



January 29, 1999

HOUSE BILL No. 1434

DIGEST OF HB 1434 (Updated January 26, 1999 4:33 pm - DI 101)

Citations Affected: IC 23-7.

Synopsis: Registration of solicitors and fundraisers. Requires a professional solicitor to submit the following information to the consumer protection division of the office of the attorney general after a solicitation campaign has ended: (1) the total gross amount of money raised by the professional solicitor and the charitable organization; (2) the total amount of money paid to or retained by the professional solicitor; (3) the total amount of expenses paid by the charitable organization, excluding money paid to the professional solicitor; and (4) the total amount of money paid to or retained by the charitable organization, after expenses and money paid to the professional solicitor are deducted. Provides that the consumer protection division may deny or revoke the registration of a professional solicitor who fails to submit this information after the end of a campaign. Provides that the attorney general may impose fines on professional fundraiser
(Continued next page)

Effective: July 1, 1999.

Grubb, Yount, Hasler

January 19, 1999, read first time and referred to Committee on Commerce and Economic Development.
January 28, 1999, amended, reported — Do Pass.

HB 1434—LS 7451/DI 101+



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Digest Continued

consultants and professional solicitors for the late filing of reports.

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HB 1434—LS 7451/DI 101+



January 29, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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HOUSE BILL No. 1434

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

- 1 SECTION 1. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter:
3 "Charitable organization" means any organization described in
4 Section 501 of the federal Internal Revenue Code.
5 "Contribution" means a promise or pledge of money, a payment, or
6 any other rendition of property or service. It does not include the
7 payment of membership dues, fines or assessments, or payments for
8 property sold or services rendered by the charitable organization, if not
9 sold or rendered in connection with a solicitation.
10 "Division" means the consumer protection division, office of the
11 attorney general.
12 "Person" includes any individual, organization, trust foundation,
13 association, partnership, limited liability company, or corporation.
14 "Professional fundraiser consultant" means any person who is hired
15 for a fee to plan, manage, advise, or act as a consultant in connection

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1 with soliciting contributions for, or on behalf of, a charitable
 2 organization, but who does not actually solicit contributions as a part
 3 of the person's services or employ, procure, or engage a compensated
 4 person to solicit contributions. The term does not include a charitable
 5 organization, or a bona fide officer, employee, member, or volunteer of
 6 a charitable organization, **that solicits on its own behalf.**

7 "Professional solicitor" means a person who, for a financial
 8 consideration, solicits contributions for, or on behalf of, a charitable
 9 organization, either personally or through agents or employees
 10 specifically employed for that purpose. The term does not include a
 11 charitable organization, or an officer, **an** employee, **a** member, or **a**
 12 volunteer of a charitable organization, **that solicits on its own behalf.**

13 "Solicit" means:

14 (1) to request, other than as described in subdivision (2), directly
 15 or indirectly, financial assistance in any form on the
 16 representation that the financial assistance will be used for a
 17 charitable purpose; or

18 (2) to sell, offer, or attempt to sell any advertisement, advertising
 19 space, membership, or tangible item:

20 (A) in connection with which any appeal is made for any
 21 charitable organization or purpose;

22 (B) where the name of any charitable organization is used or
 23 referred to in any appeal made for any charitable organization
 24 as an inducement or reason for making a sale described in this
 25 subdivision; or

26 (C) when or where in connection with a sale described in this
 27 subdivision any statement is made that the whole or any part
 28 of the proceeds from the sale will be used for any charitable
 29 purpose or benefit any charitable organization.

30 A solicitation shall be considered to have taken place whether or not
 31 the person making the solicitation receives any contribution.

32 SECTION 2. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person may not act as a
 34 professional fundraiser consultant or professional solicitor for a
 35 charitable organization unless the person has first registered with the
 36 division. A person who applies for registration shall disclose the
 37 following information while under oath:

38 (1) The names and addresses of all officers, employees, and
 39 agents who are actively involved in fundraising or related
 40 activities.

41 (2) The names and addresses of all persons who own a ten percent
 42 (10%) or more interest in the registrant.

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- 1 (3) A description of any other business related to fundraising
2 conducted by the registrant or any person who owns ten percent
3 (10%) or more interest.
- 4 (4) The name or names under which it intends to solicit
5 contributions.
- 6 (5) Whether the organization has ever had its registration denied,
7 suspended, revoked, or enjoined by any court or other
8 governmental authority.
- 9 (b) A registrant shall notify the division in writing within one
10 hundred eighty (180) days of any change in the information contained
11 in the registration. However, if requested by the division, the solicitor
12 has fifteen (15) days to notify the division of any change in the
13 information.
- 14 (c) Each registration is valid for one (1) year and may be renewed
15 for additional one (1) year periods upon application to the division and
16 payment of the renewal fee.
- 17 (d) Before acting as a professional fundraiser consultant for a
18 particular charitable organization, the consultant must enter into a
19 written contract with the organization and file this contract with the
20 division. The contract must identify the services that the professional
21 fundraiser consultant is to provide, including whether the professional
22 fundraiser consultant will at any time have custody of contributions.
- 23 (e) Before a professional solicitor engages in a solicitation, the
24 professional solicitor must have a contract which is filed with the
25 division. This contract must specify the percentage of gross
26 contributions which the charitable organization will receive or the
27 terms upon which a determination can be made as to the amount of the
28 gross revenue from the solicitation campaign that the charitable
29 organization will receive. The amount that the charitable organization
30 will receive must be expressed as a fixed percentage of the gross
31 revenue or as a reasonable estimate of the gross revenue. If a fixed
32 percentage is used, the percentage must exclude any amount that the
33 charitable organization is to pay as expenses of the solicitation
34 campaign, including the cost of the merchandise or services sold. If
35 requested by the charitable organization, the person who solicits must
36 at the conclusion of a charitable appeal provide to the charitable
37 organization the names and addresses of all contributors, the amount
38 of each contribution, and a final accounting of all expenditures. Such
39 information may not be used in violation of any trade secret laws. The
40 contract must disclose the average percentage of gross contributions
41 collected on behalf of charitable organizations that the charitable
42 organizations received from the professional solicitor for the three (3)

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1 years preceding the year in which the contract is formed.

