

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0647.01 Bart Miller x2173

HOUSE BILL 16-1129

HOUSE SPONSORSHIP

Lawrence and McCann,

SENATE SPONSORSHIP

Crowder and Heath,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES FOR ENHANCED ENFORCEMENT AGAINST ACTS
102 OF CHARITABLE FRAUD, AND, IN CONNECTION THEREWITH,
103 MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Section 1 of the bill creates enhanced penalties under the "Colorado Consumer Protection Act" for committing acts of charitable fraud involving knowledge or intent under the "Colorado Charitable Solicitations Act". The penalty for each violation is \$10,000 with no cap for a related series of violations.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 24, 2016

Sections 2 and 4 of the bill require:

- ! A statement on applications for registration by a paid solicitor to the secretary of state that neither the paid solicitor nor any officer, director or employee serves on the board of directors of a charitable organization or directs the operations of a charitable organization for which the paid solicitor solicits contributions and that no officer, director, or employee of the paid solicitor's charitable organization clients have a financial interest in the paid solicitor;
- ! Paid solicitors to either have a bond or a savings account, deposit, or certificate of deposit in a financial institution payable to the state of Colorado conditioned upon the performance of the paid solicitor in good faith without fraud or fraudulent representation and without the violation of any provision of the "Colorado Charitable Solicitations Act".

Section 3 of the bill makes it charitable fraud to misrepresent that a charitable organization for which a paid solicitor solicits has a significant membership of a certain type, such as active police, sheriff, patrol, firefighters, first responders, or veterans. Section 3 of the bill makes a charitable organization also liable with a paid solicitor if the charitable organization knew or should have known that the paid solicitor was engaged in charitable fraud on behalf of the charitable organization.

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-112, **add** (1) (f)
3 as follows:

4 **6-1-112. Civil penalties.** (1) The attorney general or a district
5 attorney may bring a civil action on behalf of the state to seek the
6 imposition of civil penalties as follows:

7 (f) (I) ANY PERSON WHO VIOLATES SECTION 6-16-111 (1) (a) TO (f)
8 (g) SHALL FORFEIT AND PAY A CIVIL PENALTY OF UP TO TEN THOUSAND
9 DOLLARS FOR EACH VIOLATION, WITH A CAP OF THREE MILLION DOLLARS
10 FOR A RELATED SERIES OF VIOLATIONS. IN DETERMINING A CIVIL PENALTY
11 UNDER THIS PARAGRAPH (f), THE COURT SHALL ADJUST THE LIMITATIONS
12 CAP FOR INFLATION BASED ON THE CUMULATIVE ANNUAL ADJUSTMENT

1 FOR INFLATION FOR EACH FULL YEAR SINCE THE EFFECTIVE DATE OF THIS
2 PARAGRAPH (f), AS AMENDED. THE ADJUSTMENTS MADE UNDER THIS
3 SUBPARAGRAPH (I) ARE ROUNDED UPWARD OR DOWNWARD TO THE
4 NEAREST TEN-DOLLAR INCREMENT. AS USED IN THIS SUBPARAGRAPH (I),
5 "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED
6 STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS
7 CONSUMER PRICE INDEX FOR THE DENVER-BOULDER-GREELEY
8 METROPOLITAN STATISTICAL AREA FOR THE PRICE OF ALL ITEMS PAID BY
9 ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

10 (II) ANY CIVIL PENALTY RECOVERED UNDER THIS PARAGRAPH (f)
11 IS PAID TO THE ATTORNEY GENERAL AND HELD AS CUSTODIAL MONEY. THE
12 ATTORNEY GENERAL SHALL GRANT THE CUSTODIAL MONEY TO A CHARITY
13 IN ACCORDANCE WITH THE CY PRES DOCTRINE WITHIN TWO YEARS AFTER
14 RECEIPT BY THE ATTORNEY GENERAL.

