

IC 23-7-8

Chapter 8. Professional Fundraiser Consultant and Solicitor Registration

IC 23-7-8-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to sections 1 and 8 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

As added by P.L.220-2011, SEC.379.

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Definitions

Sec. 1. As used in this chapter:

"Bona fide employee" means a person who is a regular, nontemporary employee of a charitable organization under the direct and exclusive control of the organization. The term does not include a person that:

- (1) solicits contributions for a charitable organization under the direction, supervision, instruction, or employ of a professional solicitor;
- (2) is engaged or employed as a professional solicitor by any other person; or
- (3) solicits contributions for more than one (1) charitable organization.

"Charitable organization" means any organization described in Section 501 of the federal Internal Revenue Code.

"Contribution" means a promise or pledge of money, a payment, or any other rendition of property or service. It does not include the payment of membership dues, fines or assessments, or payments for property sold or services rendered by the charitable organization, if not sold or rendered in connection with a solicitation, and does not include a charitable organization that resells used clothing or household items.

"Division" means the consumer protection division, office of the attorney general.

"Person" includes any individual, organization, trust foundation, association, partnership, limited liability company, or corporation.

"Professional fundraiser consultant" means any person who is hired for a fee to plan, manage, advise, or act as a consultant in connection with soliciting contributions for, or on behalf of, a charitable organization, but who does not actually solicit contributions as a part of the person's services or employ, procure, or engage a compensated person to solicit contributions. The term does not include a charitable organization, or a bona fide officer, employee, member, or volunteer of a charitable organization, that solicits on its own behalf.

"Professional solicitor" means a person who, for a financial consideration, solicits contributions for, or on behalf of, a charitable organization, either personally or through agents or employees

specifically employed for that purpose, including agents or employees specifically employed by or for a charitable organization who solicit contributions under the direction, supervision, or instruction of a professional solicitor. The term does not include a charitable organization, or an officer, a bona fide employee, or a volunteer of a charitable organization, that solicits on its own behalf.

"Solicit" means:

- (1) to request, other than as described in subdivision (2), directly or indirectly, financial assistance in any form on the representation that the financial assistance will be used for a charitable purpose; or
- (2) to sell, offer, or attempt to sell any advertisement, advertising space, membership, or tangible item:
 - (A) in connection with which any appeal is made for any charitable organization or purpose;
 - (B) where the name of any charitable organization is used or referred to in any appeal made for any charitable organization as an inducement or reason for making a sale described in this subdivision; or
 - (C) when or where in connection with a sale described in this subdivision any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization.

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

As added by P.L.245-1983, SEC.1. Amended by P.L.12-1986, SEC.2; P.L.248-1987, SEC.1; P.L.24-1989, SEC.2; P.L.8-1993, SEC.319; P.L.135-1999, SEC.7; P.L.245-2005, SEC.1.

IC 23-7-8-2

Registration; required disclosure of information; term; renewal; contract; notice

Sec. 2. (a) A person may not act as a professional fundraiser consultant or professional solicitor for a charitable organization unless the person has first registered with the division. A person who applies for registration shall disclose the following information while under oath:

- (1) The names and addresses of all officers, employees, and agents who are actively involved in fundraising or related activities.
- (2) The names and addresses of all persons who own a ten percent (10%) or more interest in the registrant.
- (3) A description of any other business related to fundraising conducted by the registrant or any person who owns ten percent (10%) or more interest.
- (4) The name or names under which it intends to solicit contributions.
- (5) Whether the organization has ever had its registration denied, suspended, revoked, or enjoined by any court or other governmental authority.

(b) A registrant shall notify the division in writing within one hundred eighty (180) days of any change in the information contained in the registration. However, if requested by the division, the solicitor has fifteen (15) days to notify the division of any change in the information.

(c) Before acting as a professional fundraiser consultant for a particular charitable organization, the consultant must enter into a written contract with the organization and file this contract with the division. The contract must identify the services that the professional fundraiser consultant is to provide, including whether the professional fundraiser consultant will at any time have custody of contributions.

