



SPONSOR: Rep. Keeley & Sen. McBride
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Sorenson

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 248

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE
CHARITABLE/FRATERNAL SOLICITATION ACT OF 1996.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section I. Amend Chapter 25, Title 6 of the Delaware Code by striking Chapter X in its entirety and adding a new
Chapter 25B as follows:

"Chapter 25B. Charitable/Fraternal Solicitation

§ 2501B. Short title.

This chapter may be cited as the "Delaware Charitable/Fraternal Solicitation and Registration Act of 2009."

§ 2502B. Purpose.

The purpose of this chapter is to safeguard the public against fraudulent and misleading charitable/fraternal
solicitations, thereby enhancing public confidence in legitimate charitable/fraternal organizations.

§ 2503B. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Attorney General" shall mean the Attorney General of the Department of Justice for the State of Delaware, or
his or her designee.

(2) "Charitable/fraternal organization" means any person who is or holds himself or herself out to be established
(i) for any benevolent, educational, humane, scientific, patriotic, social welfare or advocacy, public health, environmental
conservation, civic or philanthropic purpose; (ii) for the benefit of military personnel, veterans, law enforcement officers,
firefighters or other persons who protect the public safety; (iii) any person who in any manner employs a charitable appeal
as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any such
solicitation; or (iv) any organization otherwise subject to § 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C.
§ 501(c)], as amended.

(3) "Charitable/fraternal purpose" means (i) any benevolent, educational, humane, scientific, patriotic, social
welfare or advocacy, public health, environmental conservation, civic or philanthropic objective; (ii) an objective to benefit

22 law enforcement officers, firefighters or other persons who protect the public safety; or (iii) any purpose described in
23 § 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)], as amended.

24 (4) "Charitable/fraternal solicitation" means any oral or written request, directly, or indirectly, for money, credit,
25 property, financial assistance or other thing of value on the plea, or representation that such money, credit, property,
26 financial assistance, or other thing of value or any portion thereof, will be used for a charitable/fraternal purpose or the
27 benefit of a charitable/fraternal organization. No actual contribution need be made in order for a charitable/fraternal
28 solicitation to be deemed to have taken place. Without limiting the scope of the foregoing, charitable/fraternal solicitation
29 shall include the following methods of requesting or securing such money, credit, property, financial assistance or other
30 thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value, or
31 any portion thereof: (1) the making of any announcement to any organization for the purpose of further dissemination,
32 including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, concerning an
33 appeal or campaign by or for any charitable/fraternal organization or purpose; (2) the distribution, circulation, posting, or
34 publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public
35 support; (3) the sale, offer, or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device,
36 magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with
37 which any appeal is made for any charitable/fraternal organization or purpose; or where the name of any charitable/fraternal
38 organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection
39 with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for any
40 charitable/fraternal purpose or to benefit any charitable/fraternal organization; and (4) a request made through the use of
41 receptacles for contributions, including but not limited to, honor boxes, vending machines, wishing wells, contribution
42 boxes, and novelty machines, where a charitable appeal is used, referred to, or implied as an inducement or reason to
43 contribute.

44 (5) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer,
45 that represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or
46 in part, a charitable/fraternal organization or charitable/fraternal purpose.

47 (6) "Commercial co-venturer" means a person who, for profit, is regularly and primarily engaged in trade or
48 commerce other than in connection with soliciting for charitable/fraternal organizations or charitable/fraternal purposes,
49 and who conducts charitable sales promotions.

(7) "Contribution" means the grant, promise or pledge of any money, credit, property, financial assistance, or other thing of value, in response to a charitable/fraternal solicitation.

(8) "Director" shall mean the Director of the Consumer Protection Unit of the Department of Justice for the State of Delaware.

(9) "Fundraising costs" means those costs incurred in inducing others to make contributions to a charitable/fraternal organization for which persons making the contributions receive no direct economic benefit. The term includes, but is not limited to, salaries, rent, the costs of acquiring and maintaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions. The term does not include the direct cost of merchandise or goods sold, or the direct cost of fundraising dinners, bazaars, shows, circuses, banquets, dinners, theater parties, or any other form of benefit performances.

