

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0647.01 Bart Miller x2173

HOUSE BILL 16-1129

HOUSE SPONSORSHIP

Lawrence and McCann,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES FOR ENHANCED ENFORCEMENT AGAINST ACTS**
102 **OF CHARITABLE FRAUD.**

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/billsummaries>.)

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.

Sections 2 and 4 of the bill require:

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.

- ! 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) ANY PERSON WHO VIOLATES SECTION 6-16-111 (1) (a) TO (1)
 8 (g) SHALL FORFEIT AND PAY TO THE GENERAL FUND OF THE STATE A CIVIL
 9 PENALTY OF UP TO TEN THOUSAND DOLLARS FOR EACH VIOLATION, WITH
 10 NO CAP FOR A RELATED SERIES OF VIOLATIONS.

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

13 **6-16-104.6. Paid solicitors - annual registration - filing of**

1 **contracts - fees.** (3) Applications for registration or renewal of
2 registration shall be submitted on a form prescribed by the secretary of
3 state, shall be signed under oath, and shall include the following
4 information:

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

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

10 (j) WHETHER THE APPLICANT OR ANY OFFICER, DIRECTOR, OR
11 EMPLOYEE OF THE APPLICANT SERVES ON THE BOARD OF DIRECTORS OF A
12 CHARITABLE ORGANIZATION, DIRECTS THE OPERATIONS OF A CHARITABLE
13 ORGANIZATION, OR OTHERWISE HAS A FINANCIAL INTEREST IN A
14 CHARITABLE ORGANIZATION FOR WHICH THE APPLICANT SOLICITS
15 CONTRIBUTIONS. IF THIS RELATIONSHIP EXISTS BETWEEN THE APPLICANT
16 AND THE CHARITABLE ORGANIZATION, THE APPLICATION MUST INCLUDE
17 A STATEMENT THAT THE RELATIONSHIP MEETS THE STANDARDS SET FORTH
18 IN SECTION 7-128-501 (3), C.R.S., REGARDING CONFLICT OF INTEREST
19 TRANSACTIONS.

20 (3.5) (a) BEFORE ANY PAID SOLICITOR IS REGISTERED, THE
21 APPLICANT SHALL PROCURE AND FILE WITH THE SECRETARY OF STATE
22 EVIDENCE OF A SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT
23 MEETING THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A GOOD
24 AND SUFFICIENT BOND IN THE AMOUNT OF TWENTY-FIVE THOUSAND
25 DOLLARS ISSUED BY A CORPORATE SURETY DULY LICENSED TO DO
26 BUSINESS WITHIN THE STATE, APPROVED AS TO FORM BY THE ATTORNEY
27 GENERAL OF THE STATE, AND CONDITIONED THAT THE APPLICANT SHALL

1 PERFORM IN GOOD FAITH AS A PAID SOLICITOR WITHOUT FRAUD OR
2 FRAUDULENT REPRESENTATION AND WITHOUT THE VIOLATION OF ANY
3 PROVISION OF THIS ARTICLE.

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

9 (c) ALL BONDS REQUIRED UNDER THIS SECTION MUST BE RENEWED
10 ANNUALLY AT THE SAME TIME AS THE BONDHOLDER'S LICENSE IS
11 RENEWED. RENEWAL OF THE BOND MAY BE DONE THROUGH A
12 CONTINUATION CERTIFICATE ISSUED BY THE SURETY.

13 **SECTION 3.** In Colorado Revised Statutes, 6-16-111, **amend**
14 (1.5); and **add** (7) as follows:

15 **6-16-111. Violations.** (1.5) A person commits charitable fraud if
16 he or she, in the course of or in furtherance of a solicitation, misrepresents
17 to, misleads, makes false statements to, or uses a name other than the
18 solicitor's legal name in communicating with a person being solicited in
19 any manner that would lead a reasonable person to believe that:

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

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

1 (c) THE MEMBERSHIP ORGANIZATION FOR WHICH THE PERSON IS
2 SOLICITING HAS A SIGNIFICANT MEMBERSHIP OF A CERTAIN TYPE,
3 INCLUDING ACTIVE POLICE, SHERIFF, PATROL, FIREFIGHTERS, FIRST
4 RESPONDERS, OR VETERANS WHEN THE ORGANIZATION DOES NOT HAVE A
5 SIGNIFICANT MEMBERSHIP OF THAT TYPE. FOR PURPOSES OF THIS
6 PARAGRAPH (c), "SIGNIFICANT MEMBERSHIP" MEANS TEN PERCENT OF THE
7 MEMBERSHIP OF THE ORGANIZATION OR ONE HUNDRED MEMBERS,
8 WHICHEVER IS LESS. FOR PURPOSES OF THIS PARAGRAPH (c), "MEMBERSHIP
9 ORGANIZATION" MEANS AN ORGANIZATION THAT IS A TAX-EXEMPT
10 NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c) OF THE FEDERAL
11 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND HAS MEMBERS
12 WHO PAY REGULAR MEMBERSHIP DUES.

13 (7) IF A PAID SOLICITOR COMMITS CHARITABLE FRAUD IN THE
14 COURSE OF MAKING A SOLICITATION FOR A CHARITABLE ORGANIZATION,
15 THE CHARITABLE ORGANIZATION SHALL ALSO BE LIABLE FOR ANY
16 APPLICABLE REMEDIES AND PENALTIES IF THE CHARITABLE ORGANIZATION
17 KNEW OR SHOULD HAVE KNOWN THAT THE PAID SOLICITOR WAS ENGAGED
18 IN CHARITABLE FRAUD. THIS SUBSECTION (7) DOES NOT EXTEND PERSONAL
19 LIABILITY TO BOARD MEMBERS OF A CHARITABLE ORGANIZATION BEYOND
20 THE PERSONAL LIABILITY ALLOWED BY LAW PRIOR TO THE EFFECTIVE DATE
21 OF THIS SUBSECTION (7), AS AMENDED.

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

24 11-35-101. Alternatives to surety bonds permitted -
25 requirements. (1) The requirement of a surety bond as a condition to
26 licensure or authority to conduct business or perform duties in this state
27 provided in sections ~~12-5.5-202 (2) (b)~~ SECTIONS 6-16-104.6, 12-5.5-202

1 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124
2 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1),
3 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2),
4 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a),
5 (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3),
6 and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit
7 in or a certificate of deposit issued by a state or national bank doing
8 business in this state or by a savings account or deposit in or a certificate
9 of deposit issued by a state or federal savings and loan association doing
10 business in this state. Such savings account, deposit, or certificate of
11 deposit shall be in the amount specified by statute, if any, and shall be
12 assigned to the appropriate state agency for the use of the people of the
13 state of Colorado. The aggregate liability of the bank or savings and loan
14 association shall in no event exceed the amount of the deposit. For the
15 purposes of the sections referred to in this section, "bond" includes the
16 savings account, deposit, or certificate of deposit authorized by this
17 section.

18 **SECTION 5. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
20 the expiration of the ninety-day period after final adjournment of the
21 general assembly (August 10, 2016, if adjournment sine die is on May 11,
22 2016); except that, if a referendum petition is filed pursuant to section 1
23 (3) of article V of the state constitution against this act or an item, section,
24 or part of this act within such period, then the act, item, section, or part
25 will not take effect unless approved by the people at the general election
26 to be held in November 2016 and, in such case, will take effect on the
27 date of the official declaration of the vote thereon by the governor.

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