

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 438 - L.D. 1277

An Act To Streamline the Charitable Solicitations Act

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

Sec. 1. 9 MRSA §5002, as amended by PL 2007, c. 402, Pt. A, §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, professional solicitors, and professional fund-raising counsel and ~~commercial co-venturers~~ and the bonding of professional solicitors ~~and commercial co-venturers~~.

Sec. 2. 9 MRSA §5003, sub-§3, as amended by PL 2011, c. 286, Pt. A, §1, is repealed.

Sec. 3. 9 MRSA §5003, sub-§3-A, as amended by PL 1999, c. 386, Pt. A, §3, is repealed.

Sec. 4. 9 MRSA §5003, sub-§4-B, as enacted by PL 2003, c. 541, §3, is repealed.

Sec. 5. 9 MRSA §5003, sub-§4-D is enacted to read:

4-D. Director. "Director" means the Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation.

Sec. 6. 9 MRSA §5003, sub-§5-A, as enacted by PL 1977, c. 696, §359, is repealed.

Sec. 7. 9 MRSA §5003, sub-§5-F, as amended by PL 2011, c. 286, Pt. B, §5, is repealed.

Sec. 8. 9 MRSA §5003, sub-§8, as enacted by PL 1977, c. 488, §1, is amended to read:

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

Sec. 9. 9 MRSA §5004, as amended by PL 2011, c. 286, Pt. A, §§3 to 6, is further amended to read:

§5004. Licensure of charitable organizations

~~Charitable organizations must be licensed as follows.~~

1. Initial licensure as a charitable organization. The following provisions govern license applications by charitable organizations.

A. Unless ~~exempt~~ it has received an exemption pursuant to section 5006, a charitable organization that intends to solicit, accept or obtain contributions in this State or to have contributions solicited, accepted or obtained on its behalf within this State shall file a license application with the ~~office~~ director and pay the application and license fees as set under section 5015-A at least 30 days before soliciting, accepting or obtaining contributions ~~in each year in which the organization is engaged in soliciting, accepting or obtaining contributions.~~ Before it is issued a license by the director, a charitable organization that is required to file an initial license application may not solicit, accept or obtain contributions or have contributions solicited, accepted or obtained on its behalf by any other person, charitable organization or professional solicitor. The charitable organization shall identify any affiliate organizations or chapters on its license application.

B. A parent organization may file a consolidated license application for its affiliates, chapters and branches in this State and shall pay a single fee for such a consolidated license application.

~~C. Before issuance of a license by the office, a charitable organization that is required to file an initial license application or annual renewal application may not solicit, accept or obtain contributions or have contributions solicited, accepted or obtained on its behalf by any other person, charitable organization, commercial co-venturer or professional solicitor, or participate in charitable sales promotion.~~

~~**2-A. Fee for license application.** Charitable organizations shall pay the application fee, initial fee and renewal fee as set under section 5015-A. The application fee is nonrefundable.~~

3. Content of application for initial licensure. A license application must be sworn to or affirmed by the principal officer of ~~any~~ the charitable organization and must contain the following information, ~~which must be updated within 10 days when any change occurs in the information filed:~~

A. The name of the organization and the purpose for which it was organized;

B. The principal mailing address of the organization and the mailing address of any offices in this State, or, if the organization does not maintain an office, the name and mailing address of the person having custody of its financial records;

C. The names and mailing addresses of any chapters, branches or affiliates in this State;

D. The place where and the date when the organization was legally established, the form of its organization and a ~~reference to any determination of its tax-exempt status under the United States Internal Revenue Code~~ copy of its certificate of existence or other organizing document;

E. The names and mailing addresses of the officers, directors or trustees and the principal salaried executive staff officer;

F. A statement as to whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;

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

H. ~~A statement as to whether the organization is authorized by any other governmental authority~~ list of all jurisdictions in which the organization is authorized to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

I. The purpose or purposes for which the contributions to be solicited will be used;

~~K. The name or names under which it intends to solicit contributions;~~

L. The names of the individuals or officers of the organizations who will have final responsibility for the custody of the contributions;

M. The names of the individuals or officers of the organization responsible for the final distribution of the contributions;

~~N. The total amount of money received as contributions during the organization's preceding fiscal year and the dates of the fiscal year;~~

P. A determination letter from the federal Internal Revenue Service, confirming the tax-exempt status of the charitable organization; ~~and~~

Q. 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;

R. 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

S. Other information as the director may require, including but not limited to documentation as to the current federal tax-exempt status of the charitable organization.

