



SPONSOR: Rep. Osienski & Rep. Keeley & Sen. Townsend
Rep. Kowalko; Sen. Sokola

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 187

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO CHARITABLE SOLICITATIONS.

1 WHEREAS, the Department of Justice, Consumer Protection Unit, enforces the current provisions of Subchapter
2 X, Chapter 25, Title 6 to protect the public from fraudulent charitable and fraternal solicitations; and

3 WHEREAS, there is growing national support for state oversight of charitable organizations and their solicitation
4 activities; and

5 WHEREAS, the current version of Delaware's Charitable/Fraternal Solicitation Act are lacking as to registration
6 and annual financial reporting requirements which are imperative to protect the citizens of this State from fraudulent
7 charitable solicitations and to create and maintain a transparent and robust philanthropic climate in Delaware;

8 NOW, THEREFORE:

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

10 Section 1. Amend Chapter 25, Title 6 of the Delaware Code by striking Subchapter X in its entirety.

11 Section 2. Amend Title 6 of the Delaware Code by inserting a new Chapter 25D as shown by underlining as
12 follows:

13 CHAPTER 25D. CHARITABLE FRATERNAL SOLICITATION

14 § 2501D. Short title.

15 This chapter may be cited as the "Delaware Charitable Solicitation Act of 2013."

16 § 2502D. Purpose.

17 The several purposes of this chapter are to require proper registration of charitable organizations, professional
18 fundraisers and professional solicitors; to provide pertinent information to the public thereby enabling them to make
19 informed decisions as to which charitable causes to support; and to safeguard the citizens of Delaware against fraudulent
20 and misleading charitable solicitations, thereby enhancing public confidence in legitimate charitable organizations. The
21 provisions of this chapter are intended to assist the Consumer Protection Unit of the Department of Justice of the State of
22 Delaware investigate allegations of wrongdoing by charitable organizations, without having a chilling effect on charitable
23 organizations or their donors.

24 § 2503D. Definitions.

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

26 (1) "Attorney General" means the Attorney General of the Department of Justice for the State of Delaware, or his
27 or her designee.

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

35 (3) "Charitable purpose" means (i) any benevolent, educational, humane, scientific, patriotic, social welfare or
36 advocacy, public health, environmental conservation, civic, or philanthropic objective; (ii) an objective to benefit law
37 enforcement officers, firefighters, or other persons or fraternal organizations who protect the public safety; or (iii) any
38 purpose described in § 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)], as amended.

39 (4) "Charitable solicitation" means any oral, written, or electronic request, directly, or indirectly, for money, credit,
40 property, financial assistance or other thing of value on the plea, or representation that such money, credit, property,
41 financial assistance, or other thing of value or any portion thereof, will be used for a charitable purpose or the benefit of a
42 charitable organization. No actual contribution need be made in order for a charitable solicitation to be deemed to have
43 taken place. Without limiting the scope of the foregoing, charitable solicitation shall include the following methods of
44 requesting or securing such money, credit, property, financial assistance or other thing of value on the plea or representation
45 that such money, credit, property, financial assistance, or other thing of value, or any portion thereof:

46 (i) the making of any announcement to any organization for the purpose of further dissemination,
47 including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, or over the
48 internet, concerning an appeal or campaign by or for any charitable organization or purpose;

49 (ii) the distribution, circulation, posting, or publishing of any handbill, written or electronic
50 advertisement, or other publication that directly or by implication seeks to obtain public support;

51 (iii) the sale, offer, or attempted sale, of any advertisement, advertising space, book, card, tag, coupon,
52 device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in
53 connection with which any appeal is made for any charitable organization or purpose; or where the name of any charitable

54 organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection
55 with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for any charitable
56 purpose or to benefit any charitable organization; and

57 (iv) a request made through the use of receptacles for contributions, including but not limited to, honor
58 boxes, vending machines, wishing wells, contribution boxes, commercial donation and interactive websites, and novelty
59 machines, where a charitable appeal is used, referred to, or implied as an inducement or reason to contribute. (5)
60 "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, that
61 represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in
62 part, a charitable organization or charitable purpose.

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

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

68 (8) "Director" means the Director of the Consumer Protection Unit of the Department of Justice for the State of
69 Delaware.

