

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 12-0610.01 Thomas Morris x4218

HOUSE BILL 12-1236

HOUSE SPONSORSHIP

Summers, Holbert

SENATE SPONSORSHIP

Jahn, Boyd

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF CHARITABLE SOLICITATIONS.**

Bill Summary

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

The bill makes several changes to the laws governing charitable solicitations. **Section 1** of the bill excludes grant writers from the definition of "paid solicitor" unless the grant writer's compensation is computed on the basis of funds raised from the grant. **Section 2** specifies that fundraising on behalf of a named individual is not a charitable appeal and therefore the fundraiser does not have to register with the secretary of state.

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

In addition, section 2 eliminates the need for a charity to request a 3-month extension for the filing of its initial or annual financial report with the secretary of state if the charity has filed for an extension with the internal revenue service.

Section 3 clarifies that only monetary contributions must be deposited with a financial institution. **Section 4** requires paid solicitors, near the beginning of a telephone solicitation, to disclose that a contribution is not tax-deductible, if that is the case, before soliciting the donation and to state their full and complete name.

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-16-103, **amend** (7)
3 (e) and (7) (f); and **add** (7) (g) as follows:

4 **6-16-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (7) "Paid solicitor" means a person who, for monetary
7 compensation, performs any service in which contributions will be
8 solicited in this state by such compensated person or by any compensated
9 person he or she employs, procures, or engages, directly or indirectly, to
10 solicit for contributions. The following persons are not "paid solicitors":

11 (e) Any employee of the department of revenue collecting
12 voluntary contributions for organ and tissue donations under ~~the~~
13 ~~provisions of~~ sections 42-2-107 (4) (b) (V) and 42-2-118 (1) (a) (II),
14 C.R.S.; ~~or~~

15 (f) A person whose only responsibility in connection with a
16 charitable contribution is to provide a merchant account to process credit
17 card payments using the internet; OR

18 (g) A PERSON WHO PREPARES A GRANT APPLICATION FOR A
19 CHARITABLE ORGANIZATION OR PURPOSE, UNLESS THE PERSON'S
20 COMPENSATION IS COMPUTED ON THE BASIS OF FUNDS TO BE RAISED OR

1 ACTUALLY RAISED AS A RESULT OF THE GRANT APPLICATION.

2 **SECTION 2.** In Colorado Revised Statutes, 6-16-104, **amend** (2)
3 introductory portion, (2) (f), (5), (6) introductory portion, and (6) (b); and
4 **add** (6) (d) as follows:

5 **6-16-104. Charitable organizations - initial registration -**
6 **annual filing - fees.** (2) The registration statement ~~shall~~ **MUST** be signed
7 and sworn to under oath by an officer of the charitable organization,
8 which may include its chief fiscal officer, and ~~shall~~ **MUST** contain the
9 following information:

10 (f) A financial report for the most recent fiscal year, upon a form
11 prescribed by the secretary of state, or, in the discretion of the secretary
12 of state, a copy of the charitable organization's federal form 990, with all
13 schedules except schedules of donors, for the most recent fiscal year. If,
14 at the time of the initial registration, the charitable organization does not
15 have the required financial report or form 990 for the most recent fiscal
16 year, the charitable organization shall submit a financial report or form
17 990 for the most recent fiscal year in which such information is available.
18 An organization that was first legally established within the past year and
19 thus does not have financial information or a form 990 for its most recent
20 fiscal year shall provide to the secretary of state a financial report based
21 on good faith estimates for its current fiscal year on a form prescribed by
22 the secretary of state. Any organization that files a good faith estimate for
23 its first fiscal year shall amend its initial registration statement to report
24 actual financial information ~~no later than~~ **ON OR BEFORE THE EARLIER OF**
25 **the fifteenth day of the ~~fifth~~ EIGHTH month after the close of the**
26 **organization's first fiscal year OR THE DATE AUTHORIZED FOR FILING A**
27 **FORM 990 WITH THE INTERNAL REVENUE SERVICE.**