15 **SECTION 2.** In Colorado Revised Statutes, 6-16-104.6, **amend**
16 (3) (h) and (3) (i); and **add** (3) (j) and (3.5) as follows:

17 **6-16-104.6. Paid solicitors - annual registration - filing of**
18 **contracts - fees.** (3) Applications for registration or renewal of
19 registration shall be submitted on a form prescribed by the secretary of
20 state, shall be signed under oath, and shall include the following
21 information:

22 (h) Whether the applicant is registered with or otherwise
23 authorized by any other state to act as a paid solicitor; ~~and~~

24 (i) Whether the applicant has had such registration or authority
25 denied, suspended, revoked, or enjoined by any court or other
26 governmental authority in this state or another state; AND

27 (j) WHETHER THE APPLICANT OR ANY OFFICER, DIRECTOR, OR

1 EMPLOYEE OF THE APPLICANT SERVES ON THE BOARD OF DIRECTORS OF A
2 CHARITABLE ORGANIZATION, DIRECTS THE OPERATIONS OF A CHARITABLE
3 ORGANIZATION, OR OTHERWISE HAS A FINANCIAL INTEREST IN A
4 CHARITABLE ORGANIZATION FOR WHICH THE APPLICANT SOLICITS
5 CONTRIBUTIONS. IF THIS RELATIONSHIP EXISTS BETWEEN THE APPLICANT
6 AND THE CHARITABLE ORGANIZATION, THE APPLICATION MUST INCLUDE
7 A STATEMENT THAT THE RELATIONSHIP MEETS THE STANDARDS SET FORTH
8 IN SECTION 7-128-501 (3), C.R.S., REGARDING CONFLICT OF INTEREST
9 TRANSACTIONS.

10 (3.5) (a) BEFORE ANY PAID SOLICITOR IS REGISTERED, THE
11 APPLICANT SHALL PROCURE AND FILE WITH THE SECRETARY OF STATE
12 EVIDENCE OF A SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT
13 MEETING THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A GOOD
14 AND SUFFICIENT BOND IN THE AMOUNT OF TWENTY-FIVE THOUSAND
15 DOLLARS ISSUED BY A CORPORATE SURETY DULY LICENSED TO DO
16 BUSINESS WITHIN THE STATE, APPROVED AS TO FORM BY THE ATTORNEY
17 GENERAL OF THE STATE, AND CONDITIONED THAT THE APPLICANT SHALL
18 PERFORM IN GOOD FAITH AS A PAID SOLICITOR WITHOUT FRAUD OR
19 FRAUDULENT REPRESENTATION AND WITHOUT THE VIOLATION OF ANY
20 PROVISION OF THIS ARTICLE.

21 (b) NO CORPORATE SURETY IS REQUIRED TO MAKE ANY PAYMENT
22 TO ANY PERSON CLAIMING A BOND ISSUED UNDER THIS SUBSECTION (3.5)
23 UNTIL A FINAL DETERMINATION OF FRAUD OR FRAUDULENT
24 REPRESENTATION HAS BEEN MADE BY THE SECRETARY OF STATE OR BY A
25 COURT OF COMPETENT JURISDICTION.

26 (c) ALL BONDS REQUIRED UNDER THIS SECTION MUST BE RENEWED
27 ANNUALLY AT THE SAME TIME AS THE BONDHOLDER'S LICENSE IS

1 RENEWED. RENEWAL OF THE BOND MAY BE DONE THROUGH A
2 CONTINUATION CERTIFICATE ISSUED BY THE SURETY.

3 **SECTION 3.** In Colorado Revised Statutes, 6-16-111, **amend**
4 (1.5); and **add** (7) as follows:

5 **6-16-111. Violations.** (1.5) A person commits charitable fraud if
6 he or she, in the course of or in furtherance of a solicitation, misrepresents
7 to, misleads, makes false statements to, or uses a name other than the
8 solicitor's legal name in communicating with a person being solicited in
9 any manner that would lead a reasonable person to believe that:

10 (a) If the person being solicited makes a contribution, he or she
11 will receive special benefits or favorable treatment from a police, sheriff,
12 patrol, firefighting, or other law enforcement agency or department of
13 government; ~~or~~

14 (b) If the person being solicited fails to make a contribution, he or
15 she will receive unfavorable treatment from a police, sheriff, patrol,
16 firefighting, or other law enforcement agency or department of
17 government; OR

