Colorado Revised Statutes 2015

TITLE 6

CONSUMER AND COMMERCIAL AFFAIRS

ARTICLE 16

Colorado Charitable Solicitations Act

6-16-101. Short title. This article shall be known and may be cited as the "Colorado Charitable Solicitations Act".

6-16-102. Legislative declaration. The general assembly hereby finds that fraudulent charitable solicitations are a widespread practice in this state that results in millions of dollars of losses to contributors and legitimate charities each year. Legitimate charities are harmed by such fraud because the money available for contributions continually is being siphoned off by fraudulent charities, and the goodwill and confidence of contributors continually is being undermined by the practices of unscrupulous solicitors. The general assembly further finds that legitimate charities provide many public benefits and that charitable donations are a direct result of public trust in charities. The general assembly therefore finds that the provisions of this article, including those involving pertinent information to be filed in a timely manner by charitable organizations and disclosures to be made by paid solicitors, are necessary to protect the public's interest in making informed choices as to which charitable causes should be supported. Furthermore, these provisions are intended to help the secretary of state investigate allegations of wrongdoing in charities, without having a chilling effect on donors who wish to give anonymously or requiring public disclosure of confidential information about charities.

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

(1) "Charitable organization" means any person who is or holds himself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, any person who operates for the benefit of the objectives of law enforcement officers, firefighters, other persons who protect the public safety, or veterans, or any person who in any manner employs a charitable appeal or an appeal which suggests that there is a charitable purpose as the basis for any solicitation. "Charitable organization" does not include the department of revenue collecting voluntary contributions for organ and tissue donations under the provisions of sections 42-2-107 (4) (b) (V) and 42-2-118 (1) (a) (II), C.R.S.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane,

scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, any objective of law enforcement officers, firefighters, other persons who protect the public safety, or veterans, or any objective of sponsoring the free or subsidized attendance of persons at any event.

(3) "Charitable sales promotion" means an advertising or sales campaign which is conducted by a commercial coventurer and which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.

(4) "Commercial coventurer" means a person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.

(5) "Contribution" means the grant, promise, or pledge of money, credit, property, financial assistance, or any other thing of value in response to a solicitation. "Contribution" does not include voluntary contributions for organ and tissue donations under the provisions of sections 42-2-107 (4) (b) (V) and 42-2-118 (1) (a) (II), C.R.S., and bona fide fees, dues, or assessments paid by members of a charitable organization if membership is not conferred primarily as consideration for making a contribution in response to a solicitation.

(6) Repealed.

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

(a) A person whose sole responsibility is to print or mail fund-raising literature;

(b) A lawyer, investment counselor, or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering such professional services or advice to the charitable organization or person;

(c) A bona fide volunteer;

(d) A director, officer, or compensated employee who is directly employed by a charitable organization which, at the time of the solicitation, had received a determination letter from the internal revenue service granting the organization tax-exempt status pursuant to 26 U.S.C. sec. 501 (c) (3), (c) (4), (c) (8), (c) (10), or (c) (19). For purposes of this paragraph (d), such a determination letter shall not have retroactive effect.

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

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

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

(8) "Person" means an individual, a corporation, an association, a partnership, a trust, a foundation, or any other entity however organized or any group of individuals associated in fact but not a legal entity.

(9) Repealed.

(9.3) "Professional fundraising consultant" means any person, other than a bona fide officer or regular employee of a charitable organization, who is retained by a charitable organization for a fixed fee or rate under a written agreement to plan, manage, advise, consult, or prepare material for or with respect to the solicitation in this state of contributions for a charitable organization but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions. No lawyer, investment counselor, or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to the person shall be deemed, as a result of such professional services or advice, to be a "professional fundraising consultant".

(9.5) "Records" means books, financial statements, papers, correspondence, memoranda, agreements, or other documents or records that the secretary of state deems relevant or material to an inquiry.

(10) "Solicit" or "solicitation" means to request, or the request for, directly or indirectly, money, credit, property, financial assistance, or any other thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value, or any portion thereof, will be used for a charitable purpose or will benefit a charitable organization. The term "solicit" or "solicitation" shall include, but need not be limited to, the following methods of requesting or securing such money, credit, property, financial assistance, or other thing of value:

(a) Any oral or written request; or

(b) Any sale or attempted sale of or any offer to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in which any appeal is made for any charitable organization or purpose, or for which the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or for which any statement is made that the proceeds or any portion thereof from such sale will be used for any charitable purpose or will benefit any charitable organization. A "solicitation" shall be deemed to have taken place whether or not the person making the "solicitation" receives any contribution.

(11) "Solicitation campaign" means a series of solicitations which are made by the same person and which are similar in content or are based on a similar pitch or sales approach, which series leads up to or is represented to lead up to an event or lasts or is intended to last for a definite period of time. If the series of solicitations lasts or is intended to last for an indefinite period of time or for more than one year, a "solicitation campaign" means all similar solicitations made by the same person occurring within a particular calendar year.

(11.5) "Suspend" means that a charitable organization, professional fund-raising consultant, or paid solicitor is prohibited from soliciting contributions, providing consulting services in connection with a solicitation campaign, or conducting a solicitation campaign in Colorado.