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

76 (10) "Gross revenue" means income of any kind from all sources, from donors residing in this State and national
77 gross revenue from a charitable solicitation activity or campaign, including all amounts received by a professional solicitor
78 as the result of any solicitation campaign, except, gross revenue shall not include income obtained from federal grants or
79 other charitable organizations.

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

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

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

88 (14) "Person" means any individual, organization, corporation, government, governmental subdivision or agency,
89 statutory trust, business trust, estate, trust, foundation, partnership, unincorporated association, limited liability company,
90 limited liability partnership, limited partnership, benefit corporation, low-profit limited liability company, flexible purpose
91 corporation, two or more of any of the foregoing having a joint or common interest, any group of individuals associated in
92 fact but not otherwise a legal entity, or any other legal or commercial entity.

93 (15) "Professional fund-raising counsel" means any person who, for financial or other consideration, plans,
94 conducts, manages, advises, consults, or prepares material for, or with respect to, the solicitation of contributions in this
95 State for a charitable organization, and whose compensation is in no way related to the amount of money the professional
96 fund-raising counsel raises for the organization but who does not solicit contributions nor employ, procure, or engage any
97 compensated person to solicit contributions on a percentage basis. Professional fund-raising counsel shall not, at any time,
98 have custody or control of charitable contributions. This term shall not include a volunteer, salaried officer, or employee of
99 the charitable organization, or attorney acting on behalf of a charitable organization.

100 (16) "Professional solicitor" means a person who, for financial or other consideration, solicits contributions for a
101 charitable purpose or on behalf of a charitable organization, either personally or through agents or employees employed or
102 designated for that purpose, and whose compensation is based in part or in whole on the amount of money that the solicitor
103 raises for the organization. A person who is otherwise a professional fund-raising counsel shall be deemed a professional
104 solicitor if the person's compensation is related to the amount of contributions received, or if the person exercises custody
105 or control of charitable contributions at any time. The term does not include a volunteer receiving no compensation or an
106 employee of a professional solicitor. The term includes a salaried officer, director, member, or employee of a charitable
107 organization if the salaried officer, director, member, or employee of the charitable organization receives compensation
108 related to the amount of contributions received. The term does not include an attorney, investment counselor or advisor,
109 financial advisor, or banker, or other person who: (i) advises another person to make a contribution to a charitable
110 organization as part of the person's employment; and (ii) does not receive compensation from the charitable organization
111 for that advice.

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

114 § 2504D. Registration of charitable organizations.

115 (a) Every charitable organization, except those entities exempt under subsection (b) of this section, whether
116 domiciled in this State or in a foreign jurisdiction, that intends to solicit contributions in this State by any means or to have
117 contributions solicited in this State on its behalf, prior to conducting any solicitation, or prior to having any solicitation
118 conducted on its behalf by others, shall file an initial registration statement with the Director upon the Unified Registration
119 Statement ("URS"), in its most recent version, or as revised, or on such other registration form as prescribed by the
120 Director. At least two persons authorized by the charitable organization, one of whom shall be a board member or CEO of
121 the organization, shall sign the URS or other prescribed registration form and shall certify under penalty provided by § 877
122 of Title 11 that the statements therein are true and correct to the best of their knowledge. A consolidated application for
123 registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all
124 of its related foundations, supporting organizations, chapters, branches, or affiliates in this State.

125 (b) The following charitable organizations shall be exempted from the requirements of § 2504D(a):

126 (1) Religious organizations or societies that are exempt from filing an IRS Form 990 federal annual
127 information return pursuant to 26 U.S.C. § 6033(a)(3)(A)(i), (a)(3)(A)(iii), or (a)(3)(C)(i);

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

130 (3) Charitable organizations that do not intend to, and do not actually, raise or receive gross revenue
131 excluding grants from governmental entities or from organizations exempt from federal taxation under §
132 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, in excess of fifty thousand dollars
133 (\$50,000) during a fiscal year, or do not receive contributions from more than ten (10) persons during a fiscal
134 year. The exemption authorized in this subparagraph shall not apply to a charitable organization that

135 (i) has contracted with a paid solicitor to solicit contributions in this state for the organization; or

136 (ii) has incurred administrative salary or commission costs in relation to its solicitation activities;

137 (4) Any parent-teacher association or educational institution, the curricula of which in whole or in part are
138 registered or approved by any state or the United States either directly or by acceptance of accreditation by an
139 accrediting body, and any 501(c)(3) organization authorized by and having established identity with the
140 mentioned educational institutions, so long as solicitations of charitable contributions by such

