

Title 13A CRIMINAL CODE - Article 3 Charitable Fraud

Section 13A-9-70

Definitions.

The following words and phrases as used in this article shall have the following meanings unless a different meaning is required by the context:

(1) CHARITABLE ORGANIZATION. Any benevolent, philanthropic, or patriotic person, or one purporting to be such, consistent with the then-controlling definition provided in the Internal Revenue Code of the United States of America, which solicits and collects funds for charitable purposes and includes each local, county, or area division within this state of the charitable organization; provided the local, county, or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

(2) CHARITABLE PURPOSE. Any charitable, benevolent, philanthropic, or patriotic purpose which is consistent with the then-controlling definition provided in the Internal Revenue Code of the United States of America.

(3) CIVIL RIGHTS ORGANIZATION. Any charitable organization exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code that is organized to protect the rights of persons against deprivation, discrimination, or denial of their right to equal protection of the laws under the Constitution of the United States of America because of color, race, religion, sex, age, disability, or national origin.

(4) COMMERCIAL CO-VENTURER. Any person who for profit or other commercial consideration, conducts, promotes, underwrites, arranges, or sponsors a sale, performance, or event of any kind which is advertised, and which will benefit, to any extent, a charitable or religious organization. However, any such person who will benefit in good will only, is not a commercial co-venturer if the collection and distribution of the proceeds of the sale, performance, or event are supervised and controlled by the benefiting charitable or religious organization.

(5) CONTRIBUTION. The promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority. Reference to the dollar amount of "contributions" in this article means in the case of promises to pay, or payments for merchandise or rights of any other description, the value of the total amount promised to be paid for the merchandise or rights and not merely that portion of the purchase price to be applied to a charitable purpose.

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(6) EDUCATIONAL INSTITUTION. A school, college, or other institution which has a defined curriculum, student body, and faculty and which conducts classes on a regular basis.

(7) PERSON. Any individual, organization, group, association, partnership, corporation, trust, or any combination of them.

(8) POLITICAL ORGANIZATION. A party, committee, association, fund, or other organization, whether or not incorporated, which is organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function pursuant to 26 U.S.C. §527.

(9) PROFESSIONAL FUND RAISER. Any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself or herself out to persons in this state as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization is not a professional fund raiser unless his or her salary or other compensation is computed on the basis of funds to be raised, or actually raised. This section shall not apply to persons who solicit political campaign contributions on behalf of candidates for public office or initiatives on a ballot.

(10) PROFESSIONAL SOLICITOR. Any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes in this state.

(11) RELIGIOUS ORGANIZATION. Any society, sect, persuasion, mission, church, parish, congregation, temple, convention, or association of any of the foregoing, diocese or presbytery, or other organization, whether or not incorporated, or any employee thereof, no part of the net earnings of which inures to the benefit of any private party or individual associated with such an organization and that otherwise qualifies as an exempt organization under Section 501(c)(3) of Title 26, United States Code, as amended.

(Acts 1987, No. 87-605, p. 1052, §1; Acts 1996, No. 96-547, p. 786, §1.)

Section 13A-9-71

Registration of charitable organizations, professional fund raisers, and commercial co-venturers, and professional solicitors; notification of changes; exempt persons; annual report; prohibition against fund raising by unregistered person; contracts between professional fund raisers and commercial co-venturers; appointment of Secretary of State as agent for service of process; use of name of charitable organization without consent; disclosure by solicitors; violations and penalties; injunctive relief.

(a) Every charitable organization, except those granted an exemption in subsection (f), which is physically located in this state, intends to solicit contributions in or from this state, or to have contributions solicited in this state, on its behalf, by other charitable organizations, paid

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solicitors, or commercial co-venturers in or from this state shall, prior to any solicitation, file a registration statement with the Attorney General upon a form prescribed by the Attorney General containing all of the following information:

- (1) The name of the organization and the name or names under which it intends to solicit contributions.
 - (2) The names and addresses of the officers, directors, trustees, and executive personnel of the organization.
 - (3) The addresses of the organization and the addresses of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records.
 - (4) The place where and the date when the organization was legally established, the form of its organization, and its tax exempt status.
 - (5) The purposes for which the organization is organized and the purpose or purposes for which the contributions to be solicited will be used.
 - (6) The date on which the fiscal year of the organization ends.
 - (7) Whether the organization is authorized by any governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.
 - (8) The names and addresses of any professional fund raisers and commercial co-venturers who are acting or have agreed to act on behalf of the organization.
- (b) With the initial registration only, every charitable organization required to be registered shall also file with the Attorney General a copy of the charitable organizational charter, articles of organization or incorporation, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws, and a statement setting forth the place where and the date when the organization was legally established, the form of this organization, and its tax exemption status attaching federal or state tax exemption determination letters.
- (c) The registration form shall be signed by the president or other authorized officer and the chief fiscal officer of the organization.
- (d) Every charitable organization required to register shall pay a fee of twenty-five dollars (\$25) to the Attorney General at the time of registration.
- (e) The registration shall remain in effect unless it is either cancelled as provided in this section or withdrawn by the organization. Every registered organization shall notify the Attorney General within 10 days of any change in the information required to be furnished by the organization under subsection (a).