(12) "Volunteer" means a person who renders services to a charitable organization or for a charitable purpose and who neither receives nor is expressly or impliedly promised financial

remuneration for said services.

6-16-104. Charitable organizations - initial registration - annual filing - fees. (1) Every charitable organization, except those exempted under subsection (6) of this section, that intends to solicit contributions in this state by any means or to have contributions solicited in this state on its behalf by any other person or entity or that participates in a charitable sales promotion shall, prior to engaging in any of these activities, file a registration statement with the secretary of state upon a form prescribed by the secretary of state. Each chapter, branch, or affiliate of a charitable organization that is required to file a registration statement under this section either shall file a separate registration statement or shall report the necessary information to its parent charitable organization, which then shall file a consolidated registration statement.

(2) The registration statement must be signed and sworn to under oath by an officer of the charitable organization, which may include its chief fiscal officer, and must contain the following information:

(a) The name of the charitable organization, the purpose for which it is organized, and the name or names under which it intends to solicit contributions;

(b) The address and telephone number of the principal place of business of the charitable organization and the address and telephone number of any offices in this state, or, if the charitable organization does not maintain an office in this state, the name, address, and telephone number of the person that has custody of its financial records;

(c) The names and titles of the officers, directors, trustees, and executive personnel of the charitable organization;

(d) The last day of the fiscal year of the charitable organization;

(e) The place and date when the charitable organization was legally established, the form of its organization, and its tax-exempt status;

(f) A financial report for the most recent fiscal year, upon a form prescribed by the secretary of state, or, in the discretion of the secretary of state, a copy of the charitable organization's federal form 990, with all schedules except schedules of donors, for the most recent fiscal year. If, at the time of the initial registration, the charitable organization does not have the required financial report or form 990 for the most recent fiscal year, the charitable organization shall submit a financial report or form 990 for the most recent fiscal year in which such information is available. An organization that was first legally established within the past year and thus does not have financial information or a form 990 for its most recent fiscal year shall provide to the secretary of state a financial report based on good faith estimates for its current fiscal year on a form prescribed by the secretary of state. Any organization that files a good faith estimate for its first fiscal year shall amend its initial registration statement to report actual financial information on or before the earlier of the fifteenth day of the eighth month after the close of the organization's first fiscal year or the date authorized for filing a form 990 with the internal revenue service.

(g) The names and addresses of any paid solicitors, professional fundraising consultants, and commercial coventurers who are acting or have agreed to act on behalf of the charitable organization. If the paid solicitor, professional fundraising consultant, or commercial coventurer

is a partnership, corporation, limited liability company, or other legal entity, the charitable organization shall list only the name and address of the legal entity.

(3) The secretary of state may promulgate rules concerning the acceptance of a uniform multistate registration statement, such as a unified registration statement, in lieu of the registration statement described in subsection (2) of this section. As soon as practicable, the secretary of state shall take steps to cooperate in a joint state and federal electronic filing project involving state charity offices and the internal revenue service to enable and promote electronic filing of uniform multistate registration statements and federal annual information returns.

(4) The registration of a charitable organization shall be amended annually, on forms prescribed by the secretary of state, to reflect any changes of name, address, principals, corporate forms, tax status, and any other changes that materially affect the identity or business of the charitable organization. Annual amendments shall be filed at the same time as and together with any financial report required in subsection (5) of this section regardless of when the charitable organization filed its initial registration pursuant to subsection (1) of this section.

(5) Every charitable organization required to register under this section shall annually file with the secretary of state a financial report for the most recent fiscal year on a form prescribed by the secretary of state, or, in the discretion of the secretary of state, a copy of the charitable organization's federal form 990, with all schedules except schedules of donors, for the most recent fiscal year. The financial report must be filed on or before the earlier of the fifteenth day of the eighth calendar month after the close of each fiscal year in which the charitable organization solicited in this state or the date authorized for filing a form 990 with the internal revenue service. A charitable organization that is unable to file a copy of its form 990 return or the secretary of state's financial form by the prescribed deadline may request an extension of the filing deadline from the secretary of state. The secretary of state, upon receipt of an application to extend the filing deadline, may grant a three-month extension of time to file the financial report. All such requests must be in a form prescribed by the secretary of state and must include a statement describing in detail the reasons causing the delay in filing the financial report and an affirmation that the charitable organization has filed with the internal revenue service an application for a corresponding extension of time to file the organization's form 990. Upon request, the charitable organization shall provide the secretary of state with a copy of its application for extension of time to file with the internal revenue service in order to verify the date authorized for filing its form 990 with the internal revenue service.

(6) The following are not required to file a registration statement:

(a) Persons that are exempt from filing a federal annual information return pursuant to 26 U.S.C. sec. 6033 (a) (3) (A) (i), (a) (3) (A) (iii), or (a) (3) (C) (i) or pursuant to 26 CFR 1.6033-2 (g) (1) (i) to (g) (1) (iv) or (g) (1) (vii);

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

(c) Charitable organizations that do not intend to and do not actually raise or receive gross revenue, excluding grants from governmental entities or from organizations exempt from federal taxation under section 501(c) (3) of the federal "Internal Revenue Code of 1986", as amended, in excess of twenty-five thousand dollars during a fiscal year or do not receive contributions from more than ten persons during a fiscal year. The exemption authorized in this

paragraph (c) shall not apply to a charitable organization that has contracted with a paid solicitor to solicit contributions in this state for the organization.