(10) "Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor.

(11) "Owner" means any person who has a direct or indirect interest in any professional fund-raising counsel or professional solicitor.

(12) "Parent organization" means that part of a charitable/fraternal organization that coordinates, supervises, or exercises control over policy, fund raising, and expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in this State.

(13) "Percentage compensation" means any compensation, commission, bonus, award, or remuneration, whether direct, indirect, or otherwise, that is calculated by means of a formula, process, evaluation, or other mechanism that considers the amount of funds to be raised or received.

(14) "Person" means any individual, organization, corporation, government, governmental subdivision or agency, statutory trust, business trust, estate, trust, foundation, partnership, unincorporated association, limited liability company, limited liability partnership, limited partnership, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(15) "Professional fund-raising counsel" means any person who, for financial or other consideration, plans, conducts, manages, advises, consults, or prepares material for, or with respect to, the solicitation of contributions in this State for a charitable/fraternal organization, but who actually solicits no contributions as a part of the person's services, and who does not employ, procure, or engage any compensated person to solicit contributions. This term shall not include a

78 volunteer, salaried officer, or employee of the charitable/fraternal organization, or attorney acting on behalf of a
79 charitable/fraternal organization.

80 (16) "Professional solicitor" means a person who, for financial or other consideration, solicits contributions for a
81 charitable/fraternal purpose or on behalf of a charitable/fraternal organization, either personally or through agents or
82 employees employed or designated for that purpose. A person who is otherwise a professional fund-raising counsel shall
83 be deemed a professional solicitor if the person's compensation is related to the amount of contributions received. The term
84 does not include a volunteer receiving no compensation or an employee of a professional solicitor. The term includes a
85 salaried officer, director, member, or employee of a charitable/fraternal organization if the salaried officer, director,
86 member or employee of the charitable/fraternal organization receives compensation related to the amount of contributions
87 received. The term does not include an attorney, investment counselor or advisor, financial advisor, or banker, or other
88 person who: (1) advises another person to make a contribution to a charitable/fraternal organization as part of the person's
89 employment; and (2) does not receive compensation from the charitable organization for that advice.

90 (17) "Willful violation" means the person committing the violation knew or should have known that the conduct
91 was of the nature prohibited by this chapter.

92 **§ 2504B. Registration of charitable/fraternal organizations.**

93 (a) Every charitable/fraternal organization domiciled in this State, and every foreign charitable/fraternal
94 organization, prior to conducting any solicitation, or prior to having any solicitation conducted on its behalf by others, shall
95 file a registration statement with the Director of the Consumer Protection Unit of the Department of Justice for the State of
96 Delaware upon a form prescribed by the Director. A person authorized by the charitable/fraternal organization shall sign
97 the registration form and shall certify under penalty provided by § 877 of Title 11 that the statements therein are true and
98 correct to the best of his or her knowledge. A consolidated application for registration may, at the option of the
99 charitable/fraternal organization, be submitted by a parent organization for itself and any or all of its related foundations,
100 supporting organizations, chapters, branches, or affiliates in this State.

101 (b) The following charitable/fraternal organizations shall be exempted from the requirements of § 2504B(a):

102 (1) Persons that are exempt from filing a federal annual information return pursuant to 26 U.S.C.
103 § 6033(a)(3)(A)(i), (a)(3)(A)(iii), or (a)(3)(C)(i);

104 (2) Political parties, candidates for federal or state office, and political action committees, required to file
105 financial information with federal or state elections commissions;

(3) Charitable organizations that do not intend to, and do not actually, raise or receive gross revenue, excluding grants from governmental entities or from organizations exempt from federal taxation under § 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, in excess of fifteen thousand dollars during a fiscal year, or do not receive contributions from more than ten persons during a fiscal year. The exemption authorized in this subparagraph (b)(3) shall not apply to a charitable organization that (i) has contracted with a paid solicitor to solicit contributions in this state for the organization or (ii) has incurred administrative salary or commission costs in relation to its soliciting activities;

(4) Any parent-teacher association or educational institution, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;

(5) Any nonprofit hospital licensed by the State, or any similar provision of the laws of any other state; and

(6) Any governmental unit or instrumentality of any state or the United States.

