

2010 -- H 7255

LC00429

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- SOLICITATION BY CHARITABLE ORGANIZATIONS

Introduced By: Representatives Kilmartin, Melo, Serpa, Martin, and Walsh

Date Introduced: January 28, 2010

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 553.1-1 and 553.1-8 of the General Laws in Chapter 553.1
2 entitled "Solicitation by Charitable Organizations" are hereby amended to read as follows:

3 **5-53.1-1. Definitions.** -- The following words and phrases as used in this chapter have
4 the following meanings unless a different meaning is required by the context:

5 (1) "Charitable organization" means any organization soliciting for a charitable purpose
6 or any organization holding themselves out as such.

7 (2) "Charitable purpose" means, but is not limited to, any benevolent, educational,
8 humane, patriotic, social service, civic, philanthropic, scientific, literary or eleemosynary
9 purpose.

10 (3) "Commercial co-venturer" means any person who, for profit or other commercial
11 consideration, conducts, produces, promotes, underwrites, arranges or sponsors a performance,
12 event, or sale to the public of a good or service which is advertised in conjunction with the name
13 of any charitable organization or as benefiting to any extent any charitable purpose. Any such
14 person who will benefit in good will only shall not be deemed a commercial co-venturer if the
15 collection and distribution of the proceeds of the performance, event or sale are supervised and
16 controlled by the benefiting charitable organization.

17 ~~(3)~~ (4) "Contribution" means the promise or grant of any money, property or anything of
18 value obtained through solicitation except payments by members of any organization for fees,

1 dues, fines, assessments, or for services rendered to individual members.

2 ~~(4)~~ (5) "Department" means the department of business regulation.

3 ~~(5)~~ (6) "Director" means the director of the department.

4 ~~(6)~~ (7) "Fraudulent act" means that a party made a false representation of a material fact
5 or concealed a material fact with the intention to deceive; that the party intended that a person
6 rely on this material representation or misinformation and that there was justifiable reliance on
7 this representation or misinformation.

8 ~~(7)~~ (8) "Fund raising counsel" means any person who for compensation consults with a
9 charitable organization or who plans, manages, advises, or assists with respect to the solicitation
10 of contributions for or on behalf of a charitable organization, but who does not have access to
11 contributions or other receipts from a solicitation and who does not solicit. Bona fide volunteers
12 or employees of a charitable organization, or an attorney-at-law retained by a charitable
13 organization, shall not be deemed a fund raising counsel.

14 ~~(8)~~ (9) "Membership" means the collective body of any charitable organization
15 comprised of persons having voting rights and other powers of governance and who derive a
16 direct benefit or privilege as a member thereof.

17 ~~(9)~~ (10) "Person" means and shall include any individual, organization, group,
18 association, partnership, corporation, trust, limited liability company, and combination of the
19 foregoing, however formed, as well as any and all other entities, however formed.

20 ~~(10)~~ (11) "Professional fund raiser" means any person who directly or indirectly for
21 compensation or other consideration plans, manages, conducts, carries on, or assists in connection
22 with a solicitation for charitable purposes or individually solicits or who employs or otherwise
23 engages on any basis another person to solicit for or on behalf of any charitable organization, or
24 who engages in the business of, or holds himself, herself or itself out to persons as independently
25 engaged in the business of soliciting for the charitable purpose. Bona fide volunteers or
26 employees of a charitable organization or fund raising counsel shall not be deemed a professional
27 fund raiser.

28 ~~(11)~~ (12) "Professional solicitor" means any person who is employed or retained for
29 compensation by a professional fund raiser to solicit contributions for charitable purposes. Bona
30 fide employees of a charitable organization or fund raising counsel shall not be deemed a
31 professional solicitor.

32 ~~(12)~~ (13) "Senior Level Executive Employee" means any employee of a charitable
33 organization whose compensation is in excess of the amount specified as requiring disclosure on
34 United States Internal Revenue Service Form 990 (or the appropriate successor form by whatever

1 name or number it may be called or designated).

2 ~~(13)~~ (14) (i) "Solicit" and "solicitation" means to appeal or request, directly or indirectly,
3 whether express or implied, for money, credit, property, financial assistance, or any other thing of
4 value by means of mail, personal contact, written material, radio, telephone, television, news
5 media, magazines or other periodicals or any other means of plea or representation that the
6 money, credit, property, financial assistance, or other thing of value will be used for a charitable
7 purpose.