(d) Persons exclusively making appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of the specified individual.

(7) Filing fees for the annual registration of a charitable organization and for amendments thereto shall be established by the secretary of state in an amount that reflects the costs of the secretary of state in administering the provisions of this article. All such fees collected shall be deposited in the department of state cash fund created in section 24-21-104 (3) (b), C.R.S.

(8) The secretary of state shall examine each registration to determine whether the applicable requirements of this section are satisfied. The secretary of state shall notify the charitable organization within ten days after receipt of its application of any deficiencies therein, otherwise the registration shall be deemed approved as filed. The secretary of state shall issue each approved applicant a registration number.

(9) No charitable organization that is required to register under this article shall:

(a) Prior to registration, solicit contributions in this state by any means, have contributions solicited in this state on its behalf by any other person or entity, or participate in a charitable sales promotion; or

(b) Aid, abet, or otherwise permit any paid solicitor to solicit contributions on its behalf in this state unless the paid solicitor soliciting contributions has complied with the requirements of this article.

(10) All information filed pursuant to this section, except for residential addresses and telephone numbers of individuals, account numbers at banks or other financial institutions, and schedules of contributors listed on the federal form 990 or its equivalent, is a public record for purposes of the public records law, part 2 of article 72 of title 24, C.R.S.

6-16-104.3. Professional fundraising consultants - annual registration - fees. (1) No person shall act as a professional fundraising consultant without first complying with the requirements of this section.

(2) Every contract between a professional fundraising consultant and a charitable organization or sponsor shall be in writing and signed by an authorized official of the charitable organization. The professional fundraising consultant shall provide a copy of the contract to the charitable organization prior to the performance of any material services under the contract and shall make a copy of the contract available to the secretary of state upon request. The contract shall contain all of the following provisions:

(a) A statement of the charitable purpose for which the solicitation campaign is being conducted;

(b) A statement of the respective obligations of the professional fundraising consultant and the charitable organization;

(c) Whether the professional fundraising consultant will at any time have custody or control of contributions;

(d) A clear statement of the fees that will be paid to the professional fundraising consultant or, if the fees are to be calculated based on a percentage of contributions or other formula, a clear statement of the percentage or other formula; and

(e) The effective and termination dates of the contract.

(3) A professional fundraising consultant who at any time has or will have custody or control of contributions from a solicitation conducted on behalf of a charitable organization in this state shall also comply with the registration requirements of this section before performing any material services with respect to such solicitation.

(4) Applications for registration or renewal of registration shall be submitted on a form prescribed by the secretary of state, shall be signed under oath, and shall include the following information:

(a) The address and telephone number of the principal place of business of the applicant and the address and telephone number of any office located in this state if the principal place of business is located outside the state;

(a.5) The form of the applicant's business and, if the applicant is not an individual, the place and date when the applicant was incorporated or otherwise legally established;

(b) The name, address, and telephone number of the person that has custody of the applicant's financial records;

(c) If the applicant is not an individual, the names and addresses of the owners, officers, and executive personnel of the applicant;

(d) Whether the applicant or any of its owners, officers, directors, trustees, or employees have, within the immediately preceding five years, been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, and if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense;

(e) Whether the applicant or any of its owners, officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation or from engaging in charitable solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction;

(f) Whether the applicant is registered with or otherwise authorized by any other state to act as a professional fundraising consultant; and

(g) Whether the applicant has had such registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state.

(5) The application for registration or for renewal shall be accompanied by the fee established pursuant to subsection (12) of this section. A professional fundraising consultant that is a partnership, corporation, or limited liability company may register for and pay a single fee on behalf of all its partners, members, officers, directors, agents, and employees. In such case, the names and street addresses of all the partners, members, officers, directors, employees, and agents of the fundraising consultant and all other persons with whom the fundraising consultant has contracted to work under its direction shall be listed in the application or furnished to the

secretary of state within five days after the date of employment or contractual arrangement.

(6) Each registration is valid for a period of one year and may be renewed, on or before the anniversary date, for an additional one-year period upon application to the secretary of state and payment of the registration fee. Any material changes to the information contained in the application for registration shall be reported in writing to the secretary of state within thirty days.

(7) The secretary of state shall examine each registration to determine whether the applicable requirements of this section are satisfied. The secretary of state shall notify the applicant within ten days after receipt of its application of any deficiencies therein, otherwise the application shall be deemed approved as filed. The secretary of state shall issue each approved applicant a registration number.

(8) If a professional fundraising consultant will have custody of any contribution received during a solicitation campaign, each such contribution shall be deposited within two business days after its receipt in an account at a bank or other federally insured financial institution. The account shall be in the name of the charitable organization with whom the professional fundraising consultant has contracted, and the charitable organization shall have sole control over all withdrawals from the account.

(9) Within ninety days after a solicitation campaign has been concluded, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional fundraising consultant shall provide to the charitable organization a financial report of the campaign, including gross proceeds and an itemization of all expenses or disbursements for any purpose. The report shall be signed by the professional fundraising consultant or, if the professional fundraising consultant is not an individual, by an authorized officer or agent of the professional fundraising consultant, who shall certify that the financial report is true and complete to the best of the person's knowledge. The professional fundraising consultant shall provide a copy of the report to the secretary of state upon request.

