

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0647.01 Bart Miller x2173

HOUSE BILL 16-1129

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HOUSE SPONSORSHIP

Lawrence and McCann,

SENATE SPONSORSHIP

(None),

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING MEASURES FOR ENHANCED ENFORCEMENT AGAINST ACTS  
102 OF CHARITABLE FRAUD.

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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://www.leg.state.co.us/billsummaries>.)*

**Section 1** of the bill creates enhanced penalties under the "Colorado Consumer Protection Act" for committing acts of charitable fraud involving knowledge or intent under the "Colorado Charitable Solicitations Act". The penalty for each violation is \$10,000 with no cap for a related series of violations.

**Sections 2 and 4** of the bill require:

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.*

- ! A statement on applications for registration by a paid solicitor to the secretary of state that neither the paid solicitor nor any officer, director or employee serves on the board of directors of a charitable organization or directs the operations of a charitable organization for which the paid solicitor solicits contributions and that no officer, director, or employee of the paid solicitor's charitable organization clients have a financial interest in the paid solicitor;
- ! Paid solicitors to either have a bond or a savings account, deposit, or certificate of deposit in a financial institution payable to the state of Colorado conditioned upon the performance of the paid solicitor in good faith without fraud or fraudulent representation and without the violation of any provision of the "Colorado Charitable Solicitations Act".

**Section 3** of the bill makes it charitable fraud to misrepresent that a charitable organization for which a paid solicitor solicits has a significant membership of a certain type, such as active police, sheriff, patrol, firefighters, first responders, or veterans. Section 3 of the bill makes a charitable organization also liable with a paid solicitor if the charitable organization knew or should have known that the paid solicitor was engaged in charitable fraud on behalf of the charitable organization.

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

2           **SECTION 1.** In Colorado Revised Statutes, 6-1-112, **add** (1) (f)  
 3 as follows:

4           **6-1-112. Civil penalties.** (1) The attorney general or a district  
 5 attorney may bring a civil action on behalf of the state to seek the  
 6 imposition of civil penalties as follows:

7           (f) ANY PERSON WHO VIOLATES SECTION 6-16-111 (1) (a) TO (1)  
 8 (g) SHALL FORFEIT AND PAY TO THE GENERAL FUND OF THE STATE A CIVIL  
 9 PENALTY OF UP TO TEN THOUSAND DOLLARS FOR EACH VIOLATION, WITH  
 10 NO CAP FOR A RELATED SERIES OF VIOLATIONS.

11           **SECTION 2.** In Colorado Revised Statutes, 6-16-104.6, **amend**  
 12 (3) (h) and (3) (i); and **add** (3) (j) and (3.5) as follows:

13           **6-16-104.6. Paid solicitors - annual registration - filing of**

1 **contracts - fees.** (3) Applications for registration or renewal of  
2 registration shall be submitted on a form prescribed by the secretary of  
3 state, shall be signed under oath, and shall include the following  
4 information:

5 (h) Whether the applicant is registered with or otherwise  
6 authorized by any other state to act as a paid solicitor; ~~and~~

7 (i) Whether the applicant has had such registration or authority  
8 denied, suspended, revoked, or enjoined by any court or other  
9 governmental authority in this state or another state; AND

10 (j) A STATEMENT THAT NEITHER THE PAID SOLICITOR NOR ANY  
11 OFFICER, DIRECTOR, OR EMPLOYEE OF THE PAID SOLICITOR SERVES ON THE  
12 BOARD OF DIRECTORS OF A CHARITABLE ORGANIZATION OR DIRECTS THE  
13 OPERATIONS OF A CHARITABLE ORGANIZATION FOR WHICH THE PAID  
14 SOLICITOR SOLICITS CONTRIBUTIONS AND THAT NO OFFICER, DIRECTOR, OR  
15 EMPLOYEE OF THE PAID SOLICITOR'S CHARITABLE ORGANIZATION CLIENTS  
16 HAVE A FINANCIAL INTEREST IN THE PAID SOLICITOR.

17 (3.5) (a) BEFORE ANY PAID SOLICITOR IS REGISTERED, THE  
18 APPLICANT SHALL PROCURE AND FILE WITH THE SECRETARY OF STATE  
19 EVIDENCE OF A SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT  
20 MEETING THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A GOOD  
21 AND SUFFICIENT BOND IN THE AMOUNT OF TWENTY-FIVE THOUSAND  
22 DOLLARS ISSUED BY A CORPORATE SURETY DULY LICENSED TO DO  
23 BUSINESS WITHIN THE STATE, APPROVED AS TO FORM BY THE ATTORNEY  
24 GENERAL OF THE STATE, AND CONDITIONED THAT THE APPLICANT SHALL  
25 PERFORM IN GOOD FAITH AS A PAID SOLICITOR WITHOUT FRAUD OR  
26 FRAUDULENT REPRESENTATION AND WITHOUT THE VIOLATION OF ANY  
27 PROVISION OF THIS ARTICLE.