(c) The Director may make available a registration form to assist in the registration by charitable/fraternal organizations that must register in other states and may designate the uniform registration statement developed by the National Association of State Charity Officials be used as the registration form under this section.

(d) Each charitable/fraternal organization filing a registration form required by this section shall pay a one-time, administrative filing fee of \$10 at the time of registration;

(e) The Director may require that registration forms be filed with the Director electronically and may require the use of electronic signatures, and/or electronic payment.

§ 2505B. Annual financial reports; fiscal records and fees.

(a) Every charitable/fraternal organization required to register pursuant to § 2504B(a) shall annually file with the Director a report for its most recently completed fiscal year. The report shall include a financial statement and other information as the Director may require. The charitable/fraternal organization shall file the report not more than 8 months following the close of its fiscal year, on or before the date the charitable/fraternal organization files a Form 990 or 990EZ with the Internal Revenue Service. The report shall be accompanied by a filing fee as prescribed by subsection (d) of this section and shall be signed by the chief fiscal officer of the charitable/fraternal organization, or an equivalent person authorized by the charitable/fraternal organization. This person shall certify under penalty provided by § 877 of Title 11

that the report is true and correct to the best of his or her knowledge. The Director shall prescribe the form of the report and shall prescribe standards for its completion. The Director shall accept, under such conditions as the Director may prescribe, a copy or duplicate original of financial statements, reports, or returns filed by the charitable/fraternal organization with the Internal Revenue Service or another state having requirements similar to the provisions of this section; provided that the Director may prescribe the form of the annual financial report for charitable/fraternal organizations that file the Form 990N with the Internal Revenue Service.

(b) A charitable/fraternal organization with gross revenue in excess of \$500,000, in the year covered by the report, shall include with its annual financial report, an audit report prepared by a certified public accountant. A charitable/fraternal organization with gross revenue less than \$500,000, but nonetheless subject to a requirement imposed by a governmental authority or third party to provide an audit report prepared by a certified public accountant, shall include such audit report with its annual financial report.

(c) The Director, upon written request and for good cause shown, may grant an extension of time for the filing of the report.

(d) Each charitable/fraternal organization filing a report required by this section shall pay a filing fee, based on the total amount of its gross revenue during the time covered by the report, at the close of the calendar or fiscal year adopted by the charitable/fraternal organization, as follows, or in the amount and with any additional sums as may be prescribed by the Director:

- (1) \$0, if less than \$15,000;
- (2) \$10, if \$15,000 but less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) \$300, if \$1,000,000 but less than \$2,000,000;
- (8) \$350, if \$2,000,000 but less than \$5,000,000; or
- (9) \$450, if \$5,000,000 or more.

(e) If a return or report required under this section is not filed, taking into account any extension of time for filing, a fine of \$20 may be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$5,000. Returns and reports submitted without the proper filing fee shall not be accepted for filing.

§ 2506B. Filing requirements for professional fund-raising counsel and professional solicitors.

(a) Every professional fund-raising counsel or professional solicitor, prior to any charitable/fraternal solicitation, shall register with the Director. The registration statement shall contain the information set forth in subsection (e) of this section on forms prescribed by the Director. The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the Director. Renewal registration statements shall be filed with the Director on or before July 1 of each calendar year by each professional fund-raising counsel or professional solicitor. The renewal statement shall contain the information set forth in subsection (e) of this section on forms prescribed by the Director. A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the Director, shall accompany the renewal statement.

(b) Each professional solicitor, at the time of each filing, shall file with and have approved by the Director a bond in which the applicant is the principal obligor in the penal sum of \$25,000, or in the amount and with any additional sums as may be prescribed by the Director, issued with good and sufficient surety or sureties approved by the Director and which shall remain in effect for one year. Upon a violation of this chapter, or any regulation adopted pursuant to this chapter, by the applicant, its officers, directors, employees, agents, servants, and/or independent contractors, the bond shall inure to the State. A partnership, limited partnership, limited liability partnership, limited liability company, corporation, or any other legal or commercial entity that is a professional solicitor may, with the consent of the Director, file a consolidated bond on behalf of all its members, officers, and employees.