(10) No person may act as a professional fundraising consultant and no professional fundraising consultant required to be registered under this section shall knowingly employ any person as an officer, trustee, director, or employee if such person, within the immediately preceding five years, has been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, or has been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to charitable solicitations.

(11) Information filed pursuant to this section, except for residential addresses and telephone numbers of individuals and account numbers at banks or other financial institutions, is a public record for purposes of the public records law, part 2 of article 72 of title 24, C.R.S.

(12) Filing fees for the annual registration of a professional fundraising consultant and for amendments thereto shall be established by the secretary of state in an amount that reflects the costs of the secretary of state in administering the provisions of this article. All such fees collected shall be deposited in the department of state cash fund created in section 24-21-104 (3)

(b), C.R.S.

6-16-104.5. Additional reporting requirements. (Repealed)

6-16-104.6. Paid solicitors - annual registration - filing of contracts - fees. (1) (a) No person shall act as a paid solicitor without first complying with the requirements of this section.

(b) Every paid solicitor shall register in accordance with subsection (3) of this section before soliciting contributions in this state.

(2) Every contract between a paid solicitor and a charitable organization or sponsor for each solicitation campaign shall be in writing and shall be signed by an authorized official of the charitable organization or sponsor, who shall be a member of the organization's governing body, and by the paid solicitor if the paid solicitor is an individual or by the authorized contracting officer for the paid solicitor if the paid solicitor is not an individual. The paid solicitor shall provide a copy of the contract to the charitable organization prior to the performance of any material services under the contract and shall make a copy of the contract available to the secretary of state upon request. The contract shall contain all of the following provisions:

(a) A statement of the charitable purpose for which the solicitation campaign is being conducted;

(b) A statement of the respective obligations of the paid solicitor and the charitable organization;

(c) A statement of the specified minimum percentage, if any, of the gross receipts from contributions that will be remitted to the charitable organization, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the specified minimum percentage, if any, of the purchase price that will be remitted to the charitable organization. Any stated percentage shall exclude any amount payable by the charitable organization as fundraising costs.

(d) A statement of the specified percentage, if any, of gross revenue that constitutes the paid solicitor's compensation. If the paid solicitor's compensation is not contingent upon the number of contributions or the amount received, the paid solicitor's compensation shall be expressed as a reasonable estimate of the percentage of gross revenue, and the contract shall clearly disclose the assumptions upon which such estimate is based. The stated assumptions shall be based upon all the relevant facts known to the paid solicitor regarding the solicitation to be conducted.

(e) The effective and termination dates of the contract.

(3) Applications for registration or renewal of registration shall be submitted on a form prescribed by the secretary of state, shall be signed under oath, and shall include the following information:

(a) The address and telephone number of the principal place of business of the applicant and the address and telephone number of any office located in this state if the principal place of business is located outside the state;

(b) The form of the applicant's business and, if the applicant is not an individual, the place and date when the applicant was incorporated or otherwise legally established;

(c) The name, address, and telephone number of the person that has custody of the applicant's financial records;

(d) If the applicant is not an individual, the names and addresses of the owners, officers, and executive personnel of the applicant;

(e) The names of all persons in charge of any solicitation activity conducted in this state by the applicant or on the applicant's behalf;

(f) Whether the applicant, any person with a controlling interest in the applicant, or any of the applicant's owners, officers, directors, trustees, employees, or agents has, within the immediately preceding five years, been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, and if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense;

(g) Whether the applicant or any of its owners, officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction;

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

(i) Whether the applicant has had such registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state.

(4) The application for registration or for renewal shall be accompanied by the fee established pursuant to subsection (12) of this section. A paid solicitor that is a partnership, corporation, or limited liability company may register for and pay a single fee on behalf of all its partners, members, officers, directors, agents, and employees. In such case, the names and street addresses of all the partners, members, officers, directors, employees, and agents of the paid solicitor and all other persons with whom the paid solicitor has contracted to work under its direction shall be listed in the application or furnished to the secretary of state within five days after the date of employment or contractual arrangement.

(5) Each registration is valid for a period of one year and may be renewed, on or before the anniversary date, for an additional one-year period upon application to the secretary of state and payment of the registration fee. Any material changes to the information contained in the application for registration shall be reported in writing to the secretary of state within thirty days.

(6) The secretary of state shall examine each registration to determine whether the applicable requirements of this section are satisfied. The secretary of state shall notify the applicant within ten days after receipt of its application of any deficiencies therein, otherwise the application shall be deemed approved as filed. The secretary of state shall issue each approved applicant a registration number.

