

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-0795.01 Duane Gall x4335

HOUSE BILL 17-1158

HOUSE SPONSORSHIP

McKean,

SENATE SPONSORSHIP

Smallwood and Martinez Humenik,

House Committees

State, Veterans, & Military Affairs
Appropriations

Senate Committees

State, Veterans, & Military Affairs
Appropriations

SENATE
3rd Reading Unamended
April 18, 2017

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF CHARITABLE SOLICITATIONS BY**
102 **THE SECRETARY OF STATE, AND, IN CONNECTION THEREWITH,**
103 **MODIFYING AND CLARIFYING FILING REQUIREMENTS AND**
104 **ENFORCEMENT OF THE "COLORADO CHARITABLE**
105 **SOLICITATIONS ACT".**

SENATE
2nd Reading Unamended
April 13, 2017

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

HOUSE
3rd Reading Unamended
March 13, 2017

Section 1 of the bill clarifies that a charitable organization's registration with the secretary of state must be renewed on an annual basis

HOUSE
Amended 2nd Reading
March 10, 2017

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

if the charitable organization intends to solicit donations in Colorado, and an organization may not continue to solicit if it fails to renew its registration. The bill also requires an organization to update information in its registration within 30 days after any change.

Sections 1 to 3 make consistent the requirements for affirmations and declarations required on various forms under the charitable solicitation laws so that these laws are consistent with the Multistate Registration and Filing Portal, Inc.

Section 4 authorizes the secretary of state to promulgate rules providing for the withdrawal of an active registration by a charitable organization, professional fundraising consultant, or paid solicitor.

Section 5 changes the time limit for a request for a hearing on the denial, suspension, or revocation of a registration from 5 days after receipt of notice of the action by the secretary of state to 30 days after the date of the notice.

Section 6 deletes the requirement that an organization designate a registered agent for service of process and notices and substitutes a requirement that the organization provide an address of record. If no alternative address is provided, the address of the organization's principal place of business is its address of record.

Section 7 specifies that if an organization fails to file its actual financial report to replace estimated financial reports, the organization is subject to statutory fines. Notice of the failure to file is deemed received if sent twice to the organization's address of record.

Section 8 makes the bill effective July 1, 2018.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 6-16-104, **amend** (2)
3 introductory portion, (2)(c), (4), (5), (9) introductory portion, and (9)(a)
4 as follows:

5 **6-16-104. Charitable organizations - initial registration -**
6 **annual filing - fees.** (2) The registration statement must be signed and
7 ~~sworn to under oath~~ AFFIRMED UNDER PENALTY OF PERJURY AS DEFINED
8 IN SECTION 18-8-503 by an officer of the charitable organization, which
9 may include its chief fiscal officer, and must contain the following
10 information:

11 (c) The names ~~and titles~~ of the officers, directors, trustees, and

1 executive personnel of the charitable organization;

2 (4) (a) ~~The registration of a charitable organization shall be~~
3 ~~amended annually, on forms prescribed by the secretary of state, to reflect~~
4 A CHARITABLE ORGANIZATION'S REGISTRATION IS VALID UNTIL THE DAY
5 ON WHICH THE FINANCIAL REPORT REQUIRED IN SUBSECTION (2)(f) OR (5)
6 OF THIS SECTION IS DUE AND MAY BE RENEWED UPON APPLICATION TO THE
7 SECRETARY OF STATE AND PAYMENT OF THE REGISTRATION FEE AND ANY
8 ASSESSED FINES.

9 (b) A CHARITABLE ORGANIZATION THAT WITHDRAWS ITS
10 REGISTRATION OR ALLOWS ITS REGISTRATION TO EXPIRE MUST, ON OR
11 BEFORE THE DATE OF WITHDRAWAL OR EXPIRATION, FILE A FINAL
12 FINANCIAL REPORT, IN A FORM PRESCRIBED BY THE SECRETARY OF STATE,
13 THAT INCLUDES INFORMATION THROUGH THE LAST DATE ON WHICH THE
14 ORGANIZATION SOLICITED CONTRIBUTIONS IN COLORADO.

