

CHAPTER 216

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 08-1109

BY REPRESENTATIVE(S) Balmer, Borodkin, Kerr J., Stafford, and Summers;
also SENATOR(S) Williams.

AN ACT

CONCERNING AN INCREASE IN THE SECRETARY OF STATE'S AUTHORITY OVER CHARITABLE SOLICITATIONS, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 6-16-102, Colorado Revised Statutes, is amended to read:

6-16-102. Legislative declaration. The general assembly hereby finds that fraudulent charitable solicitations are a widespread practice in this state ~~which~~ THAT results in millions of dollars of losses to contributors and legitimate charities each year. Legitimate charities are harmed by such fraud because the money available for contributions continually is being siphoned off by fraudulent charities, and the goodwill and confidence of contributors continually is being undermined by the practices of unscrupulous solicitors. THE GENERAL ASSEMBLY FURTHER FINDS THAT LEGITIMATE CHARITIES PROVIDE MANY PUBLIC BENEFITS AND THAT CHARITABLE DONATIONS ARE A DIRECT RESULT OF PUBLIC TRUST IN CHARITIES. The general assembly therefore finds that the provisions of this article, including those involving PERTINENT INFORMATION TO BE FILED IN A TIMELY MANNER BY CHARITABLE ORGANIZATIONS AND disclosures to be made by paid solicitors, are necessary to protect the public's interest in making informed choices as to which charitable causes should be supported. FURTHERMORE, THESE PROVISIONS ARE INTENDED TO HELP THE SECRETARY OF STATE INVESTIGATE ALLEGATIONS OF WRONGDOING IN CHARITIES, WITHOUT HAVING A CHILLING EFFECT ON DONORS WHO WISH TO GIVE ANONYMOUSLY OR REQUIRING PUBLIC DISCLOSURE OF CONFIDENTIAL INFORMATION ABOUT CHARITIES.

SECTION 2. 6-16-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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

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

(9.5) "RECORDS" MEANS BOOKS, FINANCIAL STATEMENTS, PAPERS, CORRESPONDENCE, MEMORANDA, AGREEMENTS, OR OTHER DOCUMENTS OR RECORDS THAT THE SECRETARY OF STATE DEEMS RELEVANT OR MATERIAL TO AN INQUIRY.

(11.5) "SUSPEND" MEANS THAT A CHARITABLE ORGANIZATION, PROFESSIONAL FUND-RAISING CONSULTANT, OR PAID SOLICITOR IS PROHIBITED FROM SOLICITING CONTRIBUTIONS, PROVIDING CONSULTING SERVICES IN CONNECTION WITH A SOLICITATION CAMPAIGN, OR CONDUCTING A SOLICITATION CAMPAIGN IN COLORADO.

SECTION 3. 6-16-110.5 (3), Colorado Revised Statutes, is amended to read:

6-16-110.5. Secretary of state - dissemination of information - cooperation with other agencies - rules. (3) The secretary of state shall have the authority to promulgate rules as needed for the effective implementation of this section, including but not limited to:

- (a) Providing for the extension of filing deadlines; ~~and~~
- (b) Providing for the online availability of forms required to be filed pursuant to sections 6-16-104 to 6-16-104.6; ~~and~~
- (c) PROVIDING for the electronic filing of required forms, including the acceptance of electronic signatures;
- (d) ~~The secretary of state shall have the authority to mandate~~ MANDATING electronic filing and ~~to provide~~ PROVIDING, in the secretary of state's discretion, for exceptions to mandatory electronic filing; AND
- (e) SETTING FINES FOR NONCOMPLIANCE WITH THIS ARTICLE OR RULES PROMULGATED PURSUANT TO THIS ARTICLE. THE FINE FOR SOLICITING WHILE UNREGISTERED SHALL NOT EXCEED THREE HUNDRED DOLLARS PER YEAR FOR CHARITIES OR ONE THOUSAND DOLLARS PER YEAR FOR PAID SOLICITORS.

SECTION 4. Article 16 of title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

6-16-111.5. Investigations. WHENEVER THE SECRETARY OF STATE OR THE SECRETARY OF STATE'S DESIGNEE BELIEVES THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE SECRETARY OF STATE OR THE SECRETARY OF STATE'S DESIGNEE MAY INVESTIGATE ANY SUCH VIOLATION. UPON DEMAND, RECORDS SHALL BE MADE AVAILABLE AND PRODUCED TO THE SECRETARY OF STATE FOR INSPECTION. SUCH RECORDS SHALL NOT BE SUBJECT TO DISCLOSURE PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.; EXCEPT THAT PUBLIC RECORDS ABOUT PERSONS SUBJECT TO THIS ARTICLE PREPARED BY THE SECRETARY OF STATE OR THE SECRETARY OF STATE'S DESIGNEE ARE SUBJECT TO DISCLOSURE PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

6-16-114. Fine - late filing fee - rules. ANY CHARITABLE ORGANIZATION, PROFESSIONAL FUND-RAISING CONSULTANT, OR PAID SOLICITOR WHO, AFTER SUFFICIENT NOTIFICATION BY THE SECRETARY OF STATE, FAILS TO PROPERLY REGISTER, RENEW A REGISTRATION, FILE A SOLICITATION NOTICE, OR FILE A FINANCIAL REPORT OF A SOLICITATION CAMPAIGN UNDER THIS ARTICLE BY THE END OF THE SEVENTH DAY FOLLOWING THE ISSUANCE OF THE FINAL NOTICE, IS LIABLE FOR A FINE OR LATE FILING FEE IN AN AMOUNT TO BE ESTABLISHED BY RULE PROMULGATED BY THE SECRETARY OF STATE. THE LATE FEE FOR FILING A REGISTRATION RENEWAL, SOLICITATION NOTICE, OR SOLICITATION CAMPAIGN FINANCIAL REPORT LATE SHALL NOT EXCEED ONE HUNDRED DOLLARS PER YEAR FOR CHARITIES OR TWO HUNDRED DOLLARS PER YEAR FOR PAID SOLICITORS. SUFFICIENT NOTIFICATION SHALL CONSIST OF AT LEAST TWO NOTICES SENT BY MAIL TO THE ORGANIZATION AND REGISTERED AGENT OF THE CHARITABLE ORGANIZATION, PROFESSIONAL FUND-RAISING CONSULTANT, OR PAID SOLICITOR. THE FINE OR LATE FILING FEE IS IN ADDITION TO ANY OTHER FILING FEE PROVIDED BY THIS ARTICLE.

SECTION 5. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund, created in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2008, the sum of twenty-eight thousand dollars (\$28,000) cash funds, or so much thereof as may be necessary, for the implementation of this act.

SECTION 6. Effective date - applicability. (1) This act shall take effect September 1, 2008.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act.

Approved: May 14, 2008