(7) No later than fifteen days before the commencement of a solicitation campaign, the paid solicitor shall file with the secretary of state a completed solicitation notice, on forms prescribed by the secretary of state, containing the following information:

(a) A summary of the governing contract, as specified in subsection (2) of this section;

(b) The full legal name and address of the paid solicitor who will be conducting the solicitation campaign and the full legal name and address of each person responsible for directing and supervising the conduct of the campaign;

(c) A statement, in accordance with section 6-16-111 (1) (f) and (1) (g), of the nature of the intended solicitation campaign, including the means of communication to be used in the campaign, the projected commencement and conclusion dates of the campaign, and a description of any event the campaign will lead up to;

(d) A full and fair statement, in accordance with section 6-16-111 (1) (f) and (1) (g), of the charitable purpose for which the solicitation campaign is being carried out;

(e) Each location and telephone number, if applicable, from which the solicitation is to be conducted;

(f) A statement as to whether the paid solicitor will at any time have custody of contributions;

(g) The account number and location of each bank account where receipts from the campaign are to be deposited;

(h) The address where records and accounting concerning the solicitation campaign are being kept; and

(i) A certification statement, signed by an officer of the charitable organization on the behalf of whom the solicitation campaign is to occur, stating that the solicitation notice and accompanying material are true and complete to the best of his or her knowledge.

(8) If a paid solicitor will have custody of any monetary contribution received during a solicitation campaign, each such contribution must be deposited within two business days after its receipt in an account at a bank or other federally insured financial institution. The account must be in the name of the charitable organization with whom the paid solicitor has contracted, and the charitable organization must have sole control over all withdrawals from the account.

(9) Within ninety days after a solicitation campaign has been concluded, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the paid solicitor shall provide to the charitable organization and file with the secretary of state a financial report of the campaign, including gross proceeds and an itemization of all expenses or disbursements for any purpose. The report shall be on a form prescribed by the secretary of state and shall be signed by the paid solicitor, or, if the paid solicitor is not an individual, by an authorized official of the paid solicitor, and by an authorized official of the charitable organization. The persons signing the report shall certify that the financial report is true and complete to the best of their knowledge.

(10) No person may act as a paid solicitor and no paid solicitor required to be registered under this section shall knowingly employ any person as an officer, trustee, director, or employee if such person, within the immediately preceding five years, has been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, or has been enjoined within the immediately preceding five years under the laws of this or

any other state or of the United States from engaging in deceptive conduct relating to charitable solicitations.

(11) Information filed pursuant to this section, except for residential addresses and telephone numbers of individuals and account numbers at banks or other financial institutions, is a public record for purposes of the public records law, part 2 of article 72 of title 24, C.R.S.

(12) Filing fees for the annual registration of a paid solicitor, amendments thereto, solicitation notices, and financial reports shall be established by the secretary of state in amounts that reflects the costs of the secretary of state in administering the provisions of this article. All such fees collected shall be deposited in the department of state cash fund created in section 24-21-104 (3) (b), C.R.S.

6-16-105. Written confirmation of contribution - disclosures. (1) A paid solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise must furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, which confirmation shall contain the following information clearly and conspicuously:

(a) The full legal name, address, telephone number, and registration number of the employer of the individual paid solicitor who directly communicated with the contributor;

(b) A disclosure that the contribution is not tax-deductible, if such disclosure is applicable, or, if the solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the solicitor maintains is tax-deductible;

(c) A disclosure in capital letters of no less than ten-point, bold-faced type identifying the paid solicitor as a paid solicitor and containing the statement: "Registration by the secretary of state is not an endorsement of either the paid solicitor or the organization or cause the solicitor represents.";

(d) The address and telephone number of the telephone room or other location from which the solicitation has been or is being conducted if such information is different than that which is provided pursuant to paragraph (a) of this subsection (1); except that this information is not required to be provided if telephone solicitations are being conducted from more than one location and from the residences of the individual paid solicitor;

(e) The name, address, telephone number, and registration number of any charitable organization connected with the solicitation or any organization the name or symbol of which has been used in aid of or in the course of such solicitation;

(f) The amount of any expected monetary contribution;

(g) The name and address of the contributor, as well as the date of the individual solicitation, or spaces where this information may be filled in by the contributor;

(h) A statement that Colorado residents may obtain copies of registration and financial documents from the office of the secretary of state, with the web site address for obtaining such documents from the secretary of state.

(2) If the contributor is absent when the contribution is to be collected, the paid solicitor may comply with subsection (1) of this section by furnishing the written confirmation in a manner previously agreed upon between said solicitor and the contributor.

(3) Except for the amount of the expected contribution, a written solicitation shall contain the same information as is required in subsection (1) of this section.

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

(a) A statement that the person soliciting the charitable contribution by telephone is paid to make such solicitation;

(b) The name of the telemarketing company that employs the paid solicitor;

(c) The name and telephone number of the charitable organization on whose behalf the paid solicitor is making the solicitation;

(d) (Deleted by amendment, L. 2001, p. 1247, § 5, effective May 9, 2002.)

(d.5) The first name and surname of the paid solicitor, which must be given in the opening greeting;

(e) A statement, which must be made prior to the person's agreement to make a contribution, that the charitable contribution is not tax deductible, if such is the case;

(f) Upon request by a person from whom a charitable contribution is sought, the percentage of the contribution that will be paid to the charitable organization as a result of such person's contribution; and

(g) Upon request by a person from whom a charitable contribution is sought, the registration numbers of the charitable organization and the paid solicitor.

(2) A volunteer as defined in section 6-16-103 (12) who makes an oral solicitation to any person by a telephone call received in Colorado regarding a charitable contribution is subject to the disclosure required under paragraph (e) of subsection (1) of this section.