4. Renewal of licensure as a charitable organization. ~~The following provisions govern the application and qualifications for renewal of a license as a charitable organization. A license issued by the director to a charitable organization expires on November 30th annually or such other time as the director may designate. A charitable organization 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. A person or entity that holds a valid license must submit to the office a completed application for renewal prior to the date of expiration of the license.~~

~~B. An application for license renewal may not be considered until it is complete. If the application is incomplete, the applicant must include a letter documenting the specific reasons the application is incomplete. If that letter is not included, the incomplete application must be returned for completion.~~

~~C. A charitable organization that submits an application for renewal after the expiration date must include with the application:~~

- ~~(1) A financial report covering the most recently audited fiscal year;~~
- ~~(2) The filing fee and license renewal fee as set under section 5015-A; and~~
- ~~(3) A completed application.~~

~~D. The complete packet for renewal of license application must include all the requirements identified in subsection 3 as well as the following:~~

- ~~(1) The organization's most recent federal Internal Revenue Service Form 990 and Schedule A, federal Internal Revenue Service Form 990-EZ or federal Internal Revenue Service Form 990-N, as required by the federal Internal Revenue Service; and~~
- ~~(2) An audited financial statement of the organization's most recent audited fiscal year, if one has been prepared in order to comply with the requirements of another jurisdiction or otherwise exists. If an audited financial statement does not exist, a balance sheet identifying assets and liabilities and an income statement identifying revenues and expenditures may be substituted.~~

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

A. The annual fund-raising activity report required by section 5005-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 charitable organization;

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 charitable organization;

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.

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 charitable organization shall notify the director of any material change to the information contained in the organization's application for initial or renewal licensure, including any additional disciplinary or court action taken against the organization, within 10 days of the change.

Sec. 10. 9 MRSA §5005-A, as enacted by PL 1999, c. 386, Pt. A, §14, is repealed and the following enacted in its place:

§5005-A. Records

1. Books and records. A charitable organization shall maintain accurate and complete books and records of all fund-raising campaigns and shall keep those books and records available for inspection by or production to the Attorney General or the director for 3 years after the conclusion of each fund-raising campaign.

2. Audited financial statement. A charitable organization shall produce upon request of the Attorney General or the director, in conjunction with an application for initial or renewal licensure or at any other time:

A. An audited financial statement of the charitable organization's most recent audited fiscal year if one has been prepared in order to comply with the requirements of another jurisdiction or otherwise exists; or

B. If an audited financial statement under paragraph A does not exist, a balance sheet identifying assets and liabilities and an income statement identifying revenues and expenditures.

3. Tax returns. A charitable organization shall produce upon request of the Attorney General or the director, in conjunction with an application for initial or renewal licensure or at any other time, its 3 most recent federal Internal Revenue Service Form 990 and Schedule A, federal Internal Revenue Service Form 990-EZ or federal Internal Revenue Service Form 990-N, as required by the federal Internal Revenue Service.

Sec. 11. 9 MRSA §5005-B, as amended by PL 2011, c. 286, Pt. A, §7, is further amended to read:

§5005-B. Annual fund-raising activity reports to be filed by charitable organizations

1. Content of report. A charitable organization shall submit to the ~~office director~~ an annual fund-raising activity report that reflects data from the organization's preceding calendar fiscal year, on a form prescribed by the ~~office director~~, at least 60 days prior to the license expiration date as part of its application for license renewal. The report must state, at a minimum, the following:

A. The ~~charitable organization's~~ name, mailing address, telephone number and license number of the charitable organization making the report;

B. The name, mailing address, telephone number and license number of each professional solicitor, and professional fund-raising counsel ~~and commercial co-venturer~~ with which the charitable organization ~~contracts~~ 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 date of each fund-raising campaign;~~

D. The total dollar amount of contributions raised in this State during each fund-raising campaign and for the year;

E. 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

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;

~~G. The total amount paid to any professional fund-raising counsel from each fund-raising campaign and for the year; and~~

~~H. The total amount received from any commercial co-venturer 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 disagreement between the report filed by the charitable organization and that submitted by the professional solicitor, or professional fund-raising counsel ~~or commercial co-venturer~~ 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 entities prohibited. A charitable organization may not contract with an unlicensed professional solicitor, or professional fund-raising counsel ~~or commercial co-venturer~~. A violation of this subsection may result in disciplinary action as provided under Title 10, section 8003, subsection 5-A.