18 (c) THE MEMBERSHIP ORGANIZATION FOR WHICH THE PERSON IS
19 SOLICITING HAS A SIGNIFICANT MEMBERSHIP OF A CERTAIN TYPE,
20 INCLUDING ACTIVE POLICE, SHERIFF, PATROL, FIREFIGHTERS, FIRST
21 RESPONDERS, OR VETERANS WHEN THE ORGANIZATION DOES NOT HAVE A
22 SIGNIFICANT MEMBERSHIP OF THAT TYPE. FOR PURPOSES OF THIS
23 PARAGRAPH (c), "SIGNIFICANT MEMBERSHIP" MEANS ~~TEN~~ PERCENT OF THE
24 MEMBERSHIP OF THE ORGANIZATION OR ~~ONE~~ HUNDRED MEMBERS,
25 WHICHEVER IS LESS. FOR PURPOSES OF THIS PARAGRAPH (c), "MEMBERSHIP
26 ORGANIZATION" MEANS AN ORGANIZATION THAT IS A TAX-EXEMPT
27 NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c) OF THE FEDERAL

1 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND HAS MEMBERS
2 WHO PAY REGULAR MEMBERSHIP DUES.

3 (7) IF A PAID SOLICITOR COMMITS CHARITABLE FRAUD IN THE
4 COURSE OF MAKING A SOLICITATION FOR A CHARITABLE ORGANIZATION,
5 THE CHARITABLE ORGANIZATION SHALL ALSO BE LIABLE FOR ANY
6 APPLICABLE REMEDIES AND PENALTIES IF THE CHARITABLE ORGANIZATION
7 KNEW OR SHOULD HAVE KNOWN THAT THE PAID SOLICITOR WAS ENGAGED
8 IN CHARITABLE FRAUD. THIS SUBSECTION (7) DOES NOT EXTEND PERSONAL
9 LIABILITY TO BOARD MEMBERS OF A CHARITABLE ORGANIZATION BEYOND
10 THE PERSONAL LIABILITY ALLOWED BY LAW PRIOR TO THE EFFECTIVE DATE
11 OF THIS SUBSECTION (7), AS AMENDED.

12 SECTION 4. In Colorado Revised Statutes, 11-35-101, amend
13 (1) as follows:

14 11-35-101. Alternatives to surety bonds permitted -
15 requirements. (1) The requirement of a surety bond as a condition to
16 licensure or authority to conduct business or perform duties in this state
17 provided in ~~sections 12-5.5-202 (2) (b)~~ SECTIONS 6-16-104.6, 12-5.5-202
18 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124
19 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1),
20 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2),
21 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a),
22 (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3),
23 and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit
24 in or a certificate of deposit issued by a state or national bank doing
25 business in this state or by a savings account or deposit in or a certificate
26 of deposit issued by a state or federal savings and loan association doing
27 business in this state. Such savings account, deposit, or certificate of

1 deposit shall be in the amount specified by statute, if any, and shall be
2 assigned to the appropriate state agency for the use of the people of the
3 state of Colorado. The aggregate liability of the bank or savings and loan
4 association shall in no event exceed the amount of the deposit. For the
5 purposes of the sections referred to in this section, "bond" includes the
6 savings account, deposit, or certificate of deposit authorized by this
7 section.

8 **SECTION 5. Appropriation.** For the 2016-17 state fiscal year,
9 \$18,952 is appropriated to the department of state for use by the
10 information technology services division. This appropriation is from the
11 department of state cash fund created in section 24-21-104 (3) (b), C.R.S.
12 To implement this act, the division may use this appropriation for
13 personal services.

14 **SECTION 6. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly (August 10, 2016, if adjournment sine die is on May 11,
18 2016); except that, if a referendum petition is filed pursuant to section 1
19 (3) of article V of the state constitution against this act or an item, section,
20 or part of this act within such period, then the act, item, section, or part
21 will not take effect unless approved by the people at the general election
22 to be held in November 2016 and, in such case, will take effect on the
23 date of the official declaration of the vote thereon by the governor.

24 (2) This act applies to charitable solicitations on or after the
25 applicable effective date of this act.