(3) Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening any state or federal law or regulation regarding charitable solicitations.

6-16-105.5. Solicitations by container - disclosures. (1) (a) No person or charitable organization, or agent of a person or charitable organization, whether paid or not paid, shall place any container offering a product for sale or distribution in a public place for solicitation purposes unless the container is affixed with a disclosure label conspicuously displaying the information set forth in subsection (2) of this section in a typed or printed clearly legible form.

(b) (I) A person other than an organization that has received a determination that it is exempt under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, who places a container in a public place for solicitation purposes and who does not direct all of the items placed in the container to a charitable purpose or, if the items are sold, does not direct all proceeds of such sale to a charitable purpose, shall affix to the container a disclosure label that clearly and conspicuously displays the following legend:

DONATED ITEMS WILL BE SOLD FOR PROFIT

The value of items placed in this container is NOT tax-deductible.

(II) This paragraph (b) shall not apply to containers used exclusively for the collection of used paper, cardboard, motor oil, bottles, cans, or other containers or materials for recycling or waste diversion purposes.

(2) The disclosure label required pursuant to paragraph (a) of subsection (1) of this section shall state the following:

(a) The percentage of annual contributions that are paid to any person or organization to maintain, service, or collect the contributions deposited in all the containers used by the person or charitable organization;

(b) The percentage of annual contributions that are paid to the charitable organization specified on the container;

(c) Whether the person maintaining, servicing, or collecting the contributions deposited in the container is a volunteer or is paid for the services.

(3) For purposes of this section, "container" means a box, carton, package, receptacle, canister, jar, dispenser, or machine.

(4) Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening any state or federal law or regulation regarding charitable solicitations.

6-16-106. Contributor's right to cancel. (1) In addition to any right otherwise provided by law with respect to the binding nature of an agreement or pledge to make a charitable contribution, a contributor shall have the right to cancel his agreement or pledge to contribute as follows:

(a) With respect to a solicitation in which the paid solicitor knowingly fails to comply with this article, at any time; or

(b) Until 12 midnight of the third business day, or with respect to a nonmonetary contribution, until 12 midnight of the first business day after the day on which the contributor receives a written confirmation of contribution pursuant to section 6-16-105.

(2) Cancellation occurs when the contributor gives written or oral notice of the cancellation to the paid solicitor at the address or telephone number stated in the written confirmation of contribution.

(3) Notice of cancellation, if given by mail, is given at the time it is properly addressed and deposited in a mail box with proper postage.

(4) A particular form shall not be required for a notice of cancellation, and such notice shall be sufficient if it indicates the intention of the contributor to cancel his pledge to contribute.

(5) Within ten days after a notification of cancellation has been received by the paid solicitor, the paid solicitor shall tender to the contributor any contribution made and any note or other evidence of indebtedness.

(6) Allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after an agreement or pledge to contribute has been

cancelled, the contributor upon demand must tender to the paid solicitor any goods or items delivered by the paid solicitor in connection with the contribution but shall not be under obligation to tender at any other place than where the goods or items were delivered. If the paid solicitor fails to demand possession of the goods or items within a reasonable time after cancellation, the goods or items become the property of the contributor without obligation to contribute. For purposes of this subsection (6), forty days is presumed to be a reasonable time.

6-16-107. Donated tickets - sponsored attendance. No person, in the course of or in aid of a solicitation, shall represent that a contribution will purchase a ticket or tickets to be donated for use by another, sponsor the attendance of another at an event, or sponsor the receipt of a benefit by another while knowing that the donated tickets or sponsorships will not actually be used or received by the donees or beneficiaries in the quantity represented.

6-16-108. Publications. (Repealed)

6-16-109. Records - accounts. (1) During each solicitation campaign, a paid solicitor shall create and maintain, for not less than two years after the completion of such campaign, the following records:

(a) Copies of all written confirmations or any standardized written confirmations provided pursuant to section 6-16-105;

(b) The name and residence address of each employee, agent, or other person involved in the solicitation as is on record at the time of such solicitation;

(c) The locations and account numbers of all bank or other financial institution accounts into which the paid solicitor has deposited receipts from the solicitation;

(d) Records indicating the quantity of donated tickets or sponsorships, as described in section 6-16-107, which were actually used or received by donees or beneficiaries;

(e) A complete record and accounting of the receipts and disbursements of funds derived from any solicitation campaign. Said record and accounting shall clearly identify any person or organization to whom or to which any part of such funds are transferred and shall describe with specificity the purpose for which any expenditure is made and the amount of each expenditure. Funds spent directly for any charitable purpose or transferred to any charitable organization as represented in the solicitations shall be clearly delineated as such.

(f) All written records relating to pitches, sales approaches, or disclosures used during any solicitation campaign and all instructions provided to paid solicitors concerning the content or solicitations;

(g) All contracts or agreements made with charitable organizations or other represented beneficiaries of solicitations; and

(h) For each contribution, records indicating the name and address of the contributor, the amount of the contribution if monetary, and the date of the contribution, together with the name of the individual paid solicitor who solicited the contribution.

