

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1736

H.P. 1451

House of Representatives, April 22, 1977

Referred to Committee on Business Legislation. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Trafton of Auburn.

Cosponsor: Mr. Palmer of Nobleboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to Charitable Solicitations.

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

Sec. 1. § MRSA c. 385 is enacted to read:

CHAPTER 385

CHARITABLE SOLICITATIONS ACT

§ 5001. Short title

This Act shall be known and may be cited as the "Charitable Solicitations Act."

§ 5002. Intent

It is the intent of the Legislature to require the registration and financial reporting of charitable organizations, the registration and bonding of professional fund-raising counsels and commercial co-venturers and the registration of professional solicitors.

§ 5003. Definitions

As used in this Act, unless the context specifically indicates otherwise, the following words shall have the following meanings.

1. Charitable organization. "Charitable organization" means any person, including any organized in a foreign state, which is or holds itself out to be organized or operated for any charitable purpose and which solicits, accepts or obtains contributions from the public for any charitable purpose. A chap-

ter, branch, area office or similar affiliate or any person soliciting contributions for any charitable purpose within the State for a charitable organization which has its principal place of business outside the State shall be considered a charitable organization for the purposes of this Act.

2. Charitable purpose. "Charitable purpose" means any charitable, benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary purpose.

3. Commercial co-venturer. "Commercial co-venturer" shall mean any person who, for profit or other commercial consideration, shall conduct, promote, underwrite, arrange or sponsor a sale, performance or event of any kind which is advertised in conjunction with the name of any charitable organization. Any such person who will benefit in good will only shall not be deemed a commercial co-venturer if the collection and distribution of the proceeds of the sale, performance or event are supervised and controlled by the benefiting charitable organization.

4. Contribution. "Contribution" means the promise or grant of any money or property of any kind or value, including the payment or promise to pay in consideration of a sale, performance or event of any kind which is advertised in conjunction with the name of any charitable organization. This definition does not include:

A. Payments by members of an organization for membership fees, dues, fines or assessments, or for services rendered to individual members, if membership in the organization confers a bona fide right, privilege, professional standing, honor or other direct benefits, other than the right to vote, elect officers or hold offices; or

B. Money or property received from any governmental authority, excluding any moneys received through direct appropriations by the Legislature and grants, unrestricted as to their use, received from agencies of State Government or local government.

5. Federated fund-raising organization. "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a United Fund, United Way or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual organizations upon the federated fund-raising organization.

6. Parent organization. "Parent organization" means that part of a charitable organization which coordinates, supervises or exercises control over policy, fund-raising and expenditures, or assists or advises one or more chapters, branches or affiliates in the State. A federated fund-raising organization, as defined in this chapter, shall not be considered a parent organization.

7. Person. "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

8. **Principal officer.** "Principal officer" means the president, chairman or other charitable officers responsible for the daily operation of the charitable organization.

9. **Professional fund-raising counsel.** "Professional fund-raising counsel" means any person who, for a flat fixed fee under a written agreement or for a fee computed under a written agreement on the basis of funds actually raised or to be raised, or for any financial consideration of any kind or amount, plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for or on behalf of any charitable organization. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the State shall not be deemed to be a professional fund-raising counsel unless that person's salary or other compensation is computed on the basis of funds to be raised or actually raised or unless that person, for a flat fixed fee under a written agreement or for a fee computed under a written agreement on the basis of funds actually raised or to be raised, or for any financial consideration of any kind or amount, performs the same or similar services for a charitable organization other than that of which he is an officer or employee. No attorney, investment counselor or banker who advises any person to make a contribution to a charitable organization shall be deemed, as the result of such advice, to be a professional fund-raising counsel.