(c) The Director shall examine each registration statement and supporting document filed by a professional fund-raising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the Director determines that the registration requirements are not satisfied, the Director shall notify the professional fund-raising counsel or professional solicitor in writing within 30 business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within 14 business days after receipt of a notification that the registration requirements are not satisfied, the professional fund-raising counsel or professional solicitor shall submit a written report to the Director setting forth the proposed plan by the professional fund-raising counsel or professional

solicitor to cure any deficiencies in the registration statement signed by a person authorized by the professional fund-raising counsel or professional solicitor certifying under penalty provided by § 877 of Title 11 that the statements therein are true and correct to the best of their knowledge.

(d) The Director may require that registration and renewal registration, surety bonds, and contracts be filed with the Director electronically and may require the use of electronic signatures, and/or electronic payment.

(e) Each registration and renewal registration shall contain, in a form acceptable to the Director, a statement that includes, but is not limited to, the following disclosures:

(1) The names and addresses of all owners, members, officers, and directors of a professional fund-raising counsel, and the names and addresses of all owners, members, officers, and directors of a professional solicitor;

(2) The corporate form of the registrant, whether corporation, limited liability company, partnership, limited partnership, limited liability partnership, or individual;

(3) Whether the registrant has an office in this State, the address of that office, and the name and phone number of the person in charge of the office;

(4) The names and addresses of any individuals supervising any solicitation activity;

(5) Whether the registration has entered into a consent agreement with, been disciplined by, or subject to administrative action by, any other governmental agency within or outside this State;

(6) Whether any employee, officer, member, director, or any person with a controlling interest in the registrant has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a charitable/fraternal solicitation;

(7) The date that the registrant began soliciting residents of this State on behalf of a charitable/fraternal organization or providing professional fund-raising counsel or professional solicitation services; and

(8) Whether any owners, members, directors, or officers are related to:

(A) Any other owners, members, directors, officers, or employees of the registrant;

(B) Any officer, member, director, trustee, or employee of a charitable/fraternal organization under contract with the registrant; and

(C) Any vendor or supplier providing goods or services to a charitable/fraternal organization under contract with the registrant.

217 **§ 2507B. Denial, suspension, or revocation of registration of charitable/fraternal organizations, professional**
218 **solicitors, or professional fund-raising counsel.**

219 The Director may by order deny, suspend, or revoke any registration of any charitable/fraternal organization,
220 professional solicitor, or professional fund-raising counsel if the Director finds that the applicant or registrant, or any
221 partner, officer, director or any person occupying a similar status or performing similar functions, of the applicant or
222 registrant, or any person directly or indirectly controlling the applicant or registrant:

223 (1) Has filed an application for registration which is incomplete or contained any statement which was, in
224 light of the circumstances under which it was made, false or misleading;

225 (2) Has violated or failed to comply with any provision of this chapter;

226 (3) Has been convicted by any federal or state court of any felony, or of any misdemeanor involving
227 dishonesty or arising from the conduct of a charitable/fraternal solicitation;

228 (4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or
229 continuing any conduct or practice involving any aspect of charitable/fraternal solicitations;

230 (5) Is the subject of a cease and desist order of the Attorney General or of any order within or outside this
231 State denying, suspending or revoking registration as a charitable/fraternal organization, professional
232 solicitor, or professional fund-raising counsel;

233 (6) Has engaged in dishonest or unethical practices within or outside this State;

234 (7) Has failed to pay the proper filing fee, but the Director shall vacate any denial or suspension order
235 when the deficiency has been corrected;

236 (8) Has within the past 10 years been a partner, officer, director, controlling person or any person
237 occupying a similar status or performing similar functions, of a charitable/fraternal organization, professional
238 solicitor or professional fund-raising counsel whose registration in this State or any state has been denied or
239 revoked; or

240 (9) Is no longer in existence or has ceased to do business as a charitable/fraternal organization,
241 professional solicitor, or professional fund-raising counsel, or is subject to an adjudication of mental
242 incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable
243 search.