(2) Any person involved in solicitations who claims an exemption from the definition of paid solicitor in section 6-16-103 (7) shall maintain records of ruling letters and other communications from the internal revenue service regarding tax-exempt status. Failure to produce such records on written demand of the district attorney pursuant to section 6-16-111 (1) (e) shall give rise to a rebuttable presumption that the person does not have a ruling letter granting tax-exempt status pursuant to 26 U.S.C. sec. 501 (c) (3).

(3) Repealed.

6-16-110. Charitable sales promotions. (1) The provisions of this article relating to commercial coventurers and charitable sales promotions shall apply only when a commercial coventurer reasonably expects that more than one-half of all proceeds of a solicitation campaign will be derived from transactions within the state of Colorado.

(2) A commercial coventurer shall disclose in each advertisement for a charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose. If the actual dollar amount or percentage cannot reasonably be determined prior to the final date of the charitable sales promotion, the commercial coventurer shall disclose an estimated dollar amount or percentage. Any such estimate shall be reasonable and shall be based upon all of the relevant facts known to the commercial coventurer regarding the charitable sales promotion.

(3) A commercial entity which purchases at wholesale a product which is created, manufactured, or produced by a charitable organization for resale to the general public as part of the commercial entity's general stock of merchandise shall be exempt from the provisions of this article relating to commercial coventurers and charitable sales promotions.

6-16-110.5. Secretary of state - dissemination of information - cooperation with other agencies - rules. (1) The secretary of state shall take steps to:

(a) Publicize the requirements of this article and otherwise assist charitable organizations, professional fundraising consultants, and paid solicitors in complying with this article;

(b) Compile and publish, on an annual basis, the information provided by charitable organizations, professional fundraising consultants, and paid solicitors under this article to assist the public in making informed decisions about charitable solicitation and to assist charitable organizations in making informed decisions about contracting with paid solicitors;

(c) Participate in a national online charity information system as soon as a system is established, if the secretary determines that participation will further advance the purposes of this subsection (1) and subsection (2) of this section.

(2) The secretary of state may exchange with appropriate authorities of this state, any other state, and the United States information with respect to charitable organizations, professional fundraising consultants, commercial coventurers, and paid solicitors.

(3) The secretary of state may promulgate rules as needed for the effective implementation of this article, including:

(a) Providing for the extension of filing deadlines;

(b) Providing for the online availability of forms required to be filed pursuant to sections 6-16-104 to 6-16-104.6;

(c) Providing for the electronic filing of required forms, including the acceptance of electronic signatures;

(d) Mandating electronic filing and providing, in the secretary of state's discretion, for exceptions to mandatory electronic filing; and

(e) Setting fines for noncompliance with this article or rules promulgated pursuant to this article.

6-16-111. Violations. (1) A person commits charitable fraud if he or she:

(a) Knowingly solicits any contribution and in the course of such solicitation knowingly performs any act or omission in violation of any of the provisions of sections 6-16-104 to 6-16-107 and 6-16-110;

(b) Knowingly solicits any contribution and, in aid of or in the course of such solicitation, utilizes the name or symbol of another person or organization without written authorization from such person or organization for such use;

(c) Solicits any contribution and, in aid of or in the course of such solicitation, utilizes a name, symbol, or statement which is closely related or similar to that used by another person or organization with the intent to mislead the person to whom the solicitation is made that said solicitation is on the behalf of or is affiliated with such other person or organization;

(d) With the intent to defraud, knowingly solicits contributions and, in aid of such solicitation, assumes, or allows to be assumed, a false or fictitious identity or capacity, except for a trade name or trademark registered in this state by that person or his employer;

(e) Knowingly fails to create and maintain all records required by section 6-16-109 to be created and maintained or knowingly fails to make available said records for examination and photocopying at the office of the district attorney or at his own office in this state with copying facilities furnished free of charge, within five days after a written demand for the production of said records by the district attorney, or within twenty days with respect to records kept out of state;

(f) Knowingly makes a misrepresentation of a material fact in any notice, report, or record required to be filed, maintained, or created by this article;

(g) With the intent to defraud, devises or executes a scheme or artifice to defraud by means of a solicitation or obtains money, property, or services by means of a false or fraudulent pretense, representation, or promise in the course of a solicitation. A representation may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a material fact.

(h) Represents or causes another to represent that contributions are tax-deductible unless they so qualify under the federal internal revenue code;

(i) Represents or causes another to represent that a contribution to a charitable organization will be used for a purpose other than the purpose for which the charitable organization actually intends to use such contribution;

(j) Represents or causes another to represent that a greater portion of the contribution will go to a charitable organization than the actual portion that will go to such organization;

(k) Represents or causes another to represent that the solicitor is located in a geographic area that is different from the geographic area in which the solicitor is actually located;

(l) Represents or causes another to represent that the solicitor has a sponsorship, approval, status, affiliation, or connection with an organization or purpose that the solicitor does not actually have;

(m) Represents or causes another to represent that the person to whom a solicitation is made is under an obligation to make a contribution;

(n) Represents or causes another to represent that failure to make a contribution will adversely affect the person's credit rating;

(o) Represents or causes another to represent that the person has previously approved or agreed to make a contribution when in fact the person has not given such approval or agreement; or

(p) Represents or causes another to represent that the person has previously contributed to the same organization or for the same purpose when in fact the person has not so contributed.

