

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading 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,

House Committees

Judiciary
Appropriations

Senate Committees

Judiciary
Appropriations

A BILL FOR AN ACT

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

Bill Summary

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

Section 1 of the bill 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:

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.*

SENATE
Amended 2nd Reading
April 29, 2016

HOUSE
3rd Reading Unamended
March 28, 2016

HOUSE
Amended 2nd Reading
March 24, 2016

- ! 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) and (3.5) 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 (3.5) (a) BEFORE ANY PAID SOLICITOR IS REGISTERED, THE
4 APPLICANT SHALL PROCURE AND FILE WITH THE SECRETARY OF STATE
5 EVIDENCE OF A SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT
6 MEETING THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A GOOD
7 AND SUFFICIENT BOND IN THE AMOUNT OF TWENTY-FIVE THOUSAND
8 DOLLARS ISSUED BY A CORPORATE SURETY DULY LICENSED TO DO
9 BUSINESS WITHIN THE STATE, APPROVED AS TO FORM BY THE ATTORNEY
10 GENERAL OF THE STATE, AND CONDITIONED THAT THE APPLICANT SHALL
11 PERFORM IN GOOD FAITH AS A PAID SOLICITOR WITHOUT FRAUD OR
12 FRAUDULENT REPRESENTATION AND WITHOUT THE VIOLATION OF ANY
13 PROVISION OF THIS ARTICLE.

14 (b) NO CORPORATE SURETY IS REQUIRED TO MAKE ANY PAYMENT
15 TO ANY PERSON CLAIMING A BOND ISSUED UNDER THIS SUBSECTION (3.5)
16 UNTIL A FINAL DETERMINATION OF FRAUD OR FRAUDULENT
17 REPRESENTATION HAS BEEN MADE BY THE SECRETARY OF STATE OR BY A
18 COURT OF COMPETENT JURISDICTION.

19 (c) ALL BONDS REQUIRED UNDER THIS SECTION MUST BE RENEWED
20 ANNUALLY AT THE SAME TIME AS THE BONDHOLDER'S LICENSE IS
21 RENEWED. RENEWAL OF THE BOND MAY BE DONE THROUGH A
22 CONTINUATION CERTIFICATE ISSUED BY THE SURETY.

23 **SECTION 4.** In Colorado Revised Statutes, 6-16-111, **amend**
24 (1.5); and **add** (7) as follows:

25 **6-16-111. Violations.** (1.5) A person commits charitable fraud if
26 he or she, in the course of or in furtherance of a solicitation, misrepresents
27 to, misleads, makes false statements to, or uses a name other than the

1 solicitor's legal name in communicating with a person being solicited in
2 any manner that would lead a reasonable person to believe that:

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

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

11 (c) THE MEMBERSHIP ORGANIZATION FOR WHICH THE PERSON IS
12 SOLICITING HAS A SIGNIFICANT MEMBERSHIP OF A CERTAIN TYPE,
13 INCLUDING ACTIVE POLICE, SHERIFF, PATROL, FIREFIGHTERS, FIRST
14 RESPONDERS, OR VETERANS WHEN THE ORGANIZATION DOES NOT HAVE A
15 SIGNIFICANT MEMBERSHIP OF THAT TYPE. FOR PURPOSES OF THIS
16 PARAGRAPH (c), "SIGNIFICANT MEMBERSHIP" MEANS ~~TEN~~ PERCENT OF THE
17 MEMBERSHIP OF THE ORGANIZATION OR ~~ONE~~ HUNDRED MEMBERS,
18 WHICHEVER IS LESS. FOR PURPOSES OF THIS PARAGRAPH (c), "MEMBERSHIP
19 ORGANIZATION" MEANS AN ORGANIZATION THAT IS A TAX-EXEMPT
20 NONPROFIT ORGANIZATION UNDER 26 U.S.C. SEC. 501 (c) OF THE FEDERAL
21 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND HAS MEMBERS
22 WHO PAY REGULAR MEMBERSHIP DUES.

23 (7) IF A PAID SOLICITOR COMMITS CHARITABLE FRAUD IN THE
24 COURSE OF MAKING A SOLICITATION FOR A CHARITABLE ORGANIZATION,
25 THE CHARITABLE ORGANIZATION SHALL ALSO BE LIABLE FOR ANY
26 APPLICABLE REMEDIES AND PENALTIES IF THE CHARITABLE ORGANIZATION
27 KNEW OR SHOULD HAVE KNOWN THAT THE PAID SOLICITOR WAS ENGAGED

1 IN CHARITABLE FRAUD. THIS SUBSECTION (7) DOES NOT EXTEND PERSONAL
2 LIABILITY TO BOARD MEMBERS OF A CHARITABLE ORGANIZATION BEYOND
3 THE PERSONAL LIABILITY ALLOWED BY SECTION 13-21-116 (2) (b) (I),
4 C.R.S., OR AS OTHERWISE ALLOWED BY LAW PRIOR TO THE EFFECTIVE
5 DATE OF THIS SUBSECTION (7).

6 **SECTION 5.** In Colorado Revised Statutes, 11-35-101, **amend**
7 (1) as follows:

8 **11-35-101. Alternatives to surety bonds permitted -**
9 **requirements.** (1) The requirement of a surety bond as a condition to
10 licensure or authority to conduct business or perform duties in this state
11 provided in ~~sections 12-5.5-202 (2) (b)~~ SECTIONS 6-16-104.6, 12-5.5-202
12 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124
13 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1),
14 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2),
15 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a),
16 (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3),
17 and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit
18 in or a certificate of deposit issued by a state or national bank doing
19 business in this state or by a savings account or deposit in or a certificate
20 of deposit issued by a state or federal savings and loan association doing
21 business in this state. Such savings account, deposit, or certificate of
22 deposit shall be in the amount specified by statute, if any, and shall be
23 assigned to the appropriate state agency for the use of the people of the
24 state of Colorado. The aggregate liability of the bank or savings and loan
25 association shall in no event exceed the amount of the deposit. For the
26 purposes of the sections referred to in this section, "bond" includes the
27 savings account, deposit, or certificate of deposit authorized by this

1 section.

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SECTION 6. Act subject to petition - effective date -

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applicability. (1) This act takes effect at 12:01 a.m. on the day following

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the expiration of the ninety-day period after final adjournment of the

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general assembly (August 10, 2016, if adjournment sine die is on May 11,

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2016); except that, if a referendum petition is filed pursuant to section 1

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(3) of article V of the state constitution against this act or an item, section,

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or part of this act within such period, then the act, item, section, or part

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will not take effect unless approved by the people at the general election

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to be held in November 2016 and, in such case, will take effect on the

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date of the official declaration of the vote thereon by the governor.

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(2) This act applies to charitable solicitations on or after the

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applicable effective date of this act.