

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 16-0647.01 Bart Miller x2173

**HOUSE BILL 16-1129**

**HOUSE SPONSORSHIP**

**Lawrence and McCann,**

**SENATE SPONSORSHIP**

**Crowder and Heath,**

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**House Committees**

Judiciary  
Appropriations

**Senate Committees**

Judiciary  
Appropriations

SENATE  
Amended 3rd Reading  
May 2, 2016

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**A BILL FOR AN ACT**

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

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SENATE  
Amended 2nd Reading  
April 29, 2016

**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>.)*

HOUSE  
3rd Reading Unamended  
March 28, 2016

**Section 1** of the bill creates enhanced penalties under the "Colorado Consumer Protection Act" for committing acts of charitable fraud involving knowledge or intent under the "Colorado Charitable Solicitations Act". The penalty for each violation is \$10,000 with no cap for a related series of violations.

**Sections 2 and 4** of the bill require:

HOUSE  
Amended 2nd Reading  
March 24, 2016

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

- ! A statement on applications for registration by a paid solicitor to the secretary of state that neither the paid solicitor nor any officer, director or employee serves on the board of directors of a charitable organization or directs the operations of a charitable organization for which the paid solicitor solicits contributions and that no officer, director, or employee of the paid solicitor's charitable organization clients have a financial interest in the paid solicitor;
- ! Paid solicitors to either have a bond or a savings account, deposit, or certificate of deposit in a financial institution payable to the state of Colorado conditioned upon the performance of the paid solicitor in good faith without fraud or fraudulent representation and without the violation of any provision of the "Colorado Charitable Solicitations Act".

**Section 3** of the bill makes it charitable fraud to misrepresent that a charitable organization for which a paid solicitor solicits has a significant membership of a certain type, such as active police, sheriff, patrol, firefighters, first responders, or veterans. Section 3 of the bill makes a charitable organization also liable with a paid solicitor if the charitable organization knew or should have known that the paid solicitor was engaged in charitable fraud on behalf of the charitable organization.

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-112, **add** (1) (f)  
 3 as follows:

4 **6-1-112. Civil penalties.** (1) The attorney general or a district  
 5 attorney may bring a civil action on behalf of the state to seek the  
 6 imposition of civil penalties as follows:

7 (f)(I) ANY PERSON WHO VIOLATES SECTION 6-16-111 (1)(a) TO (1)  
 8 (g) SHALL FORFEIT AND PAY A CIVIL PENALTY OF UP TO TEN THOUSAND  
 9 DOLLARS FOR EACH VIOLATION, WITH A CAP OF THREE MILLION DOLLARS  
 10 FOR A RELATED SERIES OF VIOLATIONS. IN DETERMINING A CIVIL PENALTY  
 11 UNDER THIS PARAGRAPH (f), THE COURT SHALL ADJUST THE LIMITATIONS  
 12 CAP FOR INFLATION BASED ON THE CUMULATIVE ANNUAL ADJUSTMENT  
 13 FOR INFLATION FOR EACH FULL YEAR SINCE THE EFFECTIVE DATE OF THIS

1 PARAGRAPH (f), AS AMENDED. THE ADJUSTMENTS MADE UNDER THIS  
2 SUBPARAGRAPH (I) ARE ROUNDED UPWARD OR DOWNWARD TO THE  
3 NEAREST TEN-DOLLAR INCREMENT. AS USED IN THIS SUBPARAGRAPH (I),  
4 "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED  
5 STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS  
6 CONSUMER PRICE INDEX FOR THE DENVER-BOULDER-GREELEY  
7 METROPOLITAN STATISTICAL AREA FOR THE PRICE OF ALL ITEMS PAID BY  
8 ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

9 (II) ANY CIVIL PENALTY RECOVERED UNDER THIS PARAGRAPH (f)  
10 IS PAID TO THE ATTORNEY GENERAL AND HELD AS CUSTODIAL MONEY. THE  
11 ATTORNEY GENERAL SHALL PETITION THE DISTRICT COURT HAVING  
12 JURISDICTION OVER THE UNDERLYING CIVIL ENFORCEMENT ACTION FOR  
13 APPROVAL TO GRANT THE CUSTODIAL MONEY TO A CHARITY IN  
14 ACCORDANCE WITH THE CY PRES DOCTRINE WITHIN TWO YEARS AFTER  
15 RECEIPT BY THE ATTORNEY GENERAL.