(d) Before a professional solicitor engages in a solicitation, the professional solicitor must have a contract which is filed with the division. This contract must specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount of gross revenue from the solicitation campaign that the charitable organization will receive must be expressed as a fixed percentage of the gross revenue or expressed as a reasonable estimate of the percentage of the gross revenue. If a reasonable estimate is used, the contract must clearly disclose the assumptions or a formula upon which the estimate is based. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of the merchandise or services sold. If requested by the charitable organization, the person who solicits must at the conclusion of a charitable appeal provide to the charitable organization a final accounting of all expenditures. The final accounting may not be used in violation of any trade secret laws. The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed. The contract also must specify that, at least every ninety (90) days, the professional solicitor shall provide the charitable organization with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of contributor information.

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

- (1) A copy of the contract described in subsection (d).
- (2) The projected dates when soliciting will begin and end.
- (3) The location and telephone number from where solicitation will be conducted.
- (4) The name and residence address of each person responsible

for directing and supervising the conduct of the campaign. However, the division shall not divulge the residence address unless ordered to do so by a court of competent jurisdiction, or in furtherance of the prosecution of a violation under this chapter.

(5) If the solicitation is one described under section 7(a)(3) of this chapter, the solicitation notice must include a copy of the required written authorization.

(f) Not later than ninety (90) days after a solicitation campaign has ended and not later than ninety (90) days after the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, a professional solicitor shall submit the following information concerning the campaign to the division:

(1) The total gross amount of money raised by the professional solicitor and the charitable organization from donors.

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

(3) The total amount of money, not including the amount identified under subdivision (2), paid by the charitable organization as expenses as part of the solicitation campaign.

(4) The total amount of money paid to or retained by the charitable organization after the amounts identified under subdivisions (2) and (3) are deducted.

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

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

(h) At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state all of the following:

(1) The name of the company for whom the professional fundraiser consultant or professional solicitor is calling.

(2) The name of the professional fundraiser consultant or professional solicitor.

(3) The phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call.

(4) The percentage of the charitable contribution that will be expended for charitable purposes after administrative costs and the costs of making the solicitation have been satisfied.

(i) At least every ninety (90) days, a professional solicitor shall provide each charitable organization on whose behalf the professional solicitor is acting with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of information provided under this subsection.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987,

SEC.2; P.L.24-1989, SEC.3; P.L.48-1998, SEC.1; P.L.135-1999, SEC.8; P.L.155-2003, SEC.1; P.L.97-2004, SEC.86; P.L.245-2005, SEC.2.

IC 23-7-8-3

Public records; inspection

Sec. 3. All registration statements and information required to be filed under this chapter with the division, are public records. The division shall maintain these records for at least two (2) years, and shall make them available to the general public for inspection and photocopying for a charge, during the normal business hours.

As added by P.L.245-1983, SEC.1.

IC 23-7-8-4

Registration fees; disposition; update to registration

Sec. 4. (a) A professional fundraiser consultant or professional solicitor who applies for registration shall pay a fee of one thousand dollars (\$1,000). A partnership, limited liability company, corporation, or other entity that intends to act as a professional fundraiser consultant, or professional solicitor, may register for and pay a single registration fee of one thousand dollars (\$1,000) on behalf of its members, officers, agents, and employees.

(b) The fees collected shall be used, in addition to funds appropriated by the general assembly, for the administration of this chapter.

(c) Before July 2 of each year, a professional fundraiser consultant or professional solicitor registered under this chapter must file an update to the registration. A renewal fee of fifty dollars (\$50) must accompany this update.

As added by P.L.245-1983, SEC.1. Amended by P.L.24-1989, SEC.4; P.L.8-1993, SEC.320; P.L.48-1998, SEC.2.

IC 23-7-8-5

Accurate fiscal records; requirement

Sec. 5. (a) Every professional fundraiser consultant and professional solicitor required to register under this chapter shall keep accurate fiscal records regarding its activities in Indiana. A professional fundraiser consultant or professional solicitor shall retain the records for at least three (3) years after the end of the period of registration to which they relate.

(b) Records maintained under subsection (a) shall be made available for inspection and copying by the division upon oral or written request of the division at any time during the normal business hours of the professional fundraiser consultant or professional solicitor.