141 institutions and organizations are primarily directed to students, alumni, faculty and trustees of such
142 institutions and their families;

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

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

145 (7) Any entity created by an Act of Congress;

146 (8) Fraternal beneficiary societies, orders, or associations operating for the exclusive benefit of the
147 members of a fraternity itself, and which solicit contributions solely from their own membership, family
148 members of the members of the organization, volunteers, or an affiliate of the organization, and the members
149 receive no compensation, directly or indirectly, therefor, and exempt from filing an IRS Form 990 federal
150 annual information return pursuant to 26 U.S.C. § 6033(a)(3)(C)(v);

151 (9) Civic leagues and civic organizations which solicit contributions solely from their own membership,
152 family members of the members of the organization, volunteers, or an affiliate of the organization and the
153 members receive no compensation, directly or indirectly, therefor;

154 (10) Any organization which limits solicitations to persons who have a right to vote as a member, such as
155 alumni, trade or professional organizations; and

156 (11) Any person or organization which solicits contributions for the relief of a single individual,
157 specifically identified by name, if all contributions do not exceed ten thousand dollars (\$10,000) and are
158 transferred to the identified individual with no restrictions and without any deductions therefrom.

159 (c) Each charitable organization filing a registration form, whether initial or revised, required by this section shall
160 pay an administrative filing fee of twenty-five dollars (\$25.00) at the time of registration.

161 (d) The URS or other prescribed registration forms shall be electronically filed with the Director and may require
162 the use of electronic signatures in accordance with the provisions of § 2504D(a) above, and the Uniform Electronic
163 Transactions Act under Chapter 12A of this title, and/or electronic payment.

164 (e) After the filing of an initial registration statement with the Director, if a charitable organization changes or
165 modifies its charitable purpose, the charitable organization shall file a revised registration statement in the same form as the
166 initial registration statement. The revised registration statement shall be denoted as such and shall be filed in the same
167 manner as provided for by this section.

168 § 2505D. Annual financial reports; fiscal records and fees.

169 (a) Every charitable organization required to register pursuant to § 2504D(a), and not otherwise exempt under §
170 2504D(b), shall annually file with the Director a report for its most recently completed fiscal year. The report shall include

171 a financial statement on a form prescribed by the Director; or, in the Director's discretion, a copy of the charitable
172 organization's IRS Form 990, or other substantially similar federal form, with all schedules except schedules of donors; or a
173 copy of the charitable organization's internal annual financial statement. Such financial statement, in whichever form
174 submitted, shall include:

175 i. a clear statements of the gross revenue, expenses, and net income inuring to the benefit of the charitable
176 organization;

177 ii. a balance sheet as of the close of the fiscal year; and

178 iii. a schedule of the activities carried on by the charitable organization in the performance of its purposes
179 and the amounts expended thereon during the fiscal year.

180 (b) The charitable organization shall electronically file with the Director the annual financial report not more than
181 eight (8) months following the close of its fiscal year, on or before the date the charitable organization files a Form 990, or
182 other substantially similar federal form, with the Internal Revenue Service.

183 (c) The annual financial report shall be accompanied by a filing fee as prescribed by subsection (h) of this section.

184 (d) The annual financial report shall be signed by two officers authorized by the charitable organization, or other
185 equivalent persons authorized by the charitable organization, who shall certify under penalty provided by § 877 of Title 11
186 that the report is true and correct to the best of their knowledge.

187 (e) The Director shall accept a copy or duplicate original of financial statements, reports, or returns filed by the
188 charitable organization with the Internal Revenue Service or another state having requirements similar to the provisions of
189 this section; provided that the Director may prescribe the form of the annual financial report for charitable organizations
190 that file the Form 990N with the Internal Revenue Service.

191 (f) A charitable organization with gross revenue in excess of \$1,000,000, in the year covered by the annual
192 financial report, shall include its financial statements and an audit report prepared by a certified public accountant. A
193 charitable organization with gross revenue less than \$1,000,000, but nonetheless subject to a requirement imposed by any
194 governmental authority or third party to provide an audit report prepared by a certified public accountant, shall include such
195 audit report with its annual financial report. A charitable organization with gross revenue in excess of \$500,000 but less
196 than \$1,000,000 in the year covered by the annual financial report shall include, in lieu of an audit report, an independent
197 certified public accountant review report as defined by the American Institute of Certified Public Accountants.