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(f) The following persons shall not be required, pursuant to this article, to register with the Attorney General:

(1) Educational institutions and their authorized and related foundations.

(2) Religious organizations.

(3) Political organizations.

(4) Fraternal, patriotic, benevolent, social, educational, alumni, health care foundation, historical, and civil rights organizations, including fraternities and sororities and any auxiliaries associated with any such organizations.

(5) Civic leagues and civic organizations which solicit contributions solely from their own membership.

(6) Persons requesting any contributions for the relief of any individual, specified by the name at the time of the solicitation, if all of the contributions collected do not exceed ten thousand dollars (\$10,000) and, without any deductions, are turned over to the named beneficiary.

(7) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of twenty-five thousand dollars (\$25,000) during a fiscal year of the organization, provided all of its fund raising functions are carried on by persons who are not paid for such services. If the gross contributions received by a charitable organization during any fiscal year of that organization are in excess of twenty-five thousand dollars (\$25,000), within 30 days after the date it receives total contributions in excess of twenty-five thousand dollars (\$25,000), the charitable organization shall register with the Attorney General as required by this section.

(8)a. Any charitable organization receiving an allocation from an incorporated community chest or united fund, provided all of the following requirements have been met:

1. The chest or fund is complying with this section relating to registration and filing of annual reports with the Attorney General.

2. The charitable organization does not actually receive, in addition to an allocation, contributions in excess of twenty-five thousand dollars (\$25,000) during the fiscal year.

3. All of the fund raising functions of the charitable organization are carried on by persons who are not paid for such services.

b. If the gross contributions other than the allocation received by the charitable organization during any fiscal year of the charitable organization are in excess of twenty-five thousand dollars (\$25,000), the charitable organization shall within 30 days after the date it receives the contributions in excess of twenty-five thousand dollars (\$25,000), register with the Attorney General as required by this section.

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(9) A local post, camp, chapter, or similarly designated element, or a county unit of such elements of a bona fide veterans organization, which issues charters to local elements throughout this state, or a bona fide organization of volunteer firefighters, ambulance companies, or rescue squads, or a bona fide auxiliary or affiliate of such organizations, provided all of its fund raising activities are carried on by members of the organization, family members of the members of the organization, volunteers, or an affiliate of the organization and the members receive no compensation, directly or indirectly, therefor.

(g) Every charitable organization registered pursuant to subsection (a) shall, within 90 days of the close of its fiscal year ending after the date on which the charitable organization files its initial registration pursuant to subsection (a), file an annual written report. Each annual report shall be sworn to under oath, shall be in the form prescribed by the Attorney General and shall include a financial statement covering the fiscal year, clearly setting forth the gross income, expenses, and net income inuring to the benefit of the charitable organization, a balance sheet as of the close of the fiscal year, and a schedule of the activities carried on by the charitable organization in the performance of its purposes and the amounts expended thereon during the fiscal year. An organization may also meet this requirement by submitting a copy of the Form 990 submitted to the Internal Revenue Service as required by federal law. A fee of twenty-five dollars (\$25) payable to the Attorney General shall accompany the report at the time of filing.

(1) The Attorney General shall cancel the registration of any charitable organization which fails within the time herein prescribed to comply with this section, or fails to furnish any additional information requested by the Attorney General within the required time. The Attorney General may extend the time for filing the reports for a period not to exceed 180 days. Notice of cancellation pursuant to this subsection shall be mailed to the registrant at least 15 days before the effective date thereof.

(2) All records, books, and reports maintained by any charitable organization registered or required to register pursuant to subsection (a) shall be available for inspection during normal business hours at the principal office of the organization, by the Attorney General, or the duly authorized representative of the Attorney General.

(h) No person shall act as a professional fund raiser or commercial co-venturer either before he or she registers with the Attorney General, or after the expiration or cancellation of his or her registration and prior to renewal thereof. Applications for registration and renewal shall be in writing, under oath, in the form prescribed by the Attorney General, and shall be accompanied by an annual fee in the amount of one hundred dollars (\$100).