15 (c) A CHARITABLE ORGANIZATION SHALL REPORT any changes of
16 name, address, principals, corporate forms, tax status, and any other
17 changes that materially affect the identity or business of the charitable
18 organization ~~Annual amendments shall be filed at the same time as and~~
19 ~~together with any financial report required in subsection (5) of this~~
20 ~~section regardless of when the charitable organization filed its initial~~
21 ~~registration pursuant to subsection (1) of this section~~ TO THE SECRETARY
22 OF STATE WITHIN THIRTY DAYS AFTER THE CHANGE.

23 (5)(a) Every charitable organization required to register under this
24 section shall annually file with the secretary of state a financial report for
25 the most recent fiscal year on a form prescribed by the secretary of state,
26 or, in the discretion of the secretary of state, a copy of the charitable
27 organization's federal form 990, with all schedules except schedules of

1 donors, for the most recent fiscal year. The financial report must be filed
2 on or before the earlier of the fifteenth day of the eighth calendar month
3 after the close of each fiscal year in which the charitable organization
4 solicited in this state or the date authorized for filing a form 990 with the
5 internal revenue service. A charitable organization that is unable to file
6 a copy of its form 990 return or the secretary of state's financial form by
7 the prescribed deadline may request an extension of the filing deadline
8 from the secretary of state. The secretary of state, upon receipt of an
9 application to extend the filing deadline, may grant a three-month
10 extension of time to file the financial report. All ~~such~~ requests FOR
11 EXTENSION OF TIME must:

12 (I) Be in a form prescribed by the secretary of state; ~~and must~~

13 (II) Include a statement describing in detail the reasons causing
14 the delay in filing the financial report; ~~and~~

15 (III) INCLUDE an affirmation that the charitable organization has
16 filed with the internal revenue service an application for a corresponding
17 extension of time to file the organization's form 990; ~~Upon request, the~~
18 ~~charitable organization shall provide the secretary of state with a copy of~~
19 ~~its application for extension of time to file with the internal revenue~~
20 ~~service in order to verify the date authorized for filing its form 990 with~~
21 ~~the internal revenue service.~~ AND

22 (IV) BE SIGNED AND AFFIRMED UNDER PENALTY OF PERJURY AS
23 DEFINED IN SECTION 18-8-503.

24 (b) UPON REQUEST, THE CHARITABLE ORGANIZATION SHALL
25 PROVIDE THE SECRETARY OF STATE WITH A COPY OF ITS APPLICATION FOR
26 EXTENSION OF TIME TO FILE WITH THE INTERNAL REVENUE SERVICE IN
27 ORDER TO VERIFY THE DATE AUTHORIZED FOR FILING ITS FORM 990 WITH

1 THE INTERNAL REVENUE SERVICE.

2 (9) ~~No~~ A charitable organization that is required to register under
3 this ~~article~~ ARTICLE 16 shall NOT:

4 (a) Prior to registration OR RENEWAL OF AN EXPIRED
5 REGISTRATION, solicit contributions in this state by any means, have
6 contributions solicited in this state on its behalf by any other person or
7 entity, or participate in a charitable sales promotion; or

8 **SECTION 2.** In Colorado Revised Statutes, 6-16-104.3, **amend**
9 (4) introductory portion as follows:

10 **6-16-104.3. Professional fundraising consultants - annual**
11 **registration - fees.** (4) Applications for registration or renewal of
12 registration ~~shall~~ MUST be submitted on a form prescribed by the secretary
13 of state, ~~shall be signed under oath, and shall~~ AND AFFIRMED UNDER
14 PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503, AND MUST include
15 the following information:

16 **SECTION 3.** In Colorado Revised Statutes, 6-16-104.6, **amend**
17 (3) introductory portion, (5), (7)(i), and (9) as follows:

18 **6-16-104.6. Paid solicitors - annual registration - filing of**
19 **contracts - fees.** (3) Applications for registration or renewal of
20 registration ~~shall~~ MUST be submitted on a form prescribed by the secretary
21 of state, ~~shall be signed under oath, and shall~~ AFFIRMED UNDER PENALTY
22 OF PERJURY AS DEFINED IN SECTION 18-8-503, AND MUST include the
23 following information:

24 (5) Each registration is valid for a period of one year and may be
25 renewed, on or before the anniversary date, for an additional one-year
26 period upon application to the secretary of state and payment of the
27 registration fee AND ANY ASSESSED FINES. Any material changes to the

1 information contained in the application for registration ~~shall~~ MUST be
2 reported in writing to the secretary of state within thirty days.

