

CHARITABLE SOLICITATIONS ACT

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill exempts certain museums from Title 13, Chapter 22, Charitable Solicitations Act.

Highlighted Provisions:

This bill:

- ▶ defines "museum";
- ▶ exempts certain museums from Title 13, Chapter 22, Charitable Solicitations Act;

and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-22-2, as last amended by Laws of Utah 2001, Chapter 210

13-22-8, as last amended by Laws of Utah 2004, Chapter 55

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section 13-22-2 is amended to read:

29 **13-22-2. Definitions.**

30 As used in this chapter:

31 (1) (a) "Charitable organization" or "organization" means any person, joint venture,
32 partnership, limited liability company, corporation, association, group, or other entity:

33 (i) that is or holds itself out to be:

34 (A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic,
35 religious or eleemosynary, social welfare or advocacy, public health, environmental or
36 conservation, or civic organization;

37 (B) for the benefit of a public safety, law enforcement, or firefighter fraternal
38 association; or

39 (C) established for any charitable purpose;

40 (ii) who solicits or obtains contributions solicited from the public for a charitable
41 purpose; or

42 (iii) in any manner employs a charitable appeal as the basis of any solicitation or
43 employs an appeal that reasonably suggests or implies that there is a charitable purpose to any
44 solicitation.

45 (b) "Charitable organization" includes a "chapter," "branch," "area," "office," or similar
46 "affiliate" or any person soliciting contributions within the state for a charitable organization
47 that has its principal place of business outside the state.

48 (2) "Charitable purpose" means any benevolent, educational, philanthropic, humane,
49 patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental,
50 conservation, civic, or other charitable objective or for the benefit of a public safety, law
51 enforcement, or firefighter fraternal association.

52 (3) "Charitable solicitation" or "solicitation:"

53 (a) means any request, directly or indirectly, for money, credit, property, financial
54 assistance, or any other thing of value on the plea or representation that it will be used for a
55 charitable purpose[. ~~A charitable solicitation may be~~]; and

56 (b) includes a solicitation made in any manner, including:

57 ~~(a)~~ (i) any oral or written request, including any request by telephone, radio or
58 television, or other advertising or communications media;

59 ~~[(b)]~~ (ii) the distribution, circulation, or posting of any handbill, written advertisement,
60 or publication; or

61 ~~[(c)]~~ (iii) the sale of, offer or attempt to sell, or request of donations in exchange for
62 any advertisement, book, card, chance, coupon, device, magazine, membership, merchandise,
63 subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or
64 any other article in connection with which any appeal is made for any charitable purpose, or the
65 use of the name of any charitable organization or movement as an inducement or reason for
66 making any purchase donation, or, in connection with any sale or donation, stating or implying
67 that the whole or any part of the proceeds of any sale or donation will go to or be donated to
68 any charitable purpose.

69 (4) "Charitable sales promotion" means an advertising or sales campaign, conducted by
70 a commercial co-venturer, which represents that the purchase or use of goods or services
71 offered by the commercial co-venturer will benefit, in whole or in part, a charitable
72 organization or purpose.

73 (5) "Commercial co-venturer" means a person who for profit is regularly and primarily
74 engaged in trade or commerce other than in connection with soliciting for charitable
75 organizations or purposes.

76 (6) (a) "Contribution" means the pledge or grant for a charitable purpose of any money
77 or property of any kind, including any of the following:

78 (i) a gift, subscription, loan, advance, or deposit of money or anything of value;

79 (ii) a contract, promise, or agreement, express or implied, whether or not legally
80 enforceable, to make a contribution for charitable purposes; and

81 (iii) fees, dues, or assessments paid by members, when membership is conferred solely
82 as consideration for making a contribution.

83 (b) "Contribution" does not include:

84 (i) money loaned to a charitable organization by a financial institution in the ordinary
85 course of business; or

86 (ii) fees, dues, or assessments paid by members when membership is not conferred
87 solely as consideration for making a contribution.

88 (7) "Contributor" means any donor, pledgor, purchaser, or other person who makes a
89 contribution.

90 (8) "Director" means the director of the Division of Consumer Protection.

91 (9) "Division" means the Division of Consumer Protection of the Department of
92 Commerce.

93 (10) "Material fact" means information that a person of ordinary intelligence and
94 prudence would consider relevant in deciding whether or not to make a contribution in
95 response to a charitable solicitation.

96 (11) "Museum":

97 (a) means a building, place, or institution the primary purpose of which is the
98 acquisition, conservation, study, exhibition, or educational interpretation of objects having
99 scientific, historical, or artistic value; and

100 (b) includes an historical society.

101 [~~(11)~~] (12) (a) "Professional fund raiser," except as provided in Subsection [~~(11)~~]

102 (12)(b), means any person who:

103 (i) for compensation or any other consideration solicits contributions for charitable
104 purposes, or plans or manages the solicitation of contributions for or on behalf of any
105 charitable organization or any other person;

106 (ii) engages in, or who holds himself out to persons in this state as being independently
107 engaged in, the business of soliciting contributions for a charitable organization;

108 (iii) manages, supervises, or trains any solicitor whether as an employee or otherwise;

109 or

110 (iv) uses a vending device or vending device decal for financial or other consideration
111 that implies a solicitation of contributions or donations for any charitable organization or
112 charitable purposes.

113 (b) "Professional fund raiser" does not include a bona fide officer, director, volunteer,
114 or full-time employee of a charitable organization.

