

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOURTEEN

H.P. 1291 - L.D. 1799

An Act To Amend the Laws Governing Charitable Solicitations

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 9 MRSA §5002, as amended by PL 2013, c. 313, §1, is further amended to read:

§5002. Intent

It is the intent of the Legislature to require the licensure and financial reporting of charitable organizations; and professional solicitors ~~and professional fund-raising counsel~~ and the bonding of professional solicitors.

Sec. 2. 9 MRSA §5003, sub-§1, as amended by PL 2003, c. 541, §1, is further amended to read:

1. Charitable organization. "Charitable organization" means any person or entity, including any person or entity organized in a foreign state, that is or holds itself out to be organized or operated for any charitable purpose ~~or~~ and that solicits, accepts or obtains contributions from the public for any charitable purpose and by any means, including, but not limited to, personal contact, telephone, mail, newspaper advertisement, television or radio. Status as a tax-exempt entity does not necessarily qualify that entity as a charitable organization. ~~A chapter, branch, area office or similar affiliate or any person soliciting contributions for any charitable purpose within the State for a charitable organization that has its principal place of business outside the State is considered a charitable organization for the purposes of this Act.~~ For purposes of this chapter, an organization established for and serving bona fide religious purposes is not a charitable organization.

Sec. 3. 9 MRSA §5003, sub-§8, as amended by PL 2013, c. 313, §8, is further amended to read:

8. Principal officer. "Principal officer" means the president, chair, executive director or other officer or employee responsible for the daily operation of a charitable organization; or a professional solicitor ~~or professional fund-raising counsel~~.

Sec. 4. 9 MRSA §5003, sub-§9, as amended by PL 2011, c. 286, Pt. A, §2, is repealed.

Sec. 5. 9 MRSA §5004, sub-§3, ¶G, as amended by PL 2013, c. 313, §9, is further amended to read:

G. The name, mailing address and license number of any professional solicitor ~~or professional fund-raising counsel~~ who acts or will act on behalf of the charitable organization in connection with fund-raising campaigns for contributions from the State's residents;

Sec. 6. 9 MRSA §5004, sub-§3, ¶P, as amended by PL 2013, c. 313, §9, is repealed.

Sec. 7. 9 MRSA §5005-B, sub-§1, ¶B, as amended by PL 2013, c. 313, §11, is further amended to read:

B. The name, mailing address, telephone number and license number of each professional solicitor ~~and professional fund-raising counsel~~ with which the charitable organization contracted to solicit contributions in this State or to plan, manage, advise or provide consultation services with respect to the solicitation of contributions in this State;

Sec. 8. 9 MRSA §5005-B, sub-§1, ¶F, as amended by PL 2013, c. 313, §11, is further amended to read:

F. The total dollar amount attributable to contributions raised in this State that was retained by or paid to any professional solicitor ~~or professional fund-raising counsel~~ from each fund-raising campaign and for the year.

Sec. 9. 9 MRSA §5005-B, sub-§§2 and 3, as amended by PL 2013, c. 313, §11, are further amended to read:

2. Failure to file; discrepancies. Failure to file the annual fund-raising activity report required under this section or disagreement between the report filed by the charitable organization and that submitted by the professional solicitor ~~or professional fund-raising counsel~~ with which the charitable organization has contracted may result in disciplinary action as provided under Title 10, section 8003, subsection 5-A. To resolve a disagreement between reports, the director may require the charitable organization to submit an annual fund-raising activity report according to a fiscal year other than the organization's fiscal year.

3. Contracting with unlicensed professional solicitor prohibited. A charitable organization may not contract with an unlicensed professional solicitor ~~or professional fund-raising counsel~~. A violation of this subsection may result in disciplinary action as provided under Title 10, section 8003, subsection 5-A.