3 (7) No later than fifteen days before the commencement of a
4 solicitation campaign, the paid solicitor shall file with the secretary of
5 state a completed solicitation notice, on forms prescribed by the secretary
6 of state, containing the following information:

7 (i) A certification statement, signed AND AFFIRMED UNDER
8 PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503 by an officer of the
9 charitable organization on the behalf of whom the solicitation campaign
10 is to occur, stating that the solicitation notice and accompanying material
11 are true and complete to the best of his or her knowledge.

12 (9) Within ninety days after a solicitation campaign has been
13 concluded, and on the anniversary of the commencement of a solicitation
14 campaign lasting more than one year, the paid solicitor shall provide to
15 the charitable organization and file with the secretary of state a financial
16 report of the campaign, including gross proceeds and an itemization of all
17 expenses or disbursements for any purpose. The report ~~shall~~ MUST be on
18 a form prescribed by the secretary of state and ~~shall~~ MUST be signed AND
19 AFFIRMED UNDER PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503
20 by the paid solicitor, or, if the paid solicitor is not an individual, by an
21 authorized official of the paid solicitor, and by an authorized official of
22 the charitable organization. The persons signing the report shall certify
23 that the financial report is true and complete to the best of their
24 knowledge.

25 **SECTION 4.** In Colorado Revised Statutes, 6-16-110.5, **amend**
26 (3) introductory portion; and **add** (3)(f) as follows:

27 **6-16-110.5. Secretary of state - dissemination of information**

1 - **cooperation with other agencies - rules.** (3) The secretary of state
2 may promulgate rules as needed for the effective implementation of this
3 ~~article~~ ARTICLE 16, including:

4 (f) PROVIDING FOR THE WITHDRAWAL OF AN ACTIVE REGISTRATION
5 BY A CHARITABLE ORGANIZATION, PROFESSIONAL FUNDRAISING
6 CONSULTANT, OR PAID SOLICITOR.

7 **SECTION 5.** In Colorado Revised Statutes, 6-16-111, **amend**
8 (6)(b) as follows:

9 **6-16-111. Violations - rules.** (6) (b) Upon notice from the
10 secretary of state that a registration has been denied or is subject to
11 suspension or revocation, the aggrieved party may request a hearing. The
12 request for hearing must be made within ~~five calendar~~ THIRTY days after
13 ~~receipt~~ THE DATE of THE notice. Proceedings for any such denial,
14 suspension, or revocation hearing ~~shall be~~ ARE governed by the "State
15 Administrative Procedure Act", article 4 of title 24; ~~C.R.S.~~; except that
16 the secretary of state shall promulgate rules to provide for expedited
17 deadlines to govern such proceedings and shall bear the burden of proof.
18 The status quo concerning the ability of the aggrieved party to solicit
19 funds ~~shall be~~ IS maintained during the pendency of the proceedings.
20 Judicial review ~~shall be~~ IS available pursuant to section 24-4-106. ~~C.R.S.~~

21 **SECTION 6.** In Colorado Revised Statutes, **amend** 6-16-112 as
22 follows:

23 **6-16-112. Address of record - service of process.** (1) ~~Any~~
24 ~~person required under this article to register with the secretary of state~~
25 ~~shall appoint and continuously maintain a registered agent who satisfies~~
26 ~~the requirements of section 7-90-701 (1), C.R.S. A registration document~~
27 ~~filed in accordance with this article that contains the name and address of~~

1 the person's registered agent must also include a statement by the person
2 filing the document that the registered agent consents to the appointment.
3 The secretary of state shall send any notices required under this article to
4 the registered agent of the registered person ANY PERSON REQUIRED
5 UNDER THIS ARTICLE 16 TO REGISTER WITH THE SECRETARY OF STATE
6 SHALL, IN HIS OR HER INITIAL REGISTRATION OR APPLICATION AND IN
7 EVERY RENEWAL, PROVIDE AN ADDRESS OF RECORD. UNLESS THE
8 REGISTRANT DESIGNATES AN ALTERNATIVE ADDRESS, THE ADDRESS OF
9 RECORD IS THE REGISTRANT'S PRINCIPAL PLACE OF BUSINESS.