115 [~~(12)~~] (13) (a) "Professional fund raising counsel or consultant" or other comparable
116 designation or title means a person who:

117 (i) for compensation plans, manages, advises, counsels, consults, or prepares material
118 for, or with respect to, the solicitation in this state of contributions for a charitable
119 organization, whether or not at any time the person has custody of contributions from a
120 solicitation;

121 (ii) does not solicit contributions; and
 122 (iii) does not employ, procure, or engage any compensated person to solicit or receive
 123 contributions.

124 (b) "Professional fund raising counsel or consultant" does not include an attorney,
 125 investment counselor, or banker who in the conduct of that person's profession advises a client
 126 when actually engaged in the giving of legal, investment, or financial advice.

127 ~~[(13)]~~ (14) "Vending device":

128 (a) means a container used by a charitable organization or professional fund raiser, for
 129 the purpose of collecting a charitable solicitation, contribution, or donation whether or not the
 130 device offers a product or item in return for the contribution or donation~~["Vending device"]~~;
 131 and

132 (b) includes ~~[machines, boxes, jars, wishing wells, barrels]~~ a machine, box, jar,
 133 wishing well, barrel, or any other container.

134 ~~[(14)]~~ (15) "Vending device decal" means any decal, tag, or similar designation
 135 material that is attached to a vending device, whether or not used or placed by a charitable
 136 organization or professional fund raiser, ~~[that would indicate]~~ indicating that all or a portion of
 137 the proceeds from the purchase of ~~[items]~~ an item from the vending device will go to a specific
 138 charitable organization.

139 Section 2. Section **13-22-8** is amended to read:

140 **13-22-8. Exemptions.**

141 (1) Section 13-22-5 does not apply to:

142 (a) a solicitation that an organization conducts among its own established and bona fide
 143 membership exclusively through the voluntarily donated efforts of other members or officers of
 144 the organization;

145 (b) a bona fide religious, ecclesiastical, or denominational organization if:

146 (i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;
 147 and

148 (ii) the organization is either:

149 (A) a lawfully organized corporation, institution, society, church, or established
 150 physical place of worship, at which nonprofit religious services and activities are regularly
 151 conducted and carried on;

- 152 (B) a bona fide religious group:
- 153 (I) that does not maintain specific places of worship;
- 154 (II) that is not subject to federal income tax; and
- 155 (III) not required to file an IRS Form 990 under any circumstance; or
- 156 (C) a separate group or corporation that is an integral part of an institution that is an
- 157 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported
- 158 by funds solicited outside its own membership or congregation;
- 159 (c) a solicitation by a broadcast media owned or operated by an educational institution
- 160 or governmental entity, or any entity organized solely for the support of that broadcast media;
- 161 (d) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any
- 162 person sustaining a life-threatening illness or injury specified by name at the time of
- 163 solicitation if the entire amount collected without any deduction is turned over to the named
- 164 person;
- 165 (e) a political party authorized to transact its affairs within this state and any candidate
- 166 and campaign worker of the party if the content and manner of any solicitation make clear that
- 167 the solicitation is for the benefit of the political party or candidate;
- 168 (f) a political action committee or group soliciting funds relating to issues or candidates
- 169 on the ballot if the committee or group is required to file financial information with a federal or
- 170 state election commission;
- 171 (g) any school accredited by the state, any accredited institution of higher learning, or
- 172 club or parent, teacher, or student organization within and authorized by the school in support
- 173 of the operations or extracurricular activities of the school;
- 174 (h) a public or higher education foundation established under Title 53A or 53B;
- 175 (i) a television station, radio station, or newspaper of general circulation that donates
- 176 air time or print space for no consideration as part of a cooperative solicitation effort on behalf
- 177 of a charitable organization, whether or not that organization is required to register under this
- 178 chapter;
- 179 (j) a volunteer fire department, rescue squad, or local civil defense organization whose
- 180 financial oversight is under the control of a local governmental entity;
- 181 (k) any governmental unit of any state or the United States; ~~and~~
- 182 (l) any corporation:

- 183 (i) established by an act of the United States Congress; and
- 184 (ii) that is required by federal law to submit an annual report:
 - 185 (A) on the activities of the corporation, including an itemized report of all receipts and
 - 186 expenditures of the corporation; and
 - 187 (B) to the United States Secretary of Defense to be:
 - 188 (I) audited; and
 - 189 (II) submitted to the United States Congress[-]; and
 - 190 (m) a museum that is:
 - 191 (i) a nonprofit corporation under Title 16, Chapter 6a, Utah Revised Nonprofit
 - 192 Corporation Act; or
 - 193 (ii) formed by a government entity, as defined in Section 63-93-102.
 - 194 (2) Any organization claiming an exemption under this section bears the burden of
 - 195 proving its eligibility for, or the applicability of, the exemption claimed.
 - 196 (3) Each organization exempt from registration pursuant to this section that makes a
 - 197 material change in its legal status, officers, address, or similar changes shall file a report
 - 198 informing the division of its current legal status, business address, business phone, officers, and
 - 199 primary contact person within 30 days of the change.
 - 200 (4) The division may by rule:
 - 201 (a) require organizations exempt from registration pursuant to this section to file a
 - 202 notice of claim of exemption;
 - 203 (b) prescribe the contents of the notice of claim; and
 - 204 (c) require a filing fee for the notice, as determined under Section 63-38-3.2.

Legislative Review Note
as of 12-12-07 10:05 AM

Office of Legislative Research and General Counsel

H.B. 252 - Charitable Solicitations Act Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will reduce the fee revenue collections from the Commerce Service Fund and ultimately revenue to the General Fund

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$11,000)	(\$11,000)
Total	\$0	\$0	\$0	\$0	(\$11,000)	(\$11,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments or individuals. Certain businesses may be benefit due to being exempted from the organizational registration and regulation process.