198 (g) The Director, upon written request and for good cause shown, may grant an extension of time for the filing of
199 the annual financial report.

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

203 (1) \$10, if gross revenue is \$50,000 or more but less than \$100,000;

204 (2) \$25, if gross revenue is \$100,000 or more but less than \$500,000;

205 (3) \$50, if gross revenue is \$500,000 or more but less than \$1,000,000;

206 (4) \$100, if gross revenue is \$1,000,000 or more.

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

211 (j) The annual registrations shall be electronically filed with the Director and may require the use of electronic
212 signatures, and/or electronic payment.

213 § 2506D. Filing requirements for professional fund-raising counsel and professional solicitors.

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

221 (b) Each professional solicitor who exercises custody or control over charitable contributions at any time, at the
222 time of each filing, shall file with and have approved by the Director a bond in which the applicant is the principal obligor
223 in the penal sum of \$25,000, or in the amount and with any additional sums as may be prescribed by the Director, issued
224 with good and sufficient surety or sureties approved by the Director and which shall remain in effect for one (1) year. Upon
225 a violation of this chapter, or any regulation adopted pursuant to this chapter, by the applicant, its officers, directors,
226 employees, agents, servants, and/or independent contractors, the bond shall inure to the State. A partnership, limited
227 partnership, limited liability partnership, limited liability company, low-profit limited liability company, corporation,
228 benefit corporation, flexible purpose corporation, or any other legal or commercial entity that is a professional solicitor
229 may, with the consent of the Director, file a consolidated bond on behalf of all its members, officers, and employees.

230 (c) The Director shall examine each registration statement and supporting document filed by a professional fund-
231 raising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the
232 Director determines that the registration requirements are not satisfied, the Director shall notify the professional fund-
233 raising counsel or professional solicitor in writing within thirty (30) business days of its receipt of the registration
234 statement; otherwise the registration statement is deemed to be approved. Within fourteen (14) business days after receipt
235 of a notification that the registration requirements are not satisfied, the professional fund-raising counsel or professional
236 solicitor shall submit a written report to the Director setting forth the proposed plan by the professional fund-raising counsel
237 or professional solicitor to cure any deficiencies in the registration statement signed by a person authorized by the
238 professional fund-raising counsel or professional solicitor certifying under penalty provided by § 877 of Title 11 that the
239 statements therein are true and correct to the best of their knowledge.

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

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

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

247 (2) The corporate form of the registrant, whether corporation, benefit corporation, flexible purpose
248 corporation, limited liability company, low-profit limited liability company, partnership, limited partnership,
249 limited liability partnership, or individual;

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

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

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

255 (6) Whether any employee, officer, member, director, or any person with a controlling interest in the
256 registrant has been convicted by any federal or state court within the past ten (10) years of a felony or
257 misdeemeanor involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of
258 property, or any crime of dishonesty;

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

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

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

263 (B) Any officer, member, director, trustee, or employee of a charitable organization under
264 contract with the registrant.

265 § 2507D. Denial, suspension, or revocation of registration of charitable organizations, professional solicitors, or
266 professional fund-raising counsel.

267 The Director may by order deny, suspend, or revoke any registration of any charitable organization, professional
268 solicitor, or professional fund-raising counsel if the Director finds that the applicant or registrant, or any partner, officer,
269 director, or any person occupying a similar status or performing similar functions, of the applicant or registrant, or any
270 person directly controlling the applicant or registrant:

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

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

274 (3) Has been convicted by any federal or state court within the past ten (10) years of a felony or a
275 misdemeanor involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of
276 property, or any crime of dishonesty;

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

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

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

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

285 (8) Has within the past five (5) years been a partner, officer, director, controlling person or any person
286 occupying a similar status or performing similar functions, of a charitable organization, professional solicitor
287 or professional fund-raising counsel whose registration in this State or any state has been denied or revoked;

288 or

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

292 § 2508D. Hearing procedures.

293 (a) By administrative order.

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

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

298 (b) By summary administrative order.

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

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

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

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

316 § 2509D. Professional solicitors; required disclosures.

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

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

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

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

326 § 2510D. Professional solicitor financial reports; contribution account.