10 (2) ~~A registered agent of a person registered under this article is:~~

11 (a) ~~Authorized to receive service of any process, notice, or~~
12 ~~demand required or permitted by law to be served on the person; and~~

13 (b) ~~The person to whom the secretary of state may deliver any~~
14 ~~form, notice, or other document under this article pertaining to the person~~
15 ~~registered under this article~~ ANY NOTICE, ORDER, OR DOCUMENT ISSUED
16 BY THE SECRETARY OF STATE IN ACCORDANCE WITH THIS ARTICLE 16 IS
17 PROPERLY SERVED IF MAILED TO THE REGISTRANT'S OR APPLICANT'S
18 ADDRESS OF RECORD.

19 (3) Any foreign corporation performing an act prohibited under
20 this ~~article~~ ARTICLE 16 through a salesperson or agent is subject to service
21 of process either upon the registered agent specified by the corporation
22 or upon the corporation itself if the corporation fails to maintain a
23 registered agent as required by ~~this article~~ PART 7 OF ARTICLE 90 OF TITLE
24 7. Service of process upon any individual outside this state based upon
25 any action arising out of matters prohibited by this ~~article~~ ARTICLE 16
26 must be effected pursuant to section 13-1-125. ~~C.R.S.~~

27 **SECTION 7.** In Colorado Revised Statutes, 6-16-114, **amend**

1 (1)(a), (1)(b), and (1)(c) as follows:

2 **6-16-114. Fines - required notification - rules.** (1) (a) Any
3 charitable organization, professional fundraising consultant, or paid
4 solicitor who, after sufficient notification by the secretary of state, fails
5 to properly register, renew a registration, FILE A FINANCIAL REPORT
6 REQUIRED BY SECTION 6-16-104 (2)(f), (4)(b), OR (5), or file a financial
7 report of a solicitation campaign under this ~~article~~ ARTICLE 16 by the end
8 of the seventh day following the issuance of the final notice, is liable for
9 a fine in an amount to be established by rule promulgated by the secretary
10 of state.

11 (b) The secretary of state provides sufficient notification under
12 this section if the secretary:

13 (I) ~~gives~~ MAILS at least two notices BY FIRST-CLASS MAIL to the
14 ~~organization and registered agent of~~ ADDRESS OF RECORD FOR the
15 charitable organization, professional fundraising consultant, or paid
16 solicitor; AND

17 (II) IF THE CHARITABLE ORGANIZATION, PROFESSIONAL
18 FUNDRAISING CONSULTANT, OR PAID SOLICITOR HAS PROVIDED THE
19 SECRETARY WITH AN E-MAIL ADDRESS, SENDS AT LEAST TWO NOTICES TO
20 THAT E-MAIL ADDRESS.

21 (c) The fine for filing a registration renewal, FINANCIAL REPORT
22 REQUIRED BY SECTION 6-16-104 (2)(f), (4)(b), OR (5), or solicitation
23 campaign financial report late must not exceed one hundred dollars per
24 year for charities or two hundred dollars per year for paid solicitors;
25 EXCEPT THAT A CHARITABLE ORGANIZATION THAT FAILS TO TIMELY
26 RENEW ITS REGISTRATION AND FAILS TO FILE THE FINANCIAL REPORT
27 REQUIRED BY SECTION 6-16-104 (5) IS ONLY SUBJECT TO A SINGLE FINE

1 FOR THE FAILURE TO RENEW ITS REGISTRATION.

2 **SECTION 8. Act subject to petition - effective date -**

3 **applicability.** (1) This act takes effect October 1, 2018; except that, if a

4 referendum petition is filed pursuant to section 1 (3) of article V of the

5 state constitution against this act or an item, section, or part of this act

6 within the ninety-day period after final adjournment of the general

7 assembly, then the act, item, section, or part will not take effect unless

8 approved by the people at the general election to be held in November

9 2018 and, in such case, will take effect on the date of the official

10 declaration of the vote thereon by the governor.

11 (2) This act applies to the regulation of charitable solicitations by

12 the secretary of state on or after the applicable effective date of this act.