

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1799

H.P. 1291

House of Representatives, March 4, 2014

An Act To Amend the Laws Governing Charitable Solicitations

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative FOWLE of Vassalboro.
Cosponsored by Senator KATZ of Kennebec and
Representatives: HICKMAN of Winthrop, WILSON of Augusta.

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

2 **Sec. 1. 9 MRSA §5002**, as amended by PL 2013, c. 313, §1, is further amended to
3 read:

4 **§5002. Intent**

5 It is the intent of the Legislature to require the licensure ~~and~~ financial reporting of
6 ~~charitable organizations, professional solicitors and professional fund-raising counsel~~ and
7 ~~the~~ bonding of professional solicitors.

8 **Sec. 2. 9 MRSA §5003, sub-§1**, as amended by PL 2003, c. 541, §1, is further
9 amended to read:

10 **1. Charitable organization.** "Charitable organization" means any person or entity,
11 including any person or entity organized in a foreign state, that is or holds itself out to be
12 organized or operated for any charitable purpose ~~or that solicits, accepts or obtains~~
13 ~~contributions from the public for any charitable purpose and by any means, including, but~~
14 ~~not limited to, personal contact, telephone, mail, newspaper advertisement, television or~~
15 ~~radio. Status as a tax-exempt entity does not necessarily qualify that entity as a charitable~~
16 ~~organization. A chapter, branch, area office or similar affiliate or any person soliciting~~
17 ~~contributions for any charitable purpose within the State for a charitable organization that~~
18 ~~has its principal place of business outside the State is considered a charitable organization~~
19 ~~for the purposes of this Act. For purposes of this chapter, an organization established for~~
20 ~~and serving bona fide religious purposes is not a charitable organization.~~

21 **Sec. 3. 9 MRSA §5003, sub-§4-C**, as enacted by PL 2013, c. 60, §1, is repealed.

22 **Sec. 4. 9 MRSA §5003, sub-§5**, as enacted by PL 1977, c. 488, §1, is repealed.

23 **Sec. 5. 9 MRSA §5003, sub-§5-C**, as amended by PL 1999, c. 386, Pt. A, §5, is
24 repealed.

25 **Sec. 6. 9 MRSA §5003, sub-§6**, as enacted by PL 1977, c. 488, §1, is repealed.

26 **Sec. 7. 9 MRSA §5003, sub-§8**, as amended by PL 2013, c. 313, §8, is further
27 amended to read:

28 **8. Principal officer.** "Principal officer" means the president, chair, executive
29 director or other officer or employee responsible for the daily operation of ~~a charitable~~
30 ~~organization~~, a professional solicitor ~~or professional fund-raising counsel~~.

31 **Sec. 8. 9 MRSA §5003, sub-§9**, as amended by PL 2011, c. 286, Pt. A, §2, is
32 repealed.

33 **Sec. 9. 9 MRSA §5004**, as amended by PL 2013, c. 313, §9, is repealed.

34 **Sec. 10. 9 MRSA §5005-A**, as repealed and replaced by PL 2013, c. 313, §10, is
35 repealed.

1 **Sec. 11. 9 MRSA §5005-B**, as amended by PL 2013, c. 313, §11, is repealed.

2 **Sec. 12. 9 MRSA §5006**, as amended by PL 2013, c. 313, §§12 to 14, is repealed.

3 **Sec. 13. 9 MRSA §5008-A**, as enacted by PL 2013, c. 313, §17, is amended to
4 read:

5 **§5008-A. Licensure, license renewal and records kept by professional solicitors**

6 **1. Initial licensure.** A person or entity may not act as a professional solicitor ~~or~~
7 ~~professional fund-raising counsel~~ before that person or entity has received a license from
8 the director. A professional solicitor ~~or professional fund-raising counsel~~ shall apply for
9 initial licensure by filing a license application with the director ~~and~~, paying the
10 application and license fees as set under section 5015-A. ~~A professional solicitor, in~~
11 ~~addition, shall submit~~ and submitting the bond required by subsection 5.