1 (b) NO CORPORATE SURETY IS REQUIRED TO MAKE ANY PAYMENT  
2 TO ANY PERSON CLAIMING A BOND ISSUED UNDER THIS SUBSECTION (3.5)  
3 UNTIL A FINAL DETERMINATION OF FRAUD OR FRAUDULENT  
4 REPRESENTATION HAS BEEN MADE BY THE SECRETARY OF STATE OR BY A  
5 COURT OF COMPETENT JURISDICTION.

6 (c) ALL BONDS REQUIRED UNDER THIS SECTION MUST BE RENEWED  
7 ANNUALLY AT THE SAME TIME AS THE BONDHOLDER'S LICENSE IS  
8 RENEWED. RENEWAL OF THE BOND MAY BE DONE THROUGH A  
9 CONTINUATION CERTIFICATE ISSUED BY THE SURETY.

10 **SECTION 3.** In Colorado Revised Statutes, 6-16-111, **amend**  
11 (1.5); and **add** (7) as follows:

12 **6-16-111. Violations.** (1.5) A person commits charitable fraud if  
13 he or she, in the course of or in furtherance of a solicitation, misrepresents  
14 to, misleads, makes false statements to, or uses a name other than the  
15 solicitor's legal name in communicating with a person being solicited in  
16 any manner that would lead a reasonable person to believe that:

17 (a) If the person being solicited makes a contribution, he or she  
18 will receive special benefits or favorable treatment from a police, sheriff,  
19 patrol, firefighting, or other law enforcement agency or department of  
20 government; ~~or~~

21 (b) If the person being solicited fails to make a contribution, he or  
22 she will receive unfavorable treatment from a police, sheriff, patrol,  
23 firefighting, or other law enforcement agency or department of  
24 government; OR

25 (c) THE MEMBERSHIP ORGANIZATION FOR WHICH THE PERSON IS  
26 SOLICITING HAS A SIGNIFICANT MEMBERSHIP OF A CERTAIN TYPE,  
27 INCLUDING ACTIVE POLICE, SHERIFF, PATROL, FIREFIGHTERS, FIRST

1 RESPONDERS, OR VETERANS WHEN THE ORGANIZATION DOES NOT HAVE A  
2 SIGNIFICANT MEMBERSHIP OF THAT TYPE. FOR PURPOSES OF THIS  
3 PARAGRAPH (c), "SIGNIFICANT MEMBERSHIP" MEANS FIVE PERCENT OF THE  
4 MEMBERSHIP OF THE ORGANIZATION OR FIVE HUNDRED MEMBERS,  
5 WHICHEVER IS LESS. FOR PURPOSES OF THIS PARAGRAPH (c), "MEMBERSHIP  
6 ORGANIZATION" MEANS AN ORGANIZATION THAT IS A TAX-EXEMPT  
7 NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c) OF THE FEDERAL  
8 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND HAS MEMBERS  
9 WHO PAY REGULAR MEMBERSHIP DUES.

10 (7) IF A PAID SOLICITOR COMMITS CHARITABLE FRAUD IN THE  
11 COURSE OF MAKING A SOLICITATION FOR A CHARITABLE ORGANIZATION,  
12 THE CHARITABLE ORGANIZATION SHALL ALSO BE LIABLE FOR ANY  
13 APPLICABLE REMEDIES AND PENALTIES IF THE CHARITABLE ORGANIZATION  
14 KNEW OR SHOULD HAVE KNOWN THAT THE PAID SOLICITOR WAS ENGAGED  
15 IN CHARITABLE FRAUD.

16 **SECTION 4.** In Colorado Revised Statutes, 11-35-101, **amend**  
17 (1) as follows:

18 **11-35-101. Alternatives to surety bonds permitted -**  
19 **requirements.** (1) The requirement of a surety bond as a condition to  
20 licensure or authority to conduct business or perform duties in this state  
21 provided in ~~sections 12-5.5-202 (2) (b)~~ SECTIONS 6-16-104.6, 12-5.5-202  
22 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124  
23 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1),  
24 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2),  
25 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a),  
26 (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3),  
27 and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit

1 in or a certificate of deposit issued by a state or national bank doing  
2 business in this state or by a savings account or deposit in or a certificate  
3 of deposit issued by a state or federal savings and loan association doing  
4 business in this state. Such savings account, deposit, or certificate of  
5 deposit shall be in the amount specified by statute, if any, and shall be  
6 assigned to the appropriate state agency for the use of the people of the  
7 state of Colorado. The aggregate liability of the bank or savings and loan  
8 association shall in no event exceed the amount of the deposit. For the  
9 purposes of the sections referred to in this section, "bond" includes the  
10 savings account, deposit, or certificate of deposit authorized by this  
11 section.

12 **SECTION 5. Act subject to petition - effective date -**  
13 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
14 the expiration of the ninety-day period after final adjournment of the  
15 general assembly (August 10, 2016, if adjournment sine die is on May 11,  
16 2016); except that, if a referendum petition is filed pursuant to section 1  
17 (3) of article V of the state constitution against this act or an item, section,  
18 or part of this act within such period, then the act, item, section, or part  
19 will not take effect unless approved by the people at the general election  
20 to be held in November 2016 and, in such case, will take effect on the  
21 date of the official declaration of the vote thereon by the governor.

22 (2) This act applies to charitable solicitations on or after the  
23 applicable effective date of this act.