10. **Professional solicitor.** "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for or on behalf of a charitable organization, whether such solicitation is performed personally or through the professional solicitor's agents, servants or employees or through agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the State shall not be deemed to be a professional solicitor, unless such person for a financial or other consideration performs the same or similar services for a charitable organization other than that of which he is an officer or employee. No attorney, investment counselor or banker who advises any person to make a contribution to a charitable organization shall be deemed, as the result of such advice, to be a professional solicitor.

11. **Solicit and solicitation.** "Solicit and solicitation" means the request directly or indirectly for any contribution. These words shall also mean and include, but not be limited to, the following methods of securing such contributions:

A. Any oral or written request;

B. The making of any request to a Maine newspaper, periodical, broadcast facility licensed in this State or news service to publish, disseminate or broadcast a solicitation or to publicize a solicitation or an intention to solicit;

C. Any oral or written request made personally or by telephone or telegraph concerning a local appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

D. The distribution, circulation, posting or publishing of any handbill, written advertisement or other local publication which directly or by implication seeks to obtain public support; and

E. The sale of, offer or attempt to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in connection with which any appeal is made for any charitable purpose, or where the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

"Solicitation" as defined herein shall be deemed to have taken place when the request is made, whether or not the person making the solicitation receives any contribution in response.

§ 5004. Registration of charitable organizations

Charitable organizations shall register as follows.

1. Requirement for registration statement. The principal officer of every charitable organization which intends to solicit contributions within this State shall file a registration statement with the Secretary of State at least 30 days prior to solicitation in each year in which the organization is engaged in solicitation activities.

A parent organization may file a consolidated registration statement for its affiliates, chapters and branches in this State and shall pay a single fee for such a consolidated registration statement. A parent organization shall not include in such a consolidated registration statement any affiliate, chapter or branch which is an independent member agency of a federated fund-raising organization. Any such affiliate, chapter or branch shall file an individual registration statement.

2. Fee for registration statement. A fee of \$10 shall be paid to the Secretary of State when any registration statement is filed as provided in subsection 1.

3. Content of registration statement. The Secretary of State shall prescribe the form of and issue registration statements. These statements shall be sworn to or affirmed by the principal officer of any charitable organization and shall contain the following information:

A. The name of the organization and the purpose for which it was organized;

B. The principal address of the organization and the address of any offices in this State, or, if the organization does not maintain an office, the name and address of the person having custody of its financial records;

C. The names and addresses of any chapters, branches or affiliates in this State;

D. The place where and the date when the organization was legally established, the form of its organization and a reference to any determination of its tax-exempt status under the United States Internal Revenue Code;

E. The names and addresses of the officers, directors or trustees and the principal salaried executive staff officer;

F. A statement as to whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;

G. The name and address of any professional fund-raising counsel, professional solicitor or commercial co-venturer who acts or will act on behalf of the charitable organization;

H. A statement as to whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

I. The general purpose or purposes for which the contributions to be solicited shall be used;

J. The estimated percentage of each dollar contributed which will be expended for charitable purposes;

K. The name or names under which it intends to solicit contributions;

L. The names of the individuals or officers of the organizations who will have final responsibility for the custody of the contributions;

M. The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and

N. In the case of a charitable organization which has its principal place of business outside the State, the total amount of money received as contributions solicited in this State during the organization's preceding fiscal year and the dates of the fiscal year.

§ 5005. Financial reports

Charitable organizations shall file financial reports as follows.

1. Financial report. The following shall file a financial report with the Secretary of State within 6 months after the close of the organization's fiscal year:

A. The principal officer of every charitable organization registered pursuant to section 5004 and receiving more than \$10,000 in gross contributions during the organization's fiscal year; and

B. Any chapter, branch or affiliate of a parent organization which receives, separate from contributions to the parent organization, more than \$10,000 in gross contributions during its fiscal year.