244 **§ 2508B. Hearing procedures.**

(a) By administrative order.

(1) Upon the finding of a violation of § 2507B, after due notice and a hearing, the Director may issue an order denying, suspending, or revoking an applicant or registrant's registration.

(2) Upon the finding of a violation of § 2514B, after due notice and a hearing, the Director may order any relief as authorized by § 2516B(b).

(b) By summary administrative order.

(1) Where the Director in his or her discretion perceives a threat to the public interest in connection with an alleged violation of § 2514B, the Director may issue and serve upon the alleged violator a summary registration suspension and/or summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order.

(2) A complaint detailing the specific allegations against the alleged violator shall accompany any summary cease and desist order served upon the alleged violator. The Director shall provide a hearing on the charges in the complaint within 14 days after the issuance of the complaint and the cease and desist order. A written opinion and order, containing findings of fact and conclusions of law, shall issue within 14 days after the close of the hearing. The order issued after the hearing may provide for any administrative remedy authorized by this chapter.

(c) Any party, including the Director, who is aggrieved by the hearing officer's final order may appeal the order to Superior Court within 30 days after the date the order is issued. The hearing officer shall file the administrative record with the Court within 60 days after receipt of the notice of appeal. The administrative order, including any lawful sanctions, shall be affirmed by the Court if its findings are supported by substantial evidence.

(d) The Attorney General shall appoint a Deputy Attorney General to act as the administrative hearing officer to adjudicate charges brought by the Director against any person. Such hearing officer shall be a Deputy Attorney General who is not assigned to the Consumer Protection Unit.

§ 2509B. Professional solicitors; required disclosures.

A professional solicitor who makes a charitable/fraternal solicitation shall furnish to each person from whom a charitable/fraternal solicitation is being sought, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:

(1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor;

(2) The full legal name of the charitable organization for whom the professional solicitor is soliciting; and

(3) A disclosure that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible, in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible.

§ 2510B. Professional solicitor financial reports; contribution account.

(a) Within 90 days after a charitable/fraternal solicitation campaign or event has been completed and on the anniversary of the commencement of a charitable/fraternal solicitation campaign lasting more than 1 year, a professional solicitor shall file with the Director a financial report for the charitable/fraternal solicitation campaign, including gross revenue and an itemization of all expenses incurred on a form prescribed by the Director. This report shall be signed, under penalty provided by § 877 of Title 11, by the authorized contracting agent for the professional solicitor and a person authorized by the charitable/fraternal organization and shall report gross revenue from donors residing in this State and national gross revenue from a charitable/fraternal solicitation activity or campaign. A professional solicitor shall maintain during each charitable/fraternal solicitation campaign and for not less than 3 years after the completion of that charitable/fraternal solicitation activity or campaign the following records, which shall be available for inspection upon request by the Director:

(1) The date and amount of each contribution received and the name and address of each contributor;

(2) The name and residence of each employee, agent, or other person involved in the charitable/fraternal solicitation activity or campaign;

(3) Records of all revenue received and expenses incurred in the course of the charitable/fraternal solicitation activity or campaign; and

(4) The name, location, and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the charitable/fraternal solicitation activity or campaign.

(b) Any material change in any information filed with the Director pursuant to this section shall be reported in writing by the professional solicitor to the Director not more than 7 days after the change occurs.

(c) Each contribution in the control or custody of the professional solicitor, in its entirety and within 5 days of its receipt, shall be deposited in an account at a federally insured bank or other federally insured financial institution, which

shall be in the name of the charitable/fraternal organization. The charitable/fraternal organization shall maintain and administer the account and shall have sole control of all withdrawals.

§ 2511B. Records.

(a) Every charitable/fraternal organization, professional fund-raising counsel, professional solicitor, and commercial co-venturer subject to this chapter shall keep true and accurate records as to its activities in a form that will accurately provide support for the information required by this chapter, including, but not limited to, written contracts required under § 2513B of this chapter. Upon request, the records shall be made available to the Director for inspection. Except as provided in subsection (c) of this section, records shall be retained for a period of not less than five years.

