

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1001.01 Bart Miller x2173

HOUSE BILL 16-1318

HOUSE SPONSORSHIP

Wist,

SENATE SPONSORSHIP

Newell,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF CHARITABLE SOLICITATIONS BY
102 THE SECRETARY OF STATE, AND, IN CONNECTION THEREWITH,
103 MODIFYING AND CLARIFYING FILING REQUIREMENTS AND
104 ENFORCEMENT OF THE "COLORADO CHARITABLE
105 SOLICITATIONS ACT".

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 clarifies that a charitable organization's registration with the secretary of state must be renewed on an annual basis

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.

if the charitable organization intends to solicit in Colorado, and an organization may not continue to solicit donations if it fails to renew its registration. The bill also requires an organization to update information in its registration within thirty days after any change.

Sections 1 to 4 of the bill make consistent the requirements for affirmations and declarations required on various forms under the charitable solicitation laws so that these laws are consistent with the multistate registration and filing portal.

Section 5 of the bill allows the secretary of state, after a hearing, to issue a cease-and-desist order to enforce provisions of law prohibiting soliciting contributions, acting as a paid solicitor, or acting as a professional fundraiser without registering with the secretary of state as provided by law. This section also revises hearing requirements to be consistent with the "State Administrative Procedure Act".

Section 6 of the bill specifies that if an organization fails to file its actual financial report to replace estimated financial reports, the organization is subject to statutory fines.

Section 7 of the bill makes the bill effective July 1, 2017.

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-16-104 **amend** (2)
3 introductory portion, (2) (c), (4), (5), (9) introductory portion, and (9) (a)
4 as follows:

5 **6-16-104. Charitable organizations - initial registration -**
6 **annual filing - fees.** (2) The registration statement must be signed and
7 ~~sworn to under oath~~ AFFIRMED UNDER PENALTY OF PERJURY AS DEFINED
8 IN SECTION 18-8-503, C.R.S., by an officer of the charitable organization,
9 which may include its chief fiscal officer, and must contain the following
10 information:

11 (c) The names ~~and titles~~ of the officers, directors, trustees, and
12 executive personnel of the charitable organization;

13 (4) (a) A CHARITABLE ORGANIZATION'S REGISTRATION IS VALID
14 UNTIL THE DAY ON WHICH THE FINANCIAL REPORT REQUIRED IN
15 PARAGRAPH (f) OF SUBSECTION (2) OF THIS SECTION OR SUBSECTION (5) OF

1 THIS SECTION IS DUE AND MAY BE RENEWED UPON APPLICATION TO THE
2 SECRETARY OF STATE AND PAYMENT OF THE REGISTRATION FEE AND ANY
3 ASSESSED FINES.

4 (b) A CHARITABLE ORGANIZATION THAT WITHDRAWS ITS
5 REGISTRATION OR ALLOWS ITS REGISTRATION TO EXPIRE MUST, ON OR
6 BEFORE THE DATE OF WITHDRAWAL OR EXPIRATION, FILE A FINAL
7 FINANCIAL REPORT ON A FORM PRESCRIBED BY THE SECRETARY OF STATE,
8 THAT INCLUDES INFORMATION THROUGH THE LAST DATE ON WHICH THE
9 ORGANIZATION SOLICITED CONTRIBUTIONS IN COLORADO.

10 (c) ~~The registration of a charitable organization shall be amended~~
11 ~~annually, on forms prescribed by the secretary of state, to reflect A~~
12 REGISTERED CHARITABLE ORGANIZATION MUST REPORT any changes of
13 name, address, principals, corporate forms, tax status, and any other
14 changes that materially affect the identity or business of the charitable
15 organization ~~Annual amendments shall be filed at the same time as and~~
16 ~~together with any financial report required in subsection (5) of this~~
17 ~~section regardless of when the charitable organization filed its initial~~
18 ~~registration pursuant to subsection (1) of this section~~ TO THE SECRETARY
19 OF STATE WITHIN THIRTY DAYS AFTER THE CHANGE.

