be imposed under section 3165.

4. Out-of-state fund raisers and solicitors. Every professional fund raiser and every professional solicitor, whether an individual or a corporation, who solicits contributions within this State, and who is domiciled without the State, shall be deemed irrevocably to have appointed the Secretary of State as its agent for the service of any summons, subpoena, subpoena duces tecum, or other process, in any action or proceeding brought under this chapter.

#### § 3164. Certain telephone solicitations forbidden

No charitable organization shall conduct or make any solicitation by means of paid telephone operators who are employed for this purpose solely or whose principal duties are the conducting of such telephone solicitation.

#### § 3165. Enforcement and penalties

Any charitable organization subject to this chapter and any professional fund raiser or professional solicitor who shall in any way violate this chapter shall be

**punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or by both. In addition to the penalties set forth, the Superior Court shall have jurisdiction upon the complaint of the Attorney General to enjoin any solicitations of contributions or other acts being performed in violation of this chapter.**

**Sec. 2. R. S., T. 22, c. 853, repealed.** Chapter 853 of Title 22 of the Revised Statutes is repealed.