327 (a) Within ninety (90) days after a charitable solicitation campaign or event has been completed or for a charitable
328 solicitation campaign lasting more than one (1) year, within ninety (90) days of the anniversary of commencement, a
329 professional solicitor, a charitable organization, or any other person who exercises custody and control over the proceeds of
330 the campaign, shall file with the Director a financial report for the charitable solicitation campaign, including gross revenue
331 and an itemization of all expenses incurred on a form prescribed by the Director, and a copy of the written contract for the
332 solicitation services as required by § 2513D of this chapter. For a charitable solicitation campaign lasting more than one (1)
333 year, the financial report will contain the gross revenue and an itemization of all expenses incurred for the prior year. This
334 report shall be signed, under penalty provided by § 877 of Title 11, by the authorized agent for the person or entity with
335 custody and control of the proceeds of the campaign, and shall report gross revenue from donors residing in this State and
336 national gross revenue from a charitable solicitation activity or campaign. At the time of filing the report, the person
337 submitting the report shall send a true and correct copy of the report to the charitable organization on whose behalf the
338 campaign was conducted, and to the professional solicitor, if not the filer.

339 (b) A professional solicitor shall maintain during each charitable solicitation campaign and for not less than five
340 (5) years after the completion of that charitable solicitation activity or campaign the following records, which shall be
341 available for inspection upon request by the Director:

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

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

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

347 (4) A copy of the written contract entered into with the charitable organization for the solicitation services
348 to be provided by the professional solicitor, as required by § 2513D of this chapter; and

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

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

353 (d) Each contribution in the control or custody of the professional solicitor, in its entirety and within five (5) days
354 of its receipt, shall be deposited in an account at a federally insured bank or other federally insured financial institution,
355 which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the
356 account and shall have sole control of all withdrawals.

357 § 2511D. Records.

358 (a) Every charitable organization, professional fund-raising counsel, professional solicitor, and commercial co-
359 venturer subject to this chapter shall keep true and accurate records as to its activities in a form that will accurately provide
360 support for the information required by this chapter, including, but not limited to, written contracts required under § 2513D
361 of this chapter. Upon request, the records shall be made available to the Director for inspection. Except as provided in
362 subsection (c) of this section, records shall be retained for a period of not less than five (5) years.

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

367 (c) If a professional solicitor sells tickets to an event and represents that tickets will be donated for use by another,
368 the professional solicitor, for not less than five (5) years after the completion of such event, shall maintain the following
369 records, which shall be available for inspection upon request by the Director:

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

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

373 § 2512D. Commercial co-venturer's charitable sales promotions.

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

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

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

383 (2) The geographic area(s) where, and all the dates when, the offerings are to be made;

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

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

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

390 (c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer
391 following the completion of the charitable sales promotion. A copy of the final accounting shall be provided to the
392 charitable organization in accordance with the date set forth in the written contract required under subsection (b)(4) of this
393 section. The final accounting shall be kept by the commercial co-venturer as provided by § 2511D.

394 (d) The commercial co-venturer shall retain all records related to the charitable sales promotion for a period of not
395 less than five (5) years.

396 § 2513D. Written contracts.

397 (a) There shall be a written contract between a charitable organization and a professional fund-raising counsel or
398 professional solicitor. The contract shall be signed by two members of the charitable organization, one of whom shall be a
399 board member or CEO of the organization, and an authorized contracting officer for the professional fund-raising counsel
400 or professional solicitor. The contract shall contain all of the following provisions:

401 (1) The legal name and address of the charitable organization and the professional fund-raising counsel or
402 professional solicitor;

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

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

407 (4) A statement of the guaranteed minimum percentage of the gross revenue from contributions that will
408 be remitted to or retained by the charitable organization, if any, or, if the charitable solicitation involves the
409 sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be
410 remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the
411 charitable organization is to pay as fundraising costs;

412 (5) Information concerning the compensation of the professional solicitor as follows:

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

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

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

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

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

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

434 (9) Any other information required by the Director.

435 (b) No professional fund-raising counsel or professional solicitor shall contract with a charitable organization
436 unless the professional fund-raising counsel or professional solicitor is registered with the Director; and, if a professional
437 solicitor, unless bonded as required by § 2506D(b) of this chapter. A contract with an unregistered professional fund-
438 raising counsel or professional solicitor shall be voidable at the option of the charitable organization.