16 **SECTION 2.** In Colorado Revised Statutes, 6-16-103, **amend** (7)  
17 introductory portion, (7) (f), and (7) (g); and add (7) (h) as follows:

18 **6-16-103. Definitions.** As used in this article, unless the context  
19 otherwise requires:

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

25 (f) A person whose only responsibility in connection with a  
26 charitable contribution is to provide a merchant account to process credit  
27 card payments using the internet; or

1           (g) A person who prepares a grant application for a charitable  
2           organization or purpose, unless the person's compensation is computed on  
3           the basis of funds to be raised or actually raised as a result of the grant  
4           application; OR

5           (h) A PERSON WHO PROVIDES ANY SERVICE OR PRODUCT TO A  
6           CHARITABLE ORGANIZATION WHO DOES NOT DIRECTLY SOLICIT FOR A  
7           CHARITABLE CONTRIBUTION.

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

10           **6-16-104.6. Paid solicitors - annual registration - filing of**  
11           **contracts - fees.** (3) Applications for registration or renewal of  
12           registration shall be submitted on a form prescribed by the secretary of  
13           state, shall be signed under oath, and shall include the following  
14           information:

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

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

20           (j) WHETHER THE APPLICANT OR ANY OFFICER, DIRECTOR, OR  
21           EMPLOYEE OF THE APPLICANT SERVES ON THE BOARD OF DIRECTORS OF A  
22           CHARITABLE ORGANIZATION, DIRECTS THE OPERATIONS OF A CHARITABLE  
23           ORGANIZATION, OR OTHERWISE HAS A FINANCIAL INTEREST IN A  
24           CHARITABLE ORGANIZATION FOR WHICH THE APPLICANT SOLICITS  
25           CONTRIBUTIONS. IF THIS RELATIONSHIP EXISTS BETWEEN THE APPLICANT  
26           AND THE CHARITABLE ORGANIZATION, THE APPLICATION MUST INCLUDE  
27           A STATEMENT THAT THE RELATIONSHIP MEETS THE STANDARDS SET FORTH

1 IN SECTION 7-128-501 (3), C.R.S., REGARDING CONFLICT OF INTEREST  
2 TRANSACTIONS.

3

4 SECTION 4. In Colorado Revised Statutes, 6-16-111, **amend**  
5 (1.5); and **add** (7) as follows:

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

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

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

19 (c) THE MEMBERSHIP ORGANIZATION FOR WHICH THE PERSON IS  
20 SOLICITING HAS A SIGNIFICANT MEMBERSHIP OF A CERTAIN TYPE,  
21 INCLUDING ACTIVE POLICE, SHERIFF, PATROL, FIREFIGHTERS, FIRST  
22 RESPONDERS, OR VETERANS WHEN THE ORGANIZATION DOES NOT HAVE A  
23 SIGNIFICANT MEMBERSHIP OF THAT TYPE. FOR PURPOSES OF THIS  
24 PARAGRAPH (c), "SIGNIFICANT MEMBERSHIP" MEANS TEN PERCENT OF THE  
25 MEMBERSHIP OF THE ORGANIZATION OR ONE HUNDRED MEMBERS,  
26 WHICHEVER IS LESS. FOR PURPOSES OF THIS PARAGRAPH (c), "MEMBERSHIP  
27 ORGANIZATION" MEANS AN ORGANIZATION THAT IS A TAX-EXEMPT

1 NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c) OF THE FEDERAL  
2 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND HAS MEMBERS  
3 WHO PAY REGULAR MEMBERSHIP DUES.

4 (7) IF A PAID SOLICITOR COMMITS CHARITABLE FRAUD IN THE  
5 COURSE OF MAKING A SOLICITATION FOR A CHARITABLE ORGANIZATION,  
6 THE CHARITABLE ORGANIZATION SHALL ALSO BE LIABLE FOR ANY  
7 APPLICABLE REMEDIES AND PENALTIES IF THE CHARITABLE ORGANIZATION  
8 KNEW OR SHOULD HAVE KNOWN THAT THE PAID SOLICITOR WAS ENGAGED  
9 IN CHARITABLE FRAUD. THIS SUBSECTION (7) DOES NOT EXTEND PERSONAL  
10 LIABILITY TO BOARD MEMBERS OF A CHARITABLE ORGANIZATION BEYOND  
11 THE PERSONAL LIABILITY ALLOWED BY SECTION 13-21-116 (2) (b) (I),  
12 C.R.S., OR AS OTHERWISE ALLOWED BY LAW PRIOR TO THE EFFECTIVE  
13 DATE OF THIS SUBSECTION (7).

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

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