(b) In addition to the requirements under subsection (a) of this section, a professional solicitor shall maintain accurate records of the name, address and telephone number of any person who has been solicited; the amount of any contribution; and the date of the solicitation. The professional solicitor shall provide a copy of such records to the charitable organization on a quarterly basis.

(c) If a professional solicitor sells tickets to an event and represents that tickets will be donated for use by another, the professional solicitor, for not less than 3 years after the completion of such event, shall maintain the following records, which shall be available for inspection upon request by the Director:

(1) The number of tickets purchased and donated by each contributor; and

(2) The name and address of all charitable/fraternal organizations receiving donated tickets for use by others, including the number of tickets received by each charitable/fraternal organization.

§ 2512B. Commercial co-venturer's charitable sales promotions.

(a) All charitable sales promotions by a commercial co-venturer shall disclose the name of the commercial co-venturer.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer using the name of a charitable/fraternal organization, the commercial co-venturer shall obtain the written consent of the charitable/fraternal organization whose name will be used during the charitable sales promotion. The commercial co-venturer shall file a copy of the written consent with the Director not less than 10 days prior to the commencement of the charitable sales promotion within this State. An authorized representative of the charitable/fraternal organization and the commercial co-venturer shall sign the written consent, and the terms of the written consent shall include the following:

(1) The goods or services to be offered to the public;

(2) The geographic area where, and the starting and final date when, the offering is to be made;

(3) The manner in which the name of the charitable/fraternal organization is to be used, including any representation to be made to the public as to the amount or percent, per unit of goods or services purchased or used that is to benefit the charitable/fraternal organization;

(4) A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable/fraternal organization and the date when it is to be made; and

(5) The date when and the manner in which the benefit is to be conferred on the charitable/fraternal organization.

(c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer following the completion of the charitable sales promotion. A copy of the final accounting shall be provided to the Director not more than 20 days after the completion of the charitable sales promotion. A copy of the final accounting shall be provided to the charitable/fraternal organization not more than 20 days after the copy is requested by the charitable/fraternal organization. The final accounting shall be kept by the commercial co-venturer as provided by § 2511B.

§ 2513B. Written contracts; filing with the Director.

(a) There shall be a written contract between a charitable/fraternal organization and a professional fund-raising counsel or professional solicitor that shall be filed by the professional fund-raising counsel or professional solicitor with the Director at least 10 business days prior to the performance by the professional fund-raising counsel or professional solicitor of any service. The contract shall be signed by a member of the charitable/fraternal organization's governing body, or an equivalent person authorized by the charitable/fraternal organization, and an authorized contracting officer for the professional fund-raising counsel or professional solicitor. The contract shall contain all of the following provisions:

(1) The legal name and address of the charitable/fraternal organization;

(2) A statement of the charitable purpose for which the charitable/fraternal solicitation campaign is being conducted;

(3) A statement of the respective obligations of the professional fund-raising counsel or professional solicitor and the charitable/fraternal organization;

(4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable/fraternal organization, if any, or, if the charitable/fraternal solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the

purchase price that will be remitted to the charitable/fraternal organization, if any. The stated percentage shall exclude any amount that the charitable/fraternal organization is to pay as fundraising costs;

(5) Information concerning the compensation of the professional solicitor and professional fundraising counsel as follows:

(A) If the compensation of the professional fund-raising counsel or professional solicitor is contingent upon the number of contributions or the amount of revenue received, a statement shall be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fund-raising counsel or professional solicitor is to be reimbursed for fundraising costs;

(B) If the compensation of the professional fundraising counsel or professional solicitor is not contingent upon the number of contributions or amount of revenue received from the charitable/fraternal solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor or professional fundraising counsel regarding the charitable/fraternal solicitation to be conducted; or

(C) If the compensation of the professional fundraising counsel or professional solicitor is not contingent on the number of contributions or amount of revenue received from the charitable/fraternal solicitation campaign, the compensation shall be stated in a dollar amount;

(6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to charitable/fraternal solicitation in this State of contributions for a charitable/fraternal organization;

(7) In the case of a professional fund-raising counsel, a statement that the professional fund-raising counsel will not at any time have custody or control of contributions;

(8) A statement that the charitable/fraternal organization exercises control and approval over the content and volume of any charitable/fraternal solicitation; and

(9) Any other information required by the Director.