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

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

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

451 § 2514D. Unlawful practices.

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

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

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

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

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

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

475 (f) No charitable organization shall use the services of an unregistered professional solicitor or professional fund-
476 raising counsel in connection with conducting solicitations in this State.

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

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

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

486 (3) If the charitable solicitation is made by a professional solicitor, the failure to disclose that the person
487 soliciting the contribution is, or is employed by, a professional solicitor and the identity of the professional
488 solicitor;

489 (4) When requested by the person being solicited, the failure of any person to disclose the
490 amount/percentage of the contribution that will be turned over to the charitable organization, the
491 amount/percentage of the contribution to be used for the charitable purposes for which it is being solicited
492 and the amount/percentage to be retained by the professional solicitor or professional fund-raising counsel.
493 To the extent the amount/percentage of the contribution to be turned over to the charitable organization is not

494 known at the time of the charitable solicitation, the person shall provide a good faith estimate, disclosed as
495 such, of the amount/percentage of the contribution to be turned over to the charitable organization;

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

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

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

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

507 (9) The use of the name of any charitable organization without the written consent of the charitable
508 organization;

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

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

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

516 (h) In determining whether or not a practice is unfair, deceptive, fraudulent, or misleading under this chapter,
517 definitions, standards or interpretations relating thereto under the Uniform Deceptive Trade Practices Act or the Consumer
518 Fraud Act of Chapter 25 of Title 6 shall be instructive.

519 (i) Every person soliciting, collecting, or expending contributions for charitable purposes and every officer,
520 director, trustee, and employee of any such person concerned with the solicitation, collection, or expenditure of such
521 contribution, or acting as a professional fund-raising counsel shall be deemed to be a fiduciary and acting in a fiduciary
522 capacity.

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

528 § 2515D. Time restriction.

529 No charitable organization, professional solicitor, and/or professional fund-raising counsel shall engage in
530 charitable solicitation of any person after 9:00 p.m. or before 8:00 a.m., unless explicitly authorized by the person being
531 solicited prior to the charitable solicitation. A prior existing relationship, by itself, is insufficient to waive the above time
532 restrictions.

533 § 2516D. Enforcement authority.

534 (a) The Attorney General shall have the same authority in carrying out the provisions of this chapter as is provided
535 by Chapter 25 of this title or Chapter 25 of Title 29.

536 (b) After due notice and an administrative hearing, any willful violation of the provisions of this chapter, or of a
537 lawful cease and desist order of the Director or the hearing officer, may be sanctioned by an administrative penalty up to
538 \$5,000 per violation, a cease and desist order, an order of restitution (including donations to a violator), rescission,
539 recoupment, reformation of contract, or disgorgement of monies obtained by unlawful conduct or other monies that would
540 constitute unjust enrichment.

541 (c) Class G felony. -- Any person who knowingly violates any provisions of this chapter shall upon conviction be
542 fined not more than \$10,000 or imprisoned not more than 2 years at Level V incarceration, and/or both, per violation.

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

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

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

553 § 2517D. Fees and penalties.

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

556 § 2518D. Public records.

557 Except as otherwise provided herein, registration statements, applications, reports, notices, contract or agreements
558 between charitable organizations and professional fund-raising counsel, professional solicitors and commercial co-ventures,
559 and all other documents and information required to be filed under this chapter with the Director shall become public
560 records in the Consumer Protection Unit and shall be open to the general public electronically, or at such time and under
561 such conditions as the Director may prescribe.

562 § 2519D. Severability.

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

566 § 2520D. Effective date.

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

SYNOPSIS

This Act will require, among other things: (1) the registration of all charitable organizations soliciting in this State or engaging in solicitation activities directed to Delaware citizens and the annual disclosure of certain financial information relating to these entities; and (2) the registration of professional fund-raising counsel and professional solicitors soliciting in this State or engaging in solicitation activities directed to Delaware citizens and the annual reporting of certain financial information relating to these entities. The purpose of these regulations and the electronic compilation and publication of this information serves to provide the public with the tools and information sufficient to make informed decisions about which charitable purposes to support while also facilitating transparency and confidence in the sector; thereby creating a more robust philanthropic climate in Delaware. Armed with more information, the public and the Delaware Department of Justice will be able to more aggressively and proactively pursue charitable fraud.