

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-1124)
108TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 2015, L.D. 2090, Bill, "AN ACT to Amend the Charitable Solicitations Act to Change the Responsibilities of Religious and Small Organizations."

Amend the bill by striking out all of the title and inserting in its place the following: 'AN ACT Relating to Charitable Solicitations.'

Further amend the bill by striking out all of the emergency preamble.

Further amend the bill by striking out everything after the enacting clause and inserting in its place the following:

'Sec. 1. 9 MRSA c. 387 is enacted to read:

CHAPTER 387

CHARITABLE SOLICITATIONS ACT

§5051. Short title

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

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§5052. 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.

inter space →

§5053. Definitions

chapter

As used in this / , 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 chapter, 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 chapter.

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 federal 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 a bona fide, full-time member 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 person shall be deemed to be a bona fide, full-time member of a charitable organization if that person has become a member principally to solicit for that organization. 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. Solicit and solicitation. "Solicit and solicitation" mean 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.

§5054. Out-of-state organization

Any professional fund-raising counsel 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 that professional fund-raising counsel,

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.

\$5055. Licensing and bonding of professional fund-raising counsels and commercial co-venturers

1. License required. No person shall act as a professional fund-raiser or a commercial co-venturer until he has a license from the Secretary of State. Applications for a license or a renewal of a license 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 a license or its renewal, 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 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. Licenses shall be issued for a period of one year.

2. Revocation of license. The Secretary of State shall have the authority, after hearing, to suspend a license for a violation of this chapter, pending review by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the license of any licensee for a violation of this chapter.

← The Secretary of State may not issue a license to any person whose license has been revoked within 6 months of that revocation.

→ §5056. Contracts to be filed and retained

All contracts entered into between a professional fund-raising counsel or a commercial co-venturer and any charitable organization shall be in writing and a true and correct copy of each such contract shall be filed, by the professional fund-raising counsel or commercial co-venturer who is a party thereto, with the Secretary of State prior to services being performed under the contract.

True and correct copies of these contracts shall be kept on file in the offices of the charitable organization and the professional fund-raising counsel 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.

→ §5057. 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.

→ §5058. 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.

*no
cases* → \$5059. 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.

*in
new* → \$5060. Fees

The aggregate of fees provided by this / ^{chapter} is appropriated for the use of the Secretary of State for the administration and enforcement of this / ^{chapter}. 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. Effective date. This Act shall take effect on January 1, 1979.'

Statement of Fact

The purpose of this amendment is to require the licensing and bonding of professional fund-raising counsels and commercial co-venturers. ↩

Filed by Mr. Biron of Lewiston.

Reproduced and distributed under the direction of the Clerk of the House.
3/6/78

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