1 (5) Every charitable organization required to register under this
2 section shall annually file with the secretary of state a financial report for
3 the most recent fiscal year on a form prescribed by the secretary of state,
4 or, in the discretion of the secretary of state, a copy of the charitable
5 organization's federal form 990, with all schedules except schedules of
6 donors, for the most recent fiscal year. ~~Such~~ THE financial report shall
7 MUST be filed on or before the EARLIER OF THE fifteenth day of the fifth
8 EIGHTH calendar month after the close of each fiscal year in which the
9 charitable organization solicited in this state OR THE DATE AUTHORIZED
10 FOR FILING A FORM 990 WITH THE INTERNAL REVENUE SERVICE. A
11 charitable organization that is unable to file a copy of its form 990 return
12 or the secretary of state's financial form by the prescribed deadline may
13 request an extension of the filing deadline from the secretary of state. ~~All~~
14 ~~such requests shall be made and granted under terms, conditions, and~~
15 ~~procedures that are substantially similar to the terms, conditions, and~~
16 ~~procedures applicable to obtaining an extension of time to file a form 990~~
17 ~~return from the internal revenue service. A charitable organization shall~~
18 ~~provide the secretary of state with its most recently completed form 990~~
19 ~~return, or such financial information as the secretary of state may require,~~
20 ~~in a form prescribed by the secretary of state, during the extension period.~~
21 ~~An organization that was first legally established within the past year and~~
22 ~~thus does not have financial information or a form 990 for its most recent~~
23 ~~fiscal year shall provide to the secretary of state a financial report based~~
24 ~~on good faith estimates for its current fiscal year on a form prescribed by~~
25 ~~the secretary of state~~ THE SECRETARY OF STATE, UPON RECEIPT OF AN
26 APPLICATION TO EXTEND THE FILING DEADLINE, MAY GRANT A
27 THREE-MONTH EXTENSION OF TIME TO FILE THE FINANCIAL REPORT. ALL

1 SUCH REQUESTS MUST BE IN A FORM PRESCRIBED BY THE SECRETARY OF
2 STATE AND MUST INCLUDE A STATEMENT DESCRIBING IN DETAIL THE
3 REASONS CAUSING THE DELAY IN FILING THE FINANCIAL REPORT AND AN
4 AFFIRMATION THAT THE CHARITABLE ORGANIZATION HAS FILED WITH THE
5 INTERNAL REVENUE SERVICE AN APPLICATION FOR A CORRESPONDING
6 EXTENSION OF TIME TO FILE THE ORGANIZATION'S FORM 990. UPON
7 REQUEST, THE CHARITABLE ORGANIZATION SHALL PROVIDE THE
8 SECRETARY OF STATE WITH A COPY OF ITS APPLICATION FOR EXTENSION OF
9 TIME TO FILE WITH THE INTERNAL REVENUE SERVICE IN ORDER TO VERIFY
10 THE DATE AUTHORIZED FOR FILING ITS FORM 990 WITH THE INTERNAL
11 REVENUE SERVICE.

12 (6) The following ~~shall~~ ARE not ~~be~~ required to file a registration
13 statement:

14 (b) Political parties, candidates for federal or state office, and
15 political action committees required to file financial information with
16 federal or state elections commissions; ~~and~~

17 (d) PERSONS EXCLUSIVELY MAKING APPEALS FOR FUNDS ON
18 BEHALF OF A SPECIFIC INDIVIDUAL NAMED IN THE SOLICITATION, BUT ONLY
19 IF ALL OF THE PROCEEDS OF THE SOLICITATION ARE GIVEN TO OR
20 EXPENDED FOR THE DIRECT BENEFIT OF THE SPECIFIED INDIVIDUAL.

21 **SECTION 3.** In Colorado Revised Statutes, 6-16-104.6, **amend**
22 (8) as follows:

23 **6-16-104.6. Paid solicitors - annual registration - filing of**
24 **contracts - fees.** (8) If a paid solicitor will have custody of any
25 MONETARY contribution received during a solicitation campaign, each
26 such contribution ~~shall~~ MUST be deposited within two business days after
27 its receipt in an account at a bank or other federally insured financial

1 institution. The account ~~shall~~ MUST be in the name of the charitable
2 organization with whom the paid solicitor has contracted, and the
3 charitable organization ~~shall~~ MUST have sole control over all withdrawals
4 from the account.

5 **SECTION 4.** In Colorado Revised Statutes, 6-16-105.3, **amend**
6 (1) introductory portion and (1) (e); and **add** (1) (d.5) as follows:

7 **6-16-105.3. Solicitations by telephone.** (1) In addition to any
8 other disclosure required for solicitations by telephone under section
9 6-16-105, a paid solicitor ~~as defined in section 6-16-103 (7)~~ who makes
10 an oral solicitation to any person by a telephone call received in Colorado
11 regarding a charitable contribution shall make the following oral
12 disclosures ■ as part of the telephone solicitation:

13 (d.5) THE FIRST NAME AND SURNAME OF THE PAID SOLICITOR,
14 WHICH MUST BE GIVEN IN THE OPENING GREETING;

15 (e) A statement, WHICH MUST BE MADE PRIOR TO THE PERSON'S
16 AGREEMENT TO MAKE A CONTRIBUTION, that the charitable contribution
17 is not tax deductible, if such is the case;

18 **SECTION 5. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect January 1, 2013; except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within the ninety-day period after final adjournment of the general
23 assembly, then the act, item, section, or part will not take effect unless
24 approved by the people at the general election to be held in November
25 2012 and, in such case, will take effect on January 1, 2013, or on the date
26 of the official declaration of the vote thereon by the governor, whichever
27 is later.

- 1 (2) The provisions of this act apply to actions occurring on or after
- 2 the applicable effective date of this act.