(b) No professional fund-raising counsel or professional solicitor shall contract with a charitable/fraternal organization unless the professional fund-raising counsel or professional solicitor is registered with the Director. A contract with an unregistered professional fund-raising counsel or professional solicitor shall be voidable at the option of the charitable/fraternal organization.

(c) Whenever a charitable/fraternal organization contracts with a professional fund-raising counsel or professional solicitor, the charitable/fraternal organization shall have the right to cancel the contract without cost, penalty, or liability, for a period of 10 days following the date on which that contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.

(d) A charitable/fraternal organization may cancel a contract pursuant to subsection (c) by serving a written notice of cancellation on the professional fund-raising counsel or professional solicitor. If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon receipt by the professional fund-raising counsel or professional solicitor. The notice shall be sufficient if it indicates that the charitable/fraternal organization does not intend to be bound by the contract.

(e) Any funds collected after effective notice that a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable/fraternal organization without deduction for cost or expenses of any nature. A charitable/fraternal organization shall be entitled to recover all funds collected after the date of cancellation.

§ 2514B. Unlawful practices.

(a) No person, for the purpose of conducting a charitable/fraternal solicitation of contributions from persons in this State, shall use the name, logo or trademarked identification of any other person except that of an officer, director, or trustee of the charitable/fraternal organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by, or on behalf of, a charitable/fraternal organization or the latter person's name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable/fraternal organization or its activities.

(b) No person shall solicit contributions from persons in this State or otherwise operate in this State as a charitable/fraternal organization, professional fund-raising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the Director.

(c) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in this State unless the person soliciting contributions has complied with the requirements of this chapter.

(d) No charitable/fraternal organization, professional fund-raising counsel, or professional solicitor subject to this chapter shall use or exploit the fact of filing any statement, report, professional fund-raising counsel contracts, or professional solicitor contracts or other documents or information required to be filed under this chapter or with the Director so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals of the charitable/fraternal solicitation by the charitable/fraternal organization, professional fund-raising counsel, or professional solicitor.

(e) No person shall receive compensation from a charitable/fraternal organization for obtaining moneys or bequests for that charitable/fraternal organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable/fraternal organization.

(f) No charitable/fraternal organization shall use the services of an unregistered professional solicitor or professional fund-raising counsel.

(g) No person shall use any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, whether or not any person has in fact been misled, deceived or damaged to solicit charitable contributions. Such acts or practices shall include, but are not limited to, any of the following:

(1) The failure of any person to identify himself or herself by name prior to making a charitable/fraternal solicitation;

(2) The failure of a person to identify the charitable/fraternal organization, for which the charitable/fraternal solicitation is being made, and the charitable/fraternal purpose of the charitable/fraternal solicitation, prior to making the charitable/fraternal solicitation;

(3) If the charitable/fraternal solicitation is made by a professional solicitor or professional fund-raising counsel, the failure to disclose that the person soliciting the contribution is, or is employed by, a professional

solicitor or professional fund-raising counsel and the identity of the professional solicitor or professional fund-raising counsel;

(4) The failure of any person to disclose the amount/percentage of the contribution that will be turned over to the charitable/fraternal organization, the amount/percentage of the contribution to be used for the charitable/fraternal purposes for which it is being solicited and the amount/percentage to be retained by the professional solicitor or professional fund-raising counsel. To the extent the amount/percentage of the contribution to be turned over to the charitable/fraternal organization is not known at the time of the charitable/fraternal solicitation, the person shall disclose a good faith estimate of the amount/percentage of the contribution to be turned over to the charitable/fraternal organization;

(5) The use or reference to the term "sheriff," "deputy sheriff," "police," "law enforcement," "trooper," "rescue squad," "firemen" or "firefighter" unless (i) the person making such representations is employed by a police, law enforcement, rescue squad or fire department, as defined by the Director, and the person is authorized by such entity to engage in charitable/fraternal solicitation, or (ii) such entity has authorized the use or reference to such term in writing for the purpose of charitable/fraternal solicitation;