2. Fee for financial reports. A fee of \$25 shall be paid to the Secretary of State when any financial report is filed.

3. Content of the financial report. The Secretary of State shall adopt rules and regulations for the reports, which shall be based upon the accounting and reporting procedures set forth in the 'Audit Guides' published by the American Institute of Certified Public Accountants and as may be modified from time to time by the Institute or its successor. The financial report shall set forth in detail the financial activities of the charitable organization in the State, shall be audited by an independent public accountant and shall contain either:

A. A copy of the balance sheet and income and expense statement, including the audit opinion, for the preceding fiscal year; or

B. A copy of a financial statement covering, in a consolidated report, complete information as to the preceding year's fund-raising activities showing the balance sheet, changes in fund balances, kind and amount of funds raised, fund-raising expenses, allocation or disbursement of funds raised and notes to the audit and opinion as to the fairness of the presentation by the accountant.

§ 5006. Exemptions

1. Exception. The following shall not be required to file registration statements pursuant to section 5004:

A. Organizations which solicit only within the membership of the organization and where solicitation activities are conducted by the members;

B. A corporation sole or other religious corporation, trust, society or organization incorporated or established for religious purposes, but only insofar as such corporation, trust, society or organization solicits only within the membership. The term "membership" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation;

C. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation, when all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary for that individual's use;

D. Charitable organizations which do not intend to solicit and receive and do not actually solicit or receive contributions from the public in excess of \$2,000 during a calendar year or do not receive contributions from more than 10 persons during a calendar year, if all fund-raising activities are carried on by persons who are unpaid for their services and if no part of the assets or income inures to the benefit of or is paid to any officer or member. If a charitable organization which does not intend to solicit or receive contributions from the public in excess of \$2,000 during a calendar

year does actually solicit or receive contributions in excess of such amount, whether or not all such contributions are received during a calendar year, the charitable organization shall, within 30 days after the date of contributions reach \$2,000, register with and report to the Secretary of State as required by this Act;

E. Educational institutions, the curriculums of which in whole or in part are registered or approved by the Department of Educational and Cultural Services, either directly or by acceptance of accreditation by an accrediting body recognized by the Department of Educational and Cultural Services, provided that such educational institutions file with the Secretary of State duplicates of annual fiscal reports; and organizations operated by the student bodies of such institutions; and

F. Hospitals which are nonprofit and charitable, provided that a copy of the annual fiscal report is filed with the Secretary of State.

2. Exemption statement. Any charitable organization which claims to be exempt from the registration provisions of this Act and which intends to or does solicit charitable contributions shall submit annually, to the Secretary of State, a statement of the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. This statement shall be on a form prescribed by the Secretary of State and shall be sworn to or affirmed by the principal officer of the charitable organization. No registration fee shall be required of any exempt charitable organization.

§ 5007. Out-of-state organization

Any charitable organization, professional fund-raising counsel, professional solicitor or commercial co-venturer having its principal place of business without the State or organized under and by virtue of the laws of a foreign state, which solicits contributions from the people in this State, or acts on behalf of a charitable organization in this State, shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel, professional solicitor, commercial co-venturer or to any partner, principal, officer or director thereof, in any action or proceeding brought by the Attorney General under this chapter.

§ 5008. Registration and bonding of professional fund-raising counsels and commercial co-venturers

1. Registration. No person shall act as a professional fund-raiser or a commercial co-venturer before he has registered with the Secretary of State. Applications for registration or reregistration shall be in writing, under oath, in the form prescribed by the Secretary of State and shall be accompanied by a fee in the amount of \$100. The applicant shall, at the time of making application for registration or reregistration, 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 \$10,000, with one or more responsible sureties whose liability in the aggregate as such sureties will at least equal that sum. The bond shall run to any person who may have a cause of action against

the principal obligor of the bond for any malfeasance or misfeasance in the conduct of charitable solicitation in this State. Registration shall be for a period of one year.

2. Records. A professional fund-raising counsel or commercial co-venturer shall maintain accurate and complete books and records of his activities and shall keep such books and records available for inspection by the Attorney General for a period of 3 years after the conclusion of each specific instance in which he acts as a professional fund-raising counsel or commercial co-venturer.