Sec. 10. 9 MRSA §5006, sub-§1, ¶A, as amended by PL 2013, c. 313, §12, is further amended to read:

A. Organizations that solicit primarily within their membership and do not contract with a professional solicitor ~~or professional fund-raising counsel~~. For purposes of this paragraph, the term "membership" does not include those persons who are granted a membership upon making a contribution as a result of a solicitation;

Sec. 11. 9 MRSA §5006, sub-§1, ¶D, as amended by PL 2013, c. 313, §13, is further amended to read:

D. Charitable organizations that do not intend to solicit and receive and do not actually solicit or receive contributions from the public in excess of \$35,000 during a calendar year or do not receive contributions from more than 35 persons during a calendar year, if the charitable organizations do not contract with professional solicitors ~~or professional fund-raising counsel~~ and if no part of the assets or income inures to the benefit of or is paid to any officer or member. If a charitable organization that does not intend to solicit or receive contributions from the public in excess of \$35,000 or does not intend to receive contributions from more than 35 persons during a calendar year does actually solicit or receive contributions in excess of that amount, whether or not all such contributions are received during a calendar year, or actually receives contributions from more than 35 persons during a calendar year, the charitable organization, within 30 days after the date contributions reach \$35,000 or the number of contributors reaches 35, must be licensed with the director as required by this Act;

Sec. 12. 9 MRSA §5006, sub-§3, as amended by PL 2013, c. 313, §14, is repealed.

Sec. 13. 9 MRSA §5008-A, as enacted by PL 2013, c. 313, §17, is amended to read:

§5008-A. Licensure, license renewal and records kept by professional solicitors

1. Initial licensure. A person or entity may not act as a professional solicitor ~~or professional fund-raising counsel~~ before that person or entity has received a license from the director. A professional solicitor ~~or professional fund-raising counsel~~ shall apply for initial licensure by filing a license application with the director ~~and~~, paying the application and license fees as set under section 5015-A. ~~A professional solicitor, in addition, shall submit~~ and submitting the bond required by subsection 5.

2. Content of application for initial licensure. A license application must be sworn to or affirmed by the principal officer of the professional solicitor ~~or professional fund-raising counsel~~ on a form prescribed by the director and must contain the following information:

A. The name, mailing address and license number of each charitable organization on whose behalf the professional solicitor ~~or professional fund-raising counsel~~ acts or will act in connection with fund-raising campaigns for contributions from the State's residents;

B. A list of all jurisdictions in which the professional solicitor ~~or professional fund-raising counsel~~ is authorized to solicit contributions;

C. Disclosure of, and the final disposition document pertaining to, any disciplinary action taken against the applicant by a licensing, registration or regulatory authority in any jurisdiction;

D. Disclosure of, and the final disposition document pertaining to, any court action taken against the applicant by a licensing, registration or regulatory authority or law enforcement agency in any jurisdiction that resulted in a restraining order, injunction, civil judgment, criminal conviction, consent judgment, consent agreement, agreement to pay restitution or investigative costs or any other type of negotiated disposition; and

E. Other information as the director may require.

3. Renewal of licensure as a professional solicitor. A license issued by the director to a professional solicitor ~~or professional fund-raising counsel~~ expires on November 30th annually or such other time as the director may designate. A professional solicitor ~~or professional fund-raising counsel~~ shall apply for renewal by filing a renewal application with the director prior to the expiration date ~~and~~, paying the license fee as set under section 5015-A. ~~A professional solicitor shall, in addition, submit and submitting~~ the bond required by subsection 5.

4. Content of renewal application. A renewal application pursuant to subsection 3 must contain the following information:

A. The annual fund-raising activity report required by section 5008-B;

B. Disclosure of, and the final disposition document pertaining to, any disciplinary action taken against the licensee by a licensing, registration or regulatory authority in any jurisdiction since the date of the most recent application submitted by the professional solicitor ~~or professional fund-raising counsel~~;

C. Disclosure of, and the final disposition document pertaining to, any court action taken against the licensee by a licensing, registration or regulatory authority or law enforcement agency in any jurisdiction that resulted in a restraining order, injunction, civil judgment, criminal conviction, consent judgment, consent agreement, agreement to pay restitution or investigative costs or any other type of negotiated disposition since the date of the most recent application submitted by the professional solicitor ~~or professional fund-raising counsel~~;