(6) The representation that a percentage of the contribution will be used for a charitable/fraternal purpose if the person has reason to believe the contribution will not be used for a charitable/fraternal purpose;

(7) The representation that another person endorses the charitable/fraternal solicitation unless such person has consented in writing to the use of the person's name for the purpose of endorsing the charitable/fraternal solicitation;

(8) The representation that the contribution is solicited on behalf of anyone other than the charitable/fraternal organization that authorized the charitable/fraternal solicitation in accordance with this chapter;

(9) The use of the name of any charitable/fraternal organization without the written consent of the charitable/fraternal organization;

(10) The use of a name, symbol or statement so closely related or similar to that used by another charitable/fraternal organization or governmental agency that the use thereof would tend to confuse or mislead the public;

(11) The failure to create and/or maintain the records and written contracts as required by this chapter; or

(12) The failure to file the information and registration statement, annual or financial reports, and other statements or contracts required by this chapter or failure to provide any information requested by the Director pursuant to this chapter.

(i) No charitable/fraternal organization or any officer, director, member, volunteer or employee of a charitable/fraternal organization shall be deemed in violation of this section for an unlawful practice committed by a professional solicitor or professional fund-raising counsel unless the charitable/fraternal organization or such officer, director, member, volunteer or employee knew or should have known of such unlawful practice, or the charitable/fraternal organization or such officer, director, member, volunteer or employee had fraudulent intent in connection with the unlawful practice.

§ 2515B. Time restriction.

No charitable/fraternal organization, professional solicitor and/or professional fund-raising counsel shall engage in charitable/fraternal solicitation of any person after 9:00 p.m. or before 8:00 a.m., unless authorized by the person being solicited prior to the charitable/fraternal solicitation.

§ 2516B. Enforcement authority; Class G felony.

(a) The Attorney General shall have the same authority in carrying out the provisions of this chapter as is provided by Chapter 25 of Title 6.

(b) After due notice and an administrative hearing, any willful violation of § 2514B of this title, or of a lawful cease and desist order of the Director or the hearing officer, may be sanctioned by an administrative penalty up to \$5,000 per violation, a cease and desist order, an order of restitution (including donations to a violator), rescission, recoupment, reformation of contract, or disgorgement of monies obtained by unlawful conduct or other monies that would constitute unjust enrichment.

(c) Class G felony. -- Any person who willfully fails to register as required under this chapter or solicits without an approved registration shall upon conviction be fined not more than \$100,000 or imprisoned not more than 2 years at Level V incarceration, and/or both, per violation.

(d) No indictment or information may be returned under this chapter more than 5 years after the alleged violation. The Superior Court shall have exclusive jurisdiction of any criminal violations of this chapter.

(e) The remedies and penalties provided for in this chapter are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law, including but not limited to state and/or federal criminal prosecutions and/or actions brought by private parties.

(f) The Director may adopt such regulations, not inconsistent herewith, as the Director may deem necessary or appropriate in the administration, interpretation and enforcement of this chapter. The Director shall have standing to seek additional civil remedies in the Superior Court or the Court of Chancery for violations of this chapter. Chapter II of the Delaware Administrative Procedures Act, Chapter 101 of Title 29 shall apply to the procedures for adopting such regulations.

§ 2517B. Fees and penalties.

All fees and penalties required to be paid pursuant to this chapter shall be credited by the State Treasury to the State Consumer Protection Fund as provided for in Chapter 25 of this title.

§ 2518B. Severability.

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end, the provisions of this Act that are held invalid are declared to be severable.

§ 2519B. Effective date.

This Act shall become effective upon 120 days after enactment into law.”

SYNOPSIS

This Act will require, among other things: (1) the registration of all charitable organizations domiciled in Delaware and/or soliciting Delaware citizens and the annual disclosure of certain financial information relating to these entities; and (2) the registration of professional fund-raising counsel/professional solicitors soliciting Delaware citizens and the annual reporting of certain financial information relating to these entities. Armed with more information, the Delaware Department of Justice will be able to more aggressively and proactively pursue charitable fraud.