

CHAPTER 262

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 16-1129

BY REPRESENTATIVE(S) Lawrence and McCann, Fields, Kagan, Kraft-Tharp, Lontine, Melton, Mitsch Bush, Pabon, Pettersen, Tyler, Winter, Hullinghorst, Ginal, Primavera, Singer;
also SENATOR(S) Crowder and Heath, Aguilar, Kefalas.

AN ACT**CONCERNING MEASURES FOR ENHANCED ENFORCEMENT AGAINST ACTS OF CHARITABLE FRAUD.**

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

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

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

(f) (I) ANY PERSON WHO VIOLATES SECTION 6-16-111 (1) (a) TO (1) (g) SHALL FORFEIT AND PAY A CIVIL PENALTY OF UP TO TEN THOUSAND DOLLARS FOR EACH VIOLATION, WITH A CAP OF THREE MILLION DOLLARS FOR A RELATED SERIES OF VIOLATIONS. IN DETERMINING A CIVIL PENALTY UNDER THIS PARAGRAPH (f), THE COURT SHALL ADJUST THE LIMITATIONS CAP FOR INFLATION BASED ON THE CUMULATIVE ANNUAL ADJUSTMENT FOR INFLATION FOR EACH FULL YEAR SINCE THE EFFECTIVE DATE OF THIS PARAGRAPH (f), AS AMENDED. THE ADJUSTMENTS MADE UNDER THIS SUBPARAGRAPH (I) ARE ROUNDED UPWARD OR DOWNWARD TO THE NEAREST TEN-DOLLAR INCREMENT. AS USED IN THIS SUBPARAGRAPH (I), "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR THE DENVER-BOULDER-GREELEY METROPOLITAN STATISTICAL AREA FOR THE PRICE OF ALL ITEMS PAID BY ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

(II) ANY CIVIL PENALTY RECOVERED UNDER THIS PARAGRAPH (f) IS PAID TO THE ATTORNEY GENERAL AND HELD AS CUSTODIAL MONEY. THE ATTORNEY GENERAL SHALL PETITION THE DISTRICT COURT HAVING JURISDICTION OVER THE UNDERLYING CIVIL ENFORCEMENT ACTION FOR APPROVAL TO GRANT THE CUSTODIAL MONEY TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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SECTION 2. In Colorado Revised Statutes, 6-16-103, **amend** (7) introductory portion, (7) (f), and (7) (g); and **add** (7) (h) as follows:

6-16-103. Definitions. As used in this article, unless the context otherwise requires:

(7) "Paid solicitor" means a person who, for monetary compensation, performs any service in which contributions will be solicited in this state by such compensated person or by any compensated person he or she employs, procures, or engages ~~directly or indirectly~~ to solicit for contributions. The following persons are not "paid solicitors":

(f) A person whose only responsibility in connection with a charitable contribution is to provide a merchant account to process credit card payments using the internet; ~~or~~

(g) A person who prepares a grant application for a charitable organization or purpose, unless the person's compensation is computed on the basis of funds to be raised or actually raised as a result of the grant application; OR

(h) A PERSON WHO PROVIDES ANY SERVICE OR PRODUCT TO A CHARITABLE ORGANIZATION WHO DOES NOT DIRECTLY SOLICIT FOR A CHARITABLE CONTRIBUTION.

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

6-16-104.6. Paid solicitors - annual registration - filing of contracts - fees.

(3) Applications for registration or renewal of registration shall be submitted on a form prescribed by the secretary of state, shall be signed under oath, and shall include the following information:

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

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

(j) WHETHER THE APPLICANT OR ANY OFFICER, DIRECTOR, OR EMPLOYEE OF THE APPLICANT SERVES ON THE BOARD OF DIRECTORS OF A CHARITABLE ORGANIZATION, DIRECTS THE OPERATIONS OF A CHARITABLE ORGANIZATION, OR OTHERWISE HAS A FINANCIAL INTEREST IN A CHARITABLE ORGANIZATION FOR WHICH THE APPLICANT SOLICITS CONTRIBUTIONS. IF THIS RELATIONSHIP EXISTS BETWEEN THE APPLICANT AND THE CHARITABLE ORGANIZATION, THE APPLICATION MUST INCLUDE A STATEMENT THAT THE RELATIONSHIP MEETS THE STANDARDS SET FORTH IN SECTION 7-128-501 (3), C.R.S., REGARDING CONFLICT OF INTEREST TRANSACTIONS.

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

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

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

SECTION 4. In Colorado Revised Statutes, 6-16-111, **amend** (1.5); and **add** (7) as follows:

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

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

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

(c) THE MEMBERSHIP ORGANIZATION FOR WHICH THE PERSON IS SOLICITING HAS A SIGNIFICANT MEMBERSHIP OF A CERTAIN TYPE, INCLUDING ACTIVE POLICE, SHERIFF, PATROL, FIREFIGHTERS, FIRST RESPONDERS, OR VETERANS WHEN THE ORGANIZATION DOES NOT HAVE A SIGNIFICANT MEMBERSHIP OF THAT TYPE. FOR PURPOSES OF THIS PARAGRAPH (c), "SIGNIFICANT MEMBERSHIP" MEANS TEN PERCENT OF THE MEMBERSHIP OF THE ORGANIZATION OR ONE HUNDRED MEMBERS, WHICHEVER IS LESS. FOR PURPOSES OF THIS PARAGRAPH (c), "MEMBERSHIP ORGANIZATION" MEANS AN ORGANIZATION THAT IS A TAX-EXEMPT NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND HAS MEMBERS WHO PAY REGULAR MEMBERSHIP DUES.

(7) IF A PAID SOLICITOR COMMITS CHARITABLE FRAUD IN THE COURSE OF MAKING A SOLICITATION FOR A CHARITABLE ORGANIZATION, THE CHARITABLE ORGANIZATION SHALL ALSO BE LIABLE FOR ANY APPLICABLE REMEDIES AND PENALTIES IF THE

CHARITABLE ORGANIZATION KNEW OR SHOULD HAVE KNOWN THAT THE PAID SOLICITOR WAS ENGAGED IN CHARITABLE FRAUD. THIS SUBSECTION (7) DOES NOT EXTEND PERSONAL LIABILITY TO BOARD MEMBERS OF A CHARITABLE ORGANIZATION BEYOND THE PERSONAL LIABILITY ALLOWED BY SECTION 13-21-116 (2) (b) (I), C.R.S., OR AS OTHERWISE ALLOWED BY LAW PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (7).

SECTION 5. In Colorado Revised Statutes, 11-35-101, **amend** (1) as follows:

11-35-101. Alternatives to surety bonds permitted - requirements. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in ~~sections 12-5.5-202 (2) (b)~~ SECTIONS 6-16-104.6, 12-5.5-202(2)(b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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

Approved: June 8, 2016