2 (f) Before beginning a solicitation campaign, a professional solicitor
3 must file a solicitation notice with the division. The notice must include
4 the following:

5 (1) A copy of the contract described in subsection (e).

6 (2) The projected dates when soliciting will begin and end.

7 (3) The location and telephone number from where solicitation
8 will be conducted.

9 (4) The name and residence address of each person responsible
10 for directing and supervising the conduct of the campaign.
11 However, the division shall not divulge the residence address
12 unless ordered to do so by a court of competent jurisdiction, or in
13 furtherance of the prosecution of a violation under this chapter.

14 (5) If the solicitation is one described under section 7(a)(2) of this
15 chapter, the solicitation notice must include a copy of the required
16 written authorization.

17 (g) **Not later than ninety (90) days** after a solicitation campaign,
18 other than a campaign for which a written authorization has been filed
19 under subsection (f)(5), has ended, ~~a professional fundraiser consultant~~
20 ~~or~~ a professional solicitor shall submit the following information
21 concerning the campaign to the division:

22 (1) The total **gross** amount of money ~~collected~~ **raised** by the
23 professional solicitor **and the charitable organization from**
24 **donors.**

25 (2) The total amount of money paid to **or retained** by the
26 professional solicitor.

27 (3) The total amount of money, **not including the amount**
28 **identified under subsection (g)(2), that paid** by the charitable
29 organization ~~paid~~ as expenses as part of the solicitation campaign.

30 (4) The total amount of money ~~received~~ **paid to or retained** by
31 the charitable organization **after the amounts identified under**
32 **subsections (g)(2) and (g)(3) are deducted. The division may**
33 **deny or revoke the registration of a professional solicitor who**
34 **fails to comply with this subsection.**

35 (h) The charitable organization on whose behalf the professional
36 solicitor is acting must certify that the information filed under
37 subsections (f) and (g) is true and complete to the best of its
38 knowledge.

39 SECTION 3. IC 23-7-8-8 IS AMENDED TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The division may receive,
41 investigate, and prosecute complaints concerning the activities of
42 professional fundraiser consultants and professional solicitors who:



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1 (1) may be subject to this chapter; or
 2 (2) have or may have violated this chapter.
 3 All complaints must be in writing, signed by the complainant, and filed
 4 with the division.

5 (b) The attorney general may subpoena witnesses, send for and
 6 compel the production of books, records, papers, and documents of
 7 professional fundraiser consultants and professional solicitors who are
 8 subject to registration under this chapter, for the furtherance of any
 9 investigation under this chapter. The circuit or superior court located
 10 in the county where the subpoena is to be issued shall enforce any such
 11 subpoena by the attorney general.

12 (c) The attorney general may bring an action to enjoin a violation of
 13 this chapter. In this action, the court may order a person who has
 14 violated this chapter to pay the reasonable costs of investigation and
 15 prosecution incurred by the attorney general, may award the state civil
 16 penalties up to five hundred dollars (\$500) for each violation, and may
 17 order the professional fundraiser consultant or professional solicitor to
 18 repay money unlawfully received from aggrieved solicitees. In ordering
 19 injunctive relief, the division is not required to establish irreparable
 20 harm but only a violation of a statute or that the requested order
 21 promotes the public interest. It is an affirmative defense to the
 22 assessment of civil penalties under this subsection that the defendant
 23 acted pursuant to a good faith misunderstanding concerning the
 24 requirements of this chapter.

25 (d) A person who knowingly or intentionally:
 26 (1) fails to file a registration statement or other information;
 27 (2) files a statement or other information which is materially false;
 28 or
 29 (3) fails to make a disclosure;
 30 as required by this chapter, commits a Class B misdemeanor. However,
 31 the offense is a Class A misdemeanor if the person has a previous
 32 unrelated conviction under this subsection.

33 (e) A local unit of government may adopt an ordinance which
 34 regulates professional fundraisers and solicitors if the ordinance does
 35 not conflict with this chapter.

36 (f) A professional fundraiser consultant, or a professional solicitor,
 37 who has the person's principal place of business outside of Indiana, or
 38 who has organized under the laws of another state, and who solicits
 39 contributions from persons in Indiana, is subject to this chapter and
 40 shall be considered to have appointed the secretary of state as his agent.
 41 All service of process under this subsection shall be made on the
 42 secretary of state under Rule 4.10 of the Indiana Rules of Trial

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1 Procedure.

2 (g) Pursuant to rules adopted by the attorney general, the
3 attorney general may impose fines on professional fundraiser
4 consultants and professional solicitors for the late filing of
5 information required to be filed under this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1434, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 32, after "deducted." begin a new line blocked left and insert:

"The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection."

and when so amended that said bill do pass.

(Reference is to HB 1434 as introduced.)

CROOKS, Chair

Committee Vote: yeas 13, nays 0.

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