12 **2. Content of application for initial licensure.** A license application must be
13 sworn to or affirmed by the principal officer of the professional solicitor ~~or professional~~
14 ~~fund-raising counsel~~ on a form prescribed by the director and must contain the following
15 information:

16 A. The name, mailing address and license number of each charitable organization on
17 whose behalf the professional solicitor ~~or professional fund-raising counsel~~ acts or
18 will act in connection with fund-raising campaigns for contributions from the State's
19 residents;

20 B. A list of all jurisdictions in which the professional solicitor ~~or professional fund-~~
21 ~~raising counsel~~ is authorized to solicit contributions;

22 C. Disclosure of, and the final disposition document pertaining to, any disciplinary
23 action taken against the applicant by a licensing, registration or regulatory authority
24 in any jurisdiction;

25 D. Disclosure of, and the final disposition document pertaining to, any court action
26 taken against the applicant by a licensing, registration or regulatory authority or law
27 enforcement agency in any jurisdiction that resulted in a restraining order, injunction,
28 civil judgment, criminal conviction, consent judgment, consent agreement, agreement
29 to pay restitution or investigative costs or any other type of negotiated disposition;
30 and

31 E. Other information as the director may require.

32 **3. Renewal of licensure as a professional solicitor.** A license issued by the director
33 to a professional solicitor ~~or professional fund-raising counsel~~ expires on November 30th
34 annually or such other time as the director may designate. A professional solicitor ~~or~~
35 ~~professional fund-raising counsel~~ shall apply for renewal by filing a renewal application
36 with the director prior to the expiration date ~~and~~, paying the license fee as set under
37 section 5015-A. ~~A professional solicitor shall, in addition, submit~~ and submitting
38 the bond required by subsection 5.

1 **4. Content of renewal application.** A renewal application pursuant to subsection 3
2 must contain the following information:

3 A. The annual fund-raising activity report required by section 5008-B;

4 B. Disclosure of, and the final disposition document pertaining to, any disciplinary
5 action taken against the licensee by a licensing, registration or regulatory authority in
6 any jurisdiction since the date of the most recent application submitted by the
7 professional solicitor ~~or professional fund-raising counsel~~;

8 C. Disclosure of, and the final disposition document pertaining to, any court action
9 taken against the licensee by a licensing, registration or regulatory authority or law
10 enforcement agency in any jurisdiction that resulted in a restraining order, injunction,
11 civil judgment, criminal conviction, consent judgment, consent agreement, agreement
12 to pay restitution or investigative costs or any other type of negotiated disposition
13 since the date of the most recent application submitted by the professional solicitor ~~or~~
14 ~~professional fund-raising counsel~~;

15 D. Any changes to the information contained in the licensee's application for initial
16 licensure or the most recent renewal application; and

17 E. Other information as the director may require.

18 **5. Bonding of professional solicitors.** An applicant for initial or renewal licensure
19 as a professional solicitor shall submit with the application a bond approved by the
20 director in which the professional solicitor is the principal obligor and the State the
21 obligee, in the sum of \$25,000, with one or more responsible sureties whose liability in
22 the aggregate at least equals that sum. The bond runs to any person or entity who may
23 have a cause of action against the principal obligor of the bond for any malfeasance or
24 misfeasance in the conduct of charitable solicitation in this State that occurs during the
25 term of the license applied for.

26 **6. Late renewal.** A license may be renewed up to 90 days after the date of its
27 expiration upon payment of a late fee in addition to the renewal fee as set under section
28 5015-A.

29 **7. Change of information.** As an ongoing condition of licensure, a professional
30 solicitor ~~or professional fund-raising counsel~~ must notify the director of a change to the
31 information contained in the licensee's application for initial or renewal licensure,
32 including any additional disciplinary or court action taken against the licensee, within 10
33 days of the change.

