

CHAPTER 160

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 17-1158

BY REPRESENTATIVE(S) McKean, Gray, Herod, Kraft-Tharp, Lawrence, Melton;
also SENATOR(S) Smallwood and Martinez Humenik, Priola.

AN ACT

CONCERNING THE REGULATION OF CHARITABLE SOLICITATIONS BY THE SECRETARY OF STATE, AND, IN CONNECTION THEREWITH, MODIFYING AND CLARIFYING FILING REQUIREMENTS AND ENFORCEMENT OF THE "COLORADO CHARITABLE SOLICITATIONS ACT".

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

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

6-16-104. Charitable organizations - initial registration - annual filing - fees.

(2) The registration statement must be signed and ~~sworn to under oath~~ **AFFIRMED** UNDER PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503 by an officer of the charitable organization, which may include its chief fiscal officer, and must contain the following information:

(c) The names ~~and titles~~ of the officers, directors, trustees, and executive personnel of the charitable organization;

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

(b) **A CHARITABLE ORGANIZATION THAT WITHDRAWS ITS REGISTRATION OR ALLOWS ITS REGISTRATION TO EXPIRE MUST, ON OR BEFORE THE DATE OF WITHDRAWAL OR EXPIRATION, FILE A FINAL FINANCIAL REPORT, IN A FORM PRESCRIBED BY THE SECRETARY OF STATE, THAT INCLUDES INFORMATION THROUGH**

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

THE LAST DATE ON WHICH THE ORGANIZATION SOLICITED CONTRIBUTIONS IN COLORADO.

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

(5) (a) Every charitable organization required to register under this section shall annually file with the secretary of state a financial report for the most recent fiscal year on a form prescribed by the secretary of state, or, in the discretion of the secretary of state, a copy of the charitable organization's federal form 990, with all schedules except schedules of donors, for the most recent fiscal year. The financial report must be filed on or before the earlier of the fifteenth day of the eighth calendar month after the close of each fiscal year in which the charitable organization solicited in this state or the date authorized for filing a form 990 with the internal revenue service. A charitable organization that is unable to file a copy of its form 990 return or the secretary of state's financial form by the prescribed deadline may request an extension of the filing deadline from the secretary of state. The secretary of state, upon receipt of an application to extend the filing deadline, may grant a three-month extension of time to file the financial report. All ~~such~~ requests FOR EXTENSION OF TIME must:

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

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

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

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

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

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

(a) Prior to registration OR RENEWAL OF AN EXPIRED REGISTRATION, solicit contributions in this state by any means, have contributions solicited in this state on

its behalf by any other person or entity, or participate in a charitable sales promotion; or

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

6-16-104.3. Professional fundraising consultants - annual registration - fees.

(4) Applications for registration or renewal of registration ~~shall~~ **MUST** be submitted on a form prescribed by the secretary of state, ~~shall be signed under oath, and shall~~ **AND AFFIRMED UNDER PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503, AND MUST** include the following information:

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

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

(3) Applications for registration or renewal of registration ~~shall~~ **MUST** be submitted on a form prescribed by the secretary of state, ~~shall be signed under oath, and shall~~ **AFFIRMED UNDER PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503, AND MUST** include the following information:

(5) Each registration is valid for a period of one year and may be renewed, on or before the anniversary date, for an additional one-year period upon application to the secretary of state and payment of the registration fee **AND ANY ASSESSED FINES**. Any material changes to the information contained in the application for registration ~~shall~~ **MUST** be reported in writing to the secretary of state within thirty days.

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

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

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

SECTION 4. In Colorado Revised Statutes, 6-16-110.5, **amend** (3) introductory

portion; and **add** (3)(f) as follows:

6-16-110.5. Secretary of state - dissemination of information - cooperation with other agencies - rules. (3) The secretary of state may promulgate rules as needed for the effective implementation of this ~~article~~ ARTICLE 16, including:

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

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

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

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

6-16-112. Address of record - service of process. (1) ~~Any person required under this article to register with the secretary of state shall appoint and continuously maintain a registered agent who satisfies the requirements of section 7-90-701 (1), C.R.S. A registration document filed in accordance with this article that contains the name and address of the person's registered agent must also include a statement by the person filing the document that the registered agent consents to the appointment. The secretary of state shall send any notices required under this article to the registered agent of the registered person~~ ANY PERSON REQUIRED UNDER THIS ARTICLE 16 TO REGISTER WITH THE SECRETARY OF STATE SHALL, IN HIS OR HER INITIAL REGISTRATION OR APPLICATION AND IN EVERY RENEWAL, PROVIDE AN ADDRESS OF RECORD. UNLESS THE REGISTRANT DESIGNATES AN ALTERNATIVE ADDRESS, THE ADDRESS OF RECORD IS THE REGISTRANT'S PRINCIPAL PLACE OF BUSINESS.

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

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

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

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

SECTION 7. In Colorado Revised Statutes, 6-16-114, **amend** (1)(a), (1)(b), and (1)(c) as follows:

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

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

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

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

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

SECTION 8. Act subject to petition - effective date - applicability. (1) This act takes effect October 1, 2018; 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 the ninety-day period after final adjournment of the general assembly, 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 2018 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 the regulation of charitable solicitations by the secretary of state on or after the applicable effective date of this act.

Approved: April 28, 2017