D. Any changes to the information contained in the licensee's application for initial licensure or the most recent renewal application; and

E. Other information as the director may require.

5. Bonding of professional solicitors. An applicant for initial or renewal licensure as a professional solicitor shall submit with the application a bond approved by the director in which the professional solicitor is the principal obligor and the State the obligee, in the sum of \$25,000, with one or more responsible sureties whose liability in the aggregate at least equals that sum. The bond runs to any person or entity who may have a cause of action against the principal obligor of the bond for any malfeasance or misfeasance in the conduct of charitable solicitation in this State that occurs during the term of the license applied for. The bond remains in place for 5 years after the licensee

ceases activity in the State. Notwithstanding this provision, the director may permit the bond to be eliminated prior to that date.

6. Late renewal. A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee as set under section 5015-A.

7. Change of information. As an ongoing condition of licensure, a professional solicitor ~~or professional fund-raising counsel~~ must notify the director of a change to the information contained in the licensee's application for initial or renewal licensure, including any additional disciplinary or court action taken against the licensee, within 10 days of the change.

8. Records. A professional solicitor ~~or professional fund-raising counsel~~ shall maintain accurate and complete books and records of fund-raising activities and telephone solicitation scripts and shall keep those books and records available for inspection by or production to the Attorney General or the director for a period of 3 years after the conclusion of each specific instance in which that person or entity acts as a professional solicitor ~~or professional fund-raising counsel~~.

Sec. 14. 9 MRSA §5008-B, as enacted by PL 2013, c. 313, §17, is amended to read:

§5008-B. Annual fund-raising activity reports to be filed by professional solicitors

1. Content of report. A professional solicitor ~~or professional fund-raising counsel~~ licensed pursuant to section 5008-A shall submit to the director an annual fund-raising activity report that reflects data from the licensee's preceding fiscal year, on a form prescribed by the director, as part of its application for license renewal. The report must state, at a minimum, the following:

- A. The name, mailing address, telephone number and license number of the licensee making the report;
- B. The name, mailing address, telephone number and license number of each charitable organization with which the licensee contracted to solicit contributions in this State ~~or to plan, manage, advise or provide consultation services with respect to the solicitation of contributions in this State;~~
- C. The total dollar amount of contributions raised in this State during each fund-raising campaign and for the year;
- D. The total dollar amount of contributions raised in this State that was actually received and retained by the charitable organization from each fund-raising campaign and for the year; and
- E. The total dollar amount attributable to contributions raised in this State that was retained by or paid to the licensee from each fund-raising campaign and for the year.

2. Failure to file; discrepancies. Failure to file the annual fund-raising activity report required under this section or filing a report that contains discrepancies between that report and the report submitted by the charitable organization with which the

professional solicitor ~~or professional fund-raising counsel~~ has contracted may result in disciplinary action as provided under Title 10, section 8003, subsection 5-A. To resolve a disagreement between reports, the director may require the professional solicitor ~~or professional fund-raising counsel~~ to submit an annual fund-raising activity report according to a fiscal year other than the professional solicitor's ~~or professional fund-raising counsel's~~ fiscal year.

3. Contracting with unlicensed charitable organization. A person may not contract with an unlicensed charitable organization for the solicitation of funds from the State's residents. A violation of this subsection may result in disciplinary action as provided under Title 10, section 8003, subsection 5-A.

Sec. 15. 9 MRSA §5009, as repealed and replaced by PL 2013, c. 313, §18, is amended to read:

§5009. Retention of contracts

All contracts entered into between a professional solicitor ~~or professional fund-raising counsel~~ and a charitable organization, ~~whether or not the organization is exempted under section 5006~~, must be in writing.

Contracts must be kept on file in the offices of the charitable organization and the professional solicitor ~~or professional fund-raising counsel~~ during the term of the contract and for 3 years after the date of solicitation of contributions provided for in the contract and must be made available for inspection by or production to the Attorney General or the director during that time.