34 **8. Records.** A professional solicitor ~~or professional fund-raising counsel~~ shall
35 maintain accurate and complete books and records of fund-raising activities and
36 telephone solicitation scripts and shall keep those books and records available for
37 inspection by or production to the Attorney General or the director for a period of 3 years
38 after the conclusion of each specific instance in which that person or entity acts as a
39 professional solicitor ~~or professional fund-raising counsel~~.

40 **Sec. 14. 9 MRS §5008-B**, as enacted by PL 2013, c. 313, §17, is amended to
41 read:

1 **§5008-B. Annual fund-raising activity reports to be filed by professional solicitors**

2 **1. Content of report.** A professional solicitor ~~or professional fund-raising counsel~~
3 licensed pursuant to section 5008-A shall submit to the director an annual fund-raising
4 activity report that reflects data from the licensee's preceding fiscal year, on a form
5 prescribed by the director, as part of its application for license renewal. The report must
6 state, at a minimum, the following:

7 A. The name, mailing address, telephone number and license number of the licensee
8 making the report;

9 B. The name, mailing address, and telephone number ~~and license number~~ of each
10 charitable organization with which the licensee contracted to solicit contributions in
11 this State ~~or to plan, manage, advise or provide consultation services with respect to~~
12 ~~the solicitation of contributions in this State;~~

13 C. The total dollar amount of contributions raised in this State during each fund-
14 raising campaign and for the year;

15 D. The total dollar amount of contributions raised in this State that was actually
16 received and retained by the charitable organization from each fund-raising campaign
17 and for the year; and

18 E. The total dollar amount attributable to contributions raised in this State that was
19 retained by or paid to the licensee from each fund-raising campaign and for the year.

20 **2. Failure to file; discrepancies.** Failure to file the annual fund-raising activity
21 report required under this section or filing a report that contains discrepancies between
22 that report and the report submitted by the charitable organization with which the
23 professional solicitor ~~or professional fund-raising counsel~~ has contracted may result in
24 disciplinary action as provided under Title 10, section 8003, subsection 5-A. To resolve a
25 disagreement between reports, the director may require the professional solicitor ~~or~~
26 ~~professional fund-raising counsel~~ to submit an annual fund-raising activity report
27 according to a fiscal year other than the professional solicitor's ~~or professional~~
28 ~~fund-raising counsel's~~ fiscal year.

29 ~~**3. Contracting with unlicensed charitable organization.** A person may not~~
30 ~~contract with an unlicensed charitable organization for the solicitation of funds from the~~
31 ~~State's residents. A violation of this subsection may result in disciplinary action as~~
32 ~~provided under Title 10, section 8003, subsection 5-A.~~

33 **Sec. 15. 9 MRSA §5009**, as repealed and replaced by PL 2013, c. 313, §18, is
34 amended to read:

35 **§5009. Retention of contracts**

36 All contracts entered into between a professional solicitor ~~or professional~~
37 ~~fund-raising counsel~~ and a charitable organization, ~~whether or not the organization is~~
38 ~~exempted under section 5006~~, must be in writing.

39 Contracts must be kept on file in the offices of the ~~charitable organization and the~~
40 ~~professional solicitor or professional fund-raising counsel~~ during the term of the contract

1 and for 3 years after the date of solicitation of contributions provided for in the contract
2 and must be made available for inspection by or production to the Attorney General or
3 the director during that time.

4

SUMMARY

5 This bill amends the Charitable Solicitations Act to limit the scope and application of
6 the Act to professional solicitors, which are persons or entities that solicit contributions
7 from the public on behalf of a charitable organization in exchange for a fee or other
8 remuneration, thus excluding from regulation those persons who solicit donations on
9 behalf of a charitable organization without remuneration. As in current law, an
10 employee, salaried officer, attorney, accountant or investment officer of a charitable
11 organization is not considered a professional solicitor. This bill also changes the
12 definition of "charitable organization" to remove the exclusion of organizations serving
13 religious purposes; the effect of this change is that a professional solicitor is subject to
14 regulation under the Act, regardless of the charitable organization for which donations are
15 being solicited.