

HB0119S01 compared with HB0119

~~{deleted text}~~ shows text that was in HB0119 but was deleted in HB0119S01.

inserted text shows text that was not in HB0119 but was inserted into HB0119S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative James A. Dunnigan proposes the following substitute bill:

CHARITABLE ORGANIZATION REGISTRATION

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: ~~{ }~~ Curtis S. Bramble

LONG TITLE

General Description:

This bill addresses charitable organization registration requirements.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ provides that an entity's application for a public grant is not a charitable solicitation;
- ▶ exempts ~~{a}~~ certain federal income ~~{tax-exempt}~~ tax exempt charitable ~~{organization}~~ organizations from registering as a charitable organization in Utah; ~~{~~
▶ ~~provides that the Division of Consumer Protection may include a searchable list on the division's website of federal tax-exempt charitable organizations engaging in~~

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~~certain charitable solicitations in Utah;~~ and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-22-2, as last amended by Laws of Utah 2018, Chapter 267

13-22-8, as last amended by Laws of Utah 2018, Chapters 267 and 415

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 13-22-2 is amended to read:

13-22-2. Definitions.

As used in this chapter:

(1) "Chapter" means a chapter, branch, area, office, or similar affiliate of a charitable organization.

(2) (a) "Charitable organization" or "organization" means any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

(i) who is or holds itself out to be:

(A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(B) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(C) established for any charitable purpose;

(ii) who solicits or obtains contributions solicited from the public for a charitable purpose; or

(iii) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.

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(b) "Charitable organization" includes a chapter or a person who solicits contributions within the state for a charitable organization.

(3) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of a public safety, law enforcement, or firefighter fraternal association.

(4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or purpose.

(5) (a) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose.

(b) "Charitable solicitation" or "solicitation" includes:

(i) any of the following done, or purporting to be done, for a charitable purpose:

(A) any oral or written request, including any request by telephone, radio, television, or other advertising or communications media;

(B) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

(C) an application or other request for a [grant] a private grant or, if made by an individual, a public grant; or

(ii) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, membership, subscription, or other article in connection with which any appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.

(c) "Charitable solicitation" or "solicitation" does not include an entity's application or other request for a public grant.

(6) "Commercial co-venturer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for a charitable

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organization or purpose.

(7) (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:

(i) a gift, subscription, loan, advance, or deposit of money or anything of value;

(ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; or

(iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.

(b) "Contribution" does not include:

(i) money loaned to a charitable organization by a financial institution in the ordinary course of business; or

(ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.

(8) "Contributor" means a donor, pledgor, purchaser, or other person who makes a contribution.

(9) "Director" means the director of the Division of Consumer Protection.

(10) "Division" means the Division of Consumer Protection of the Department of Commerce.

(11) "Material fact" means information that a person of ordinary intelligence and prudence would consider relevant in deciding whether or not to make a contribution in response to a charitable solicitation.

(12) (a) "Professional fund raiser" means a person who:

(i) for compensation or any other consideration, for or on behalf of a charitable organization or any other person:

(A) solicits contributions; or

(B) promotes or sponsors the solicitation of contributions;

(ii) (A) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person; and

(B) at any time has custody of a contribution for the charitable organization;

(iii) engages in, or represents being independently engaged in, the business of soliciting

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contributions for a charitable organization;

(iv) manages, supervises, or trains any solicitor whether as an employee or otherwise;

or

(v) uses a vending device or vending device decal for financial or other consideration that implies a solicitation of contributions or donations for any charitable organization or charitable purposes.

(b) "Professional fund raiser" does not include:

(i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;

(ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client regarding legal, investment, or financial advice; or

(iii) a person who tangentially prepares materials, including a person who:

(A) makes copies;

(B) cuts or folds flyers; or

(C) creates a graphic design or other artwork without providing strategic or campaign-related input.

(13) (a) "Professional fund raising counsel or consultant" means a person who:

(i) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person;

(ii) does not solicit contributions;

(iii) does not at any time have custody of a contribution from solicitation; and

(iv) does not employ, procure, or engage any compensated person to solicit or receive contributions.

(b) "Professional fund raising counsel or consultant" does not include:

(i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;

(ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client regarding legal, investment, or financial advice; or

(iii) a person who tangentially prepares materials, including a person who:

(A) makes copies;

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(B) cuts or folds flyers; or

(C) creates a graphic design or other artwork without providing strategic or campaign-related input.

(14) "Public grant" means the same as the term "grant" is defined in Section 63G-6a-103.

~~[(14)]~~ (15) (a) "Vending device" means a container used by a charitable organization or professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or donation whether or not the device offers a product or item in return for the contribution or donation.

(b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.

~~[(15)]~~ (16) "Vending device decal" means any decal, tag, or similar designation material that is attached to a vending device, whether or not used or placed by a charitable organization or professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.

Section ~~[(1)]~~ 2. Section **13-22-8** is amended to read:

13-22-8. Exemptions.