20 (5) Every charitable organization required to register under this
21 section ~~shall~~ MUST annually file with the secretary of state a financial
22 report for the most recent fiscal year on a form prescribed by the secretary
23 of state, or, in the discretion of the secretary of state, a copy of the
24 charitable organization's federal form 990, with all schedules except
25 schedules of donors, for the most recent fiscal year. The financial report
26 must be filed on or before the earlier of the fifteenth day of the eighth
27 calendar month after the close of each fiscal year in which the charitable

1 organization solicited in this state or the date authorized for filing a form
2 990 with the internal revenue service. A charitable organization that is
3 unable to file a copy of its form 990 return or the secretary of state's
4 financial form by the prescribed deadline may request an extension of the
5 filing deadline from the secretary of state. The secretary of state, upon
6 receipt of an application to extend the filing deadline, may grant a
7 three-month extension of time to file the financial report. All ~~such~~
8 requests FOR EXTENSION OF TIME must:

9 (a) Be in a form prescribed by the secretary of state; ~~and must~~

10 (b) Include a statement describing in detail the reasons causing the
11 delay in filing the financial report; ~~and~~

12 (c) INCLUDE an affirmation that the charitable organization has
13 filed with the internal revenue service an application for a corresponding
14 extension of time to file the organization's form 990. Upon request, the
15 charitable organization shall provide the secretary of state with a copy of
16 its application for extension of time to file with the internal revenue
17 service in order to verify the date authorized for filing its form 990 with
18 the internal revenue service.

19 (d) BE SIGNED AND AFFIRMED UNDER PENALTY OF PERJURY AS
20 DEFINED IN SECTION 18-8-503, C.R.S.

21 (9) ~~No~~ A charitable organization that is required to register under
22 this article shall NOT:

23 (a) Prior to registration OR RENEWAL OF AN EXPIRED
24 REGISTRATION, solicit contributions in this state by any means, have
25 contributions solicited in this state on its behalf by any other person or
26 entity, or participate in a charitable sales promotion; or

27 **SECTION 2.** In Colorado Revised Statutes, 6-16-104.3, **amend**

1 (4) introductory portion as follows:

2 **6-16-104.3. Professional fundraising consultants - annual**
3 **registration - fees.** (4) Applications for registration or renewal of
4 registration ~~shall~~ MUST be submitted on a form prescribed by the secretary
5 of state, ~~shall be signed under oath, and shall~~ AND AFFIRMED UNDER
6 PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503, C.R.S., AND MUST
7 include the following information:

8 **SECTION 3.** In Colorado Revised Statutes, 6-16-104.6, **amend**
9 (3) introductory portion, (5), (7) (i), and (9) as follows:

10 **6-16-104.6. Paid solicitors - annual registration - filing of**
11 **contracts - fees.** (3) Applications for registration or renewal of
12 registration ~~shall~~ MUST be submitted on a form prescribed by the secretary
13 of state, ~~shall be signed under oath, and shall~~ AFFIRMED UNDER PENALTY
14 OF PERJURY AS DEFINED IN SECTION 18-8-503, C.R.S., AND MUST include
15 the following information:

16 (5) Each registration is valid for a period of one year and may be
17 renewed, on or before the anniversary date, for an additional one-year
18 period upon application to the secretary of state and payment of the
19 registration fee AND ANY ASSESSED FINES. Any material changes to the
20 information contained in the application for registration ~~shall~~ MUST be
21 reported in writing to the secretary of state within thirty days.

22 (7) No later than fifteen days before the commencement of a
23 solicitation campaign, the paid solicitor shall file with the secretary of
24 state a completed solicitation notice, on forms prescribed by the secretary
25 of state, containing the following information:

26 (i) A certification statement, signed AND AFFIRMED UNDER
27 PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503, C.R.S., by an

1 officer of the charitable organization on the behalf of whom the
2 solicitation campaign is to occur, stating that the solicitation notice and
3 accompanying material are true and complete to the best of his or her
4 knowledge.

5 (9) Within ninety days after a solicitation campaign has been
6 concluded, and on the anniversary of the commencement of a solicitation
7 campaign lasting more than one year, the paid solicitor shall provide to
8 the charitable organization and file with the secretary of state a financial
9 report of the campaign, including gross proceeds and an itemization of all
10 expenses or disbursements for any purpose. The report ~~shall~~ MUST be on
11 a form prescribed by the secretary of state and ~~shall~~ MUST be signed AND
12 AFFIRMED UNDER PENALTY OF PERJURY AS DEFINED IN SECTION 18-8-503,
13 C.R.S., by the paid solicitor, or, if the paid solicitor is not an individual,
14 by an authorized official of the paid solicitor, and by an authorized
15 official of the charitable organization. The persons signing the report shall
16 certify that the financial report is true and complete to the best of their
17 knowledge.