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

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

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

(2) Any person who commits charitable fraud in violation of paragraph (b), (c), (d), (f), or (g) of subsection (1) of this section is guilty of a class 5 felony, and upon conviction thereof, shall be punished in accordance with section 18-1.3-401, C.R.S.

(3) Any person who commits charitable fraud in violation of paragraph (a), (e), or (h) to (p) of subsection (1) of this section, or of subsection (1.5) of this section, is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished in accordance with section 18-1.3-501, C.R.S.; except that a person who commits a violation of any one or more of said paragraphs with respect to solicitations involving three separate contributors in any one solicitation campaign is guilty of a class 5 felony, and upon conviction thereof, shall be punished in accordance with section 18-1.3-401, C.R.S.

(4) Charitable fraud which is a felony shall be deemed a class 1 public nuisance and subject to the provisions of part 3 of article 13 of title 16, C.R.S.

(5) Violation of any provision of this article also shall constitute a deceptive trade practice in violation of the "Colorado Consumer Protection Act", article 1 of this title, and shall be subject to remedies or penalties, or both, pursuant thereto.

(6) (a) In addition to any other applicable penalty, the secretary of state may deny, suspend, or revoke the registration of any charitable organization, professional fund-raising

consultant, or paid solicitor that makes a false statement or omits material information in any registration statement, annual report, or other information required to be filed by this article or that acts or fails to act in such a manner as otherwise to violate any provision of this article. The secretary of state may also deny, suspend, or revoke the registration of any person who does not meet the requirements for registration set forth in this article.

(b) Upon notice from the secretary of state that a registration has been denied or is subject to suspension or revocation, the aggrieved party may request a hearing. The request for hearing must be made within five calendar days after receipt of notice. Proceedings for any such denial, suspension, or revocation hearing shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.; except that the secretary of state shall promulgate rules to provide for expedited deadlines to govern such proceedings and shall bear the burden of proof. The status quo concerning the ability of the aggrieved party to solicit funds shall be maintained during the pendency of the proceedings. Judicial review shall be available pursuant to section 24-4-106, C.R.S.

(c) In addition to other remedies authorized by law, the secretary of state may bring a civil action in the district court of any judicial district in which venue is proper for the purpose of obtaining injunctive relief against any person who violates, or threatens to violate, the provisions of this article.

(d) The rights and remedies available to the secretary of state pursuant to this subsection (6) shall not affect the rights and remedies available to any other person seeking relief for violations of this article or any other applicable law.

6-16-111.5. Investigations. Whenever the secretary of state or the secretary of state's designee believes that a violation of this article has occurred, the secretary of state or the secretary of state's designee may investigate any such violation. Upon demand, records shall be made available and produced to the secretary of state for inspection. Such records shall not be subject to disclosure pursuant to part 2 of article 72 of title 24, C.R.S.; except that public records about persons subject to this article prepared by the secretary of state or the secretary of state's designee are subject to disclosure pursuant to part 2 of article 72 of title 24, C.R.S.

6-16-112. Registered agents - service of process. (1) Any person required under this article to register with the secretary of state shall appoint and continuously maintain a registered agent who satisfies the requirements of section 7-90-701 (1), C.R.S. A registration document filed in accordance with this article that contains the name and address of the person's registered agent must also include a statement by the person filing the document that the registered agent consents to the appointment. The secretary of state shall send any notices required under this article to the registered agent of the registered person.

(2) A registered agent of a person registered under this article is:

(a) Authorized to receive service of any process, notice, or demand required or permitted by law to be served on the person; and

(b) The person to whom the secretary of state may deliver any form, notice, or other

document under this article pertaining to the person registered under this article.

(3) Any foreign corporation performing an act prohibited under this article through a salesperson or agent is subject to service of process either upon the registered agent specified by the corporation or upon the corporation itself if the corporation fails to maintain a registered agent as required by this article. Service of process upon any individual outside this state based upon any action arising out of matters prohibited by this article must be effected pursuant to section 13-1-125, C.R.S.

6-16-113. Severability. If any provision of this article is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this article shall be valid, unless it appears to the court that the valid provisions of this article are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the general assembly would have enacted the valid provisions without the void provision or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

6-16-114. Fines - required notification - rules. (1) (a) Any charitable organization, professional fundraising consultant, or paid solicitor who, after sufficient notification by the secretary of state, fails to properly register, renew a registration, or file a financial report of a solicitation campaign under this article by the end of the seventh day following the issuance of the final notice, is liable for a fine in an amount to be established by rule promulgated by the secretary of state.

(b) The secretary of state provides sufficient notification under this section if the secretary gives at least two notices to the organization and registered agent of the charitable organization, professional fundraising consultant, or paid solicitor.

(c) The fine for filing a registration renewal or solicitation campaign financial report late must not exceed one hundred dollars per year for charities or two hundred dollars per year for paid solicitors.

(d) The fine for soliciting before registering must not exceed three hundred dollars per year for a charitable organization or one thousand dollars per year for paid solicitors.

(2) If a paid solicitor fails to file a solicitation notice at least fifteen days before commencing a solicitation campaign, the secretary of state shall assess against the paid solicitor, at the time the paid solicitor files the solicitation notice, a fine in an amount established in rules promulgated by the secretary of state.

(3) A fine imposed under this section is in addition to any other filing fee provided by this article.