(1) Section 13-22-5 does not apply to:

(a) a bona fide religious, ecclesiastical, or denominational organization if:

(i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;

and

(ii) the organization is either:

(A) a lawfully organized corporation, institution, society, church, or established physical place of worship, at which nonprofit religious services and activities are regularly conducted and carried on; ~~[(or)]~~

(B) a bona fide religious group:

(I) that does not maintain specific places of worship;

(II) that is not subject to federal income tax; and

(III) that is not required to file an IRS Form 990 under any circumstance; ~~[(or)]~~

~~[(C)]~~ (C) a separate group or corporation that is an integral part of an institution that is an

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income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported by funds solicited outside the group's or corporation's own membership or congregation;††

(b) a solicitation by a broadcast media owned or operated by an educational institution or governmental entity, or any entity organized solely for the support of that broadcast media;

(c) subject to Subsection 13-22-21(1), an individual soliciting a contribution for the relief or benefit of another individual, who is specified by name at the time of the solicitation, if:

(i) all contributions are turned over to the named beneficiary after deducting actual expenses necessary for the cost of solicitation, if any; and

(ii) all individuals that carry out any fund-raising function for the benefit of the named individual are unpaid, directly or indirectly, for services rendered;

(d) a political party authorized to transact the political party's affairs within this state and any candidate and campaign worker of the political party if the content and manner of any solicitation make clear that the solicitation is for the benefit of the political party or candidate;

(e) a political action committee or group soliciting funds relating to issues or candidates on the ballot if the committee or group is required to file financial information with a federal or state election commission;

(f) (i) a public school;

(ii) a public institution of higher learning;

(iii) a school accredited by an accreditation body recognized within the state or the United States;

(iv) an institution of higher learning accredited by an accreditation body recognized within the state or the United States;

(v) an organization within, and authorized by, an entity described in Subsections (1)(f)(i) through (iv); or

(vi) a parent organization, teacher organization, or student organization authorized by an entity described in Subsection (1)(f)(i) or (iii) if:

(A) the parent organization, teacher organization, or student organization is a branch of, or is affiliated with, a central organization;

(B) the parent organization, teacher organization, or student organization is subject to the central organization's general control and supervision;

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(C) the central organization holds a United States Internal Revenue Service group tax exemption that covers the parent organization, teacher organization, or student organization; and

(D) the central organization is registered with the division under this chapter;

(g) a public or higher education foundation established under Title 53E, Public Education System -- State Administration, Title 53G, Public Education System -- Local Administration, or Title 53B, State System of Higher Education;

(h) a television station, radio station, or newspaper of general circulation that donates air time or print space for no consideration as part of a cooperative solicitation effort on behalf of a charitable organization, whether or not that organization is required to register under this chapter;

(i) a volunteer fire department, rescue squad, or local civil defense organization whose financial oversight is under the control of a local governmental entity;

(j) any governmental unit of any state or the United States;

(k) any corporation:

(i) established by an act of the United States Congress; and

(ii) that is required by federal law to submit an annual report:

(A) on the activities of the corporation, including an itemized report of all receipts and expenditures of the corporation; and

(B) to the United States Secretary of Defense to be:

(I) audited; and

(II) submitted to the United States Congress;

~~[(f) a solicitation by an applicant for a grant offered by a state agency if:]~~

~~[(i) the terms of the grant provide that the state agency monitors a grant recipient to ensure that grant funds are used in accordance with the grant's purpose; and]~~

~~[(ii) the sum of the amount available to the applicant under grants offered by a state agency that the applicant applies for in a calendar year is less than or equal to \$1,500;]~~

~~[(m)] (l) a chapter of a charitable organization or a person who solicits contributions for a charitable organization, if the charitable organization is registered with the division pursuant to Section 13-22-5 or is exempt from registration under this section, and: ~~[(j)]~~~~

~~[(j)](i) all contributions solicited by the chapter or person are delivered directly to the~~

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control of the charitable organization; or ~~(f)~~

~~(f)~~(ii) (A) the charitable organization holds a United States Internal Revenue Service group tax exemption that covers the chapter; ~~(f)~~

~~(f)~~(B) the charitable organization provides a list of its chapters to the division with its registration or renewal of registration; ~~(f)~~

~~(f)~~(C) the chapter is on the list provided under Subsection ~~[(1)(m)(ii)(B) ~~(f)~~]~~
(1)(l)(ii)(B);

~~(f)~~(D) the chapter maintains the information required under Section 13-22-15 and provides the information to the division upon request; and ~~(f)~~

~~(f)~~(E) solicitations by the chapter or the person are limited to the collection of membership-related fees, dues, or assessments from new and existing members; ~~(f)~~

~~(n)~~ (m) a solicitation in an obituary; ~~(or)~~

~~(o)~~ (n) a solicitation made exclusively to a family member of the individual making the solicitation~~[-]; or~~

(o) an organization that holds federal income ~~tax-exempt~~ tax exempt status ~~under~~ in accordance with 26 U.S.C. Sec. 501(c)(~~3~~6).

(2) An organization claiming an exemption under this section bears the burden of proving the organization's eligibility for, or the applicability of, the exemption claimed.

(3) An organization exempt from registration ~~[pursuant to]~~ under this section that makes a material change in the organization's legal status, officers, address, or similar changes shall file a report informing the division of the organization's current legal status, business address, business phone, officers, and primary contact person within 30 days ~~[of]~~ after the day on which the change is made.

(4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) require an organization that is exempt from registration under ~~(f)~~this section~~(f)~~ Subsections (1)(a) through (n) to:

(i) file a notice of claim of exemption; and

(ii) file a renewal of a notice of claim of exemption;

(b) prescribe the contents of a notice of claim of exemption and a renewal of a notice of claim of exemption; and

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(c) require a filing fee for a notice of claim of exemption and a renewal of a notice of claim of exemption as determined under Section 63J-1-504.

~~{(5) The division may provide on the division's website a searchable list of organizations described in Subsection (1)(c) that engage in an activity described in Subsection 13-22-5(1)(b).~~

~~†Section 3. Effective date.~~

~~If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~