(1) The applicant shall at the time of making application, file with, and have approved by the Attorney General, a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars (\$10,000) with one or more sureties whose liability in the aggregate as sureties will at least equal that sum. The bond shall run to the Attorney General for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of the solicitation.

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(2) Registration shall be for the period of one year, or a part thereof, expiring on the 30th day of September and may be renewed upon written application under oath, in the form prescribed by the Attorney General, the filing of the bond, and the payment of the fee prescribed for an additional one-year period. Applications, registrations, renewals, and bonds, when filed with the Attorney General, shall become public records in the Office of the Attorney General.

(3) A professional fund raiser or commercial co-venturer shall maintain accurate and current books and records of his or her activities while required to be registered under this section and until at least two years have elapsed at the end of the effective period of the registration to which they relate. He or she shall keep the books and records in his or her office available for inspection and examination by the Attorney General, or the duly authorized representative of the Attorney General.

(i) All contracts entered into between professional fund raisers or commercial co-venturers and charitable organizations shall be in writing. A true and correct copy of each contract shall be filed by the professional fund raiser or commercial co-venturer with the Attorney General within 10 days after it is executed. No services shall be performed under a contract until the expiration of 15 days from the date the contract is filed with the Attorney General. Within 90 days after the termination of the contract, the professional fund raiser or commercial co-venturer shall file a closing statement with the Attorney General disclosing gross receipts and all expenditures incurred in the performance of the contract.

(j) No person shall act as a professional solicitor in the employ of a professional fund raiser who is required to register pursuant to this section before he or she has registered with the Attorney General or after the expiration or cancellation of the registration or any renewal thereof. Application for registration shall be in writing, under oath, in the form prescribed by the Attorney General and shall be accompanied by a fee in the amount of twenty-five dollars (\$25). Registration when effected shall be for a period of one year, or a part thereof, expiring with the 30th day of September and may be renewed upon written application, under oath, in the form prescribed by the Attorney General and the payment of the fee prescribed herein for additional one-year periods. Applications for registration, when filed with the Attorney General, shall become public records in the Office of the Attorney General.

(k) Any charitable organization, professional fund raiser, professional solicitor, or commercial co-venturer which is subject to this article, having its principal place of business outside this state, or organized under and by virtue of the laws of a foreign state, shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena, subpoena duces tecum, or other process directed to the charitable organization, professional fund raiser, professional solicitor, or commercial co-venturer, or any partner, principal officer, or director thereof, in any action or proceeding brought pursuant to this article. Service of process upon the Secretary of State shall be made by personally delivering a copy to the Office of the Secretary of State and depositing it with the Secretary of State or his or her agent. Service shall be sufficient if notice of the service and a copy of the process shall be forthwith sent by the Secretary of State to the charitable organization, professional fund raiser, commercial co-venturer, or other person to whom it is directed, by registered mail, with return receipt requested, to the last address known to the Secretary of State.

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(l) No person, except an officer, director, or trustee of the charitable organization by or for whom contributions are solicited, shall for the purpose of soliciting contributions from persons in this state, use the name of any charitable organization without the consent of the charitable organization.

(m) A person shall be deemed to have used the name of a charitable organization for the purpose of soliciting contributions if the latter charitable organization's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or his or her name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(n) Nothing contained in this section shall prevent the publication of names of contributors without their written consent in an annual or other periodic report issued by a charitable organization for the purpose of reporting its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(o) No charitable organization or professional fund raiser soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(p) Every individual in the process of soliciting funds shall identify himself or herself. If the individual is being paid for soliciting, he or she shall so inform the solicitee of his or her being so paid. This information shall be disclosed to the solicitee in a clear manner before attempting any solicitations.

(q) Any solicitor or person who knowingly violates the provisions of this section shall be guilty of charitable fraud. The initial conviction of charitable fraud shall be a Class A misdemeanor. A second or subsequent conviction of charitable fraud shall be a Class C felony.

(r) In addition to all other remedies provided by law, the Attorney General, or a district attorney, may bring an action to enjoin the violation of this section. The Attorney General, or district attorney, may give at least 15 days written notice by registered or certified mail to the charitable organization, person, or persons violating the provisions hereof. The notice shall require that registration be accomplished or that the solicitation of funds be immediately terminated. The failure to immediately discontinue solicitation, or to register in accordance with this section, shall be unlawful and the charitable organizations or persons committing the violation shall forfeit and pay a penalty of not more than five thousand dollars (\$5,000) upon petition by the Attorney General or a district attorney acting in the name of the state. The Attorney General shall have the authority to formulate rules and regulations interpreting this section as necessary to the administration and enforcement of its provisions.

(Acts 1987, No. 87-605, p. 1052, §2; Acts 1996, No. 96-547, p. 786, §1.)