As added by P.L.245-1983, SEC.1. Amended by P.L.24-1989, SEC.5; P.L.48-1998, SEC.3.

IC 23-7-8-6

Required disclosures at time of solicitation; written confirmation

Sec. 6. (a) A professional solicitor subject to registration under this chapter or a person who is employed to solicit or act on behalf of a professional solicitor subject to registration under this chapter shall disclose at the time of the solicitation and before the donor agrees to make a contribution:

- (1) the name and, upon request, the address of the charitable organization that is being represented;
- (2) the fact that the person soliciting the contribution is, or is employed by, a professional solicitor, and the fact that the professional solicitor is compensated;
- (3) the full name of the professional solicitor and, upon request, the telephone number the person being solicited can call to confirm the information provided under this section; and
- (4) the charitable purpose for which the funds are being raised.

(b) If a person solicits in writing or in person, the disclosures required by subsection (a)(1) and (a)(2) shall be in writing. If a person solicits by telephone, the disclosures required by subsection (a)(1) and (a)(2) shall be made orally.

(c) A written confirmation shall be mailed within ten (10) days after each solicitation in which a contribution has been given. This confirmation must include the disclosures required under subsection (a)(1) and (a)(2).

(d) All disclosures required by this section must be clear and conspicuous.

(e) A contributor has the right to cancel a pledge for monetary contribution at any time prior to making the contribution.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987, SEC.3; P.L.24-1989, SEC.6; P.L.48-1998, SEC.4.

IC 23-7-8-7

Prohibited acts

Sec. 7. (a) A person who solicits charitable contributions may not:

- (1) use the fact of registration as an endorsement by the state;
- (2) misrepresent that the person is an officer or employee of a public safety agency;
- (3) use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;
- (4) misrepresent to anyone that the contribution will be used for a charitable purpose if the person has reason to believe the contribution will not be used for a charitable purpose;
- (5) misrepresent to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;
- (6) misrepresent to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation; or
- (7) collect or attempt to collect a contribution in person or by

means of a courier unless:

- (A) the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or
- (B) the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.

(b) A person who solicits charitable contributions shall not represent that tickets to events will be donated for use by another, unless the following requirements have been met:

- (1) The paid solicitor has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.
- (2) No more contributions for donated tickets are solicited than the number of ticket commitments received from charitable organizations.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987, SEC.4; P.L.24-1989, SEC.7; P.L.48-1998, SEC.5; P.L.155-2003, SEC.2.

IC 23-7-8-8

Complaints; injunctive relief; violations; fines

Sec. 8. (a) The division may receive, investigate, and prosecute complaints concerning the activities of professional fundraiser consultants and professional solicitors who:

- (1) may be subject to this chapter; or
- (2) have or may have violated this chapter.

All complaints must be in writing, signed by the complainant, and filed with the division.

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

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

- (d) A person who knowingly or intentionally:
- (1) fails to file a registration statement or other information;
 - (2) files a statement or other information which is materially false; or
 - (3) fails to make a disclosure;

as required by this chapter, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.

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

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

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

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987, SEC.5; P.L.24-1989, SEC.8; P.L.1-1998, SEC.128; P.L.48-1998, SEC.6; P.L.135-1999, SEC.9.

IC 23-7-8-9

Assurance of voluntary compliance; form; filing

Sec. 9. (a) In the administration of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any violation of this chapter. The assurance of voluntary compliance may include any of the following:

- (1) Stipulation for the voluntary payment by the person of the costs of investigation.
- (2) Payment of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons.

The assurance of voluntary compliance must be in writing. It must be filed with the court having jurisdiction over the violation and is subject to the court's approval.

(b) The giving of an assurance of voluntary compliance under this section is not, for any purpose, considered an admission of a solicitation or failure to register in violation of this chapter. However, any violation of the terms of the assurance constitutes prima facie evidence of a violation of this chapter. An investigation or court action terminated on the basis of the giving of an assurance of compliance under this section may be reopened by the attorney general at any time for further proceedings that are in the public interest.

As added by P.L.12-1986, SEC.3. Amended by P.L.24-1989, SEC.9.