8 (ii) Solicitation is deemed to have taken place when the appeal or request is made,
9 whether or not the person making the appeal or request receives any contributions.

10 ~~5-53.1-8. Professional fund raisers and fund raising counsel Registration by~~
11 ~~professional fundraisers, fundraising counsel, commercial co-venturer or professional~~
12 ~~solicitor. Registration by professional fund raisers, fund raising counsel, commercial co-~~

13 ~~venturer or professional solicitor. --~~ (a) No person shall act, operate or transact business as a
14 professional fund raiser, ~~or~~ fund raising counsel, commercial co-venturer or professional solicitor
15 in this state before he, she or it has registered with the director or after the expiration or
16 cancellation of such registration. Applications for registration and re-registration shall be in
17 writing, under oath and penalty of perjury, in the form prescribed by the director and shall be
18 accompanied by an annual fee in the sum of two hundred forty dollars (\$240). A professional
19 fund raiser, fund raising counsel, commercial co-venturer or professional solicitor who has access
20 or the ability to access or control funds that are being solicited shall at the time of making
21 application for registration or re-registration, file with, and have approved by, the director a bond.
22 In the bond, the filer shall be the principal obligor, in the sum of ten thousand dollars (\$10,000),
23 with one or more sureties whose liability in the aggregate as sureties will at least equal that sum.
24 The bond which may be in the form of a rider to a larger blanket liability bond shall run to the
25 director for the use of the state and to any person who may have a cause of action against the
26 obligor of the bond for any malfeasance or misfeasance in the conduct of the solicitation.
27 Registration or re-registration when effected shall be for a period of one year, or a part thereof,
28 expiring on the thirtieth (30th) day of June. An application for re-registration shall be filed no
29 more than thirty (30) days prior to the expiration of the registration. Applications for registration
30 and re-registration and bonds when filed with the director, shall become public records in the
31 office of the director. If there is any material change in the information provided in any
32 application for registration and re-registration, the applicant or registrant shall notify the director,
33 in writing, within twenty (20) days of the change.

34 (b) A professional fund raiser, ~~and~~ fund raising counsel, commercial co-venturer or

1 professional solicitor shall maintain accurate and current books and records of all activities while
2 required to be registered under subsection (a) of this section; and, until at least three (3) years
3 shall have elapsed after the end of the effective period of the registration to which they relate, the
4 books and records shall be maintained in an office available for inspection and examination by
5 the director; provided, that any books and records obtained by the director shall not be available
6 to the public for inspection. The professional fund raiser, ~~or~~ fund raising counsel commercial co-
7 venturer or professional solicitor shall not be required to make available to the director the names
8 and addresses of members and donors, except with their consent or the consent of the
9 organization or through legal process where good cause has been shown by the director to
10 question compliance with this chapter and access to the information is necessary to determine
11 compliance. Nothing contained in this section shall be construed to limit an organization's ability
12 to challenge the process on constitutional grounds.

13 (c) For each calendar year, professional fund raisers, fund raising counsels, commercial
14 co-venturers and professional solicitors shall file with the director on a form prescribed by the
15 director a financial report stating, for each contract or agreement with a charitable organization,
16 the name of the charitable organization, the gross receipts collected pursuant to that contract or
17 agreement, the amounts paid to the charitable organization to be utilized exclusively for the
18 charitable purposes described in the solicitation, the amounts paid to the professional fund raiser,
19 fund raising counsel, commercial co-venturer and the professional solicitor; all additional
20 expenses not otherwise stated; and such other information as the director may require. This
21 report shall be cosigned by representatives of the charitable organizations for whom solicitation
22 was conducted.

23 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO BUSINESSES AND PROFESSIONS – SOLICITATION BY CHARITABLE
ORGANIZATIONS

1 This act would require that any business that sells for profit an item that benefits a charity
2 to be classified as a commercial co-venturer which shall register with the department of business
3 regulation, file financial documents outlining the program and post a \$10,000 bond. The business
4 must also report, among other things, how much gross revenue the program generated and the
5 amounts paid to the charity.

6 This act would take effect upon passage.

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