§ 5009. Registration of professional solicitors

No person shall act as a professional solicitor before he has registered with the Secretary of State. Application for registration or reregistration shall be in writing, under oath, in the form prescribed by the Secretary of State and shall be accompanied by a fee in the amount of \$10. Such registration shall be for a period of one year.

§ 5010. Contracts to be filed and retained

All contracts entered into between a professional fund-raising counsel, a professional solicitor or a commercial co-venturer and any charitable organization, whether or not the organization is exempted under section 5006, shall be in writing and a true and correct copy of each such contract shall be filed, by the professional fund-raising counsel, professional solicitor or commercial co-venturer who is a party thereto, with the department prior to services being performed under the contract.

True and correct copies of such contracts shall be kept on file in the offices of the charitable organization and the professional fund-raising counsel, professional solicitor or commercial co-venturer during the term thereof and until expiration of a period of 3 years subsequent to the date of solicitation of contributions provided for therein.

§ 5011. Annual report by Secretary of State

The Secretary of State shall annually, prior to February 1st, make a report to the Governor and the Legislature on the activities of charitable organizations within this State, based on the information filed under the provisions of this chapter.

§ 5012. Public information

All information required to be filed under this chapter shall be public records and shall be available to the public at the office of the Secretary of State.

§ 5013. Charitable solicitation disclosure

It shall be a violation of this chapter for a professional fund-raising counsel, professional solicitor, commercial co-venturer or any other person to solicit contributions from a prospective donor in this State without fully disclosing to the prospective donor at the time of solicitation the estimated

percentage of each dollar contributed which will be expended for charitable purposes when less than 70% of the amount donated will be so expended.

§ 5014. Unauthorized use of names

1. Use of name; written consent. No person shall, for the purpose of soliciting contributions from persons in this State, use the name of any other person, without the specific written consent of the other person.

2. Publication. Nothing contained in this section shall prevent the publication of names of contributors without their written consents in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

§ 5015. Violation as unfair trade practice

Any violation of this chapter shall constitute a violation of Title 5, chapter 10, the Unfair Trade Practices Act.

Any intentional violation of this chapter shall be a Class D crime.

§ 5016. Fees

The aggregate of fees provided by this Act is appropriated for the use of the Secretary of State for the administration and enforcement of this Act. Any balance of these funds shall not lapse, but shall be carried forward to be expended for the same purposes in the following fiscal year.

Sec. 2. 22 MRSA c. 853, as amended by PL 1973, c. 436, §§ 1-4, is repealed.

Sec. 3. Effective date. This Act shall take effect on January 1, 1978.

STATEMENT OF FACT

The purpose of this bill is to require:

1. The registration and filing of financial reports by certain charitable organizations;
2. The registration and bonding of professional fund-raising counsels and commercial co-venturers; and
3. The registration of professional solicitors.

Charitable organizations are required to register annually with the Secretary of State. Those organizations with gross contributions in excess of \$10,000 are also required to file an annual financial report with the Secretary of State. The financial report includes an audit of the organization. Certain charitable organizations such as those soliciting only with their own membership, certain religious organizations, hospitals and educational institutions are exempted from these requirements.

Professional fund-raising counsels and commercial co-venturers are required to register annually with the Secretary of State, to be bonded and to maintain complete and accurate records of their activities. Professional solicitors are also required to register with the Secretary of State.

All information filed with the Secretary of State becomes a public record available for general use in the Secretary of State's office. The Secretary of State is required to report annually to the Legislature and the Governor on the activities of charitable organizations.

In addition, the bill requires any person soliciting charitable contributions to disclose to the donor the percentage of each dollar contributed which will be used for charitable purposes if that percentage is less than 70%.

Violations of the Charitable Solicitations Act are considered as violations of the Unfair Trade Practices Act.