18 **SECTION 4.** In Colorado Revised Statutes, 6-16-110.5, **add** (3)
19 (f) as follows:

20 **6-16-110.5. Secretary of state - dissemination of information**
21 **- cooperation with other agencies - rules.** (3) The secretary of state
22 may promulgate rules as needed for the effective implementation of this
23 article, including:

24 (f) PROVIDING FOR THE WITHDRAWAL OF AN ACTIVE REGISTRATION
25 BY A CHARITABLE ORGANIZATION, PROFESSIONAL FUNDRAISING
26 CONSULTANT, OR PAID SOLICITOR.

27 **SECTION 5.** In Colorado Revised Statutes, 6-16-111, **amend** (6)

1 (b); and **add** (6) (e) as follows:

2 **6-16-111. Violations.** (6) (b) ~~Upon notice from the secretary of~~
3 ~~state that a registration has been denied or is subject to suspension or~~
4 ~~revocation, the aggrieved party may request a hearing. The request for~~
5 ~~hearing must be made within five calendar days after receipt of notice. AN~~
6 ~~APPLICANT WHOSE REGISTRATION HAS BEEN DENIED MAY REQUEST~~
7 ~~ADMINISTRATIVE REVIEW IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,~~
8 ~~C.R.S. Proceedings for any such denial, suspension, or revocation hearing~~
9 ~~shall be~~ TO REVOKE OR SUSPEND THE REGISTRATION OF A CHARITABLE
10 ORGANIZATION, PROFESSIONAL FUNDRAISING CONSULTANT, OR PAID
11 SOLICITOR ARE governed by the "State Administrative Procedure Act",
12 article 4 of title 24, C.R.S.; ~~except that the secretary of state shall~~
13 ~~promulgate rules to provide for expedited deadlines to govern such~~
14 ~~proceedings and shall bear the burden of proof.~~ The status quo concerning
15 the ability of the aggrieved party to solicit funds ~~shall be~~ IS maintained
16 during the pendency of the proceedings. Judicial review ~~shall be~~ IS
17 available pursuant to section 24-4-106, C.R.S.

18 (e) IF THE SECRETARY OF STATE HAS REASONABLE GROUNDS TO
19 BELIEVE THAT ANY PERSON IS IN VIOLATION OF SECTION 6-16-104 (9),
20 6-16-104.3 (1), OR 6-16-104.6 (1), THE SECRETARY OF STATE MAY, AFTER
21 NOTICE HAS BEEN GIVEN AND A HEARING HAS BEEN HELD IN ACCORDANCE
22 WITH ARTICLE 4 OF TITLE 24, C.R.S., ISSUE A CEASE-AND-DESIST ORDER.
23 THE ORDER MUST SET FORTH THE PROVISIONS OF THIS ARTICLE FOUND TO
24 BE VIOLATED AND THE FACTS SUPPORTING THE FINDING OF THE VIOLATION.
25 ANY PERSON SUBJECT TO A CEASE-AND-DESIST ORDER IS ENTITLED, UPON
26 REQUEST, TO JUDICIAL REVIEW IN ACCORDANCE WITH ARTICLE 4 OF TITLE
27 24, C.R.S.

1 **SECTION 6.** In Colorado Revised Statutes, 6-16-114, **amend** (1)
2 (a) as follows:

3 **6-16-114. Fines - required notification - rules.** (1) (a) Any
4 charitable organization, professional fundraising consultant, or paid
5 solicitor who, after sufficient notification by the secretary of state, fails to
6 properly register, renew a registration, FILE A FINANCIAL REPORT REQUIRED
7 BY SECTION 6-16-104 (2) (f), (4) (b), OR (5), or file a financial report of a
8 solicitation campaign under this article by the end of the seventh day
9 following the issuance of the final notice, is liable for a fine in an amount
10 to be established by rule promulgated by the secretary of state.

11 **SECTION 7. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect July 1, 2017; except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within the ninety-day period after final adjournment of the general
16 assembly, then the act, item, section, or part will not take effect unless
17 approved by the people at the general election to be held in November
18 2016 and, in such case, will take effect on July 1, 2017, or on the date of
19 the official declaration of the vote thereon by the governor, whichever is
20 later.

21 (2) This act applies to the regulation of charitable solicitations by
22 the secretary of state on or after the applicable effective date of this act.