4. Application subsequent to lapse of licensure. ~~An applicant whose prior license was not renewed or was terminated must file, along with the application, an annual~~

~~fund-raising activity report for the most recent calendar year in which the applicant conducted charitable solicitation activity within the United States.~~

Sec. 12. 9 MRSA §5006, sub-§1, ¶A, as amended by PL 1999, c. 386, Pt. A, §15, is further amended to read:

A. Organizations that solicit primarily within their membership and ~~where solicitation activities are conducted by members~~ 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. 13. 9 MRSA §5006, sub-§1, ¶D, as amended by PL 2007, c. 402, Pt. A, §5 and by PL 2011, c. 286, Pt. B, §5, 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 ~~\$10,000~~ \$35,000 during a calendar year or do not receive contributions from more than ~~40~~ 35 persons during a calendar year, ~~if all fund-raising activities are carried on by persons who are unpaid for their services~~ 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 ~~\$10,000~~ \$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 ~~\$10,000~~ \$35,000 or the number of contributors reaches 35, must be licensed with ~~and report to the Office of Professional and Occupational Regulation~~ the director as required by this Act;

Sec. 14. 9 MRSA §5006, sub-§3, as amended by PL 2007, c. 402, Pt. A, §5, is further amended to read:

3. Procedures for claiming exemption from licensure. A charitable organization claiming to be exempt under subsection 1 must submit to the ~~office~~ director annually on forms prescribed by ~~that office~~ the director and accompanied by the fee as set under section 5015-A; a sworn statement setting forth the name and address of the organization and its principal executive personnel, the purpose of the organization and the factual basis for the exemption. The organization claiming exemption must include a copy of any financial statement, report or return filed with the federal Internal Revenue Service. The ~~office~~ director shall issue annually an exemption to those organizations considered exempt under subsection 1.

Sec. 15. 9 MRSA §5007, as amended by PL 2003, c. 541, §11, is repealed.

Sec. 16. 9 MRSA §5008, as amended by PL 2011, c. 286, Pt. A, §8, is repealed.

Sec. 17. 9 MRSA §§5008-A and 5008-B are enacted to read:

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

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 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 or professional fund-raising counsel. 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 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.

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.

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

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. 18. 9 MRSA §5009, as amended by PL 2007, c. 402, Pt. A, §§7 and 8, is repealed and the following enacted in its place:

§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.

Sec. 19. 9 MRSA §5010, as amended by PL 2003, c. 204, Pt. A, §1, is repealed.

Sec. 20. 9 MRSA §5011, as amended by PL 2003, c. 541, §14, is further amended to read:

§5011. Public information

All information required to be filed under this chapter is a public record and must be available to the public at the office of the ~~commissioner~~ director or in any manner the ~~commissioner~~ director may prescribe.

Sec. 21. 9 MRSA §5011-A, last ¶, as enacted by PL 2003, c. 541, §15, is repealed.

Sec. 22. 9 MRSA §5012, as amended by PL 2003, c. 541, §16, is repealed and the following enacted in its place:

§5012. Charitable solicitation disclosure

It is a violation of this chapter for any person or entity to solicit contributions from a prospective donor without fully disclosing to the prospective donor, at the time of solicitation but prior to the request for contributions, the name and physical address of the charitable organization for which the solicitation is being conducted.

Sec. 23. 9 MRSA §5012-A, as amended by PL 2011, c. 286, Pt. A, §9, is repealed.

Sec. 24. 9 MRSA §5015-A, as enacted by PL 2001, c. 323, §8, is amended to read:

§5015-A. Fees

The director ~~of the office~~ may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed \$200 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. 25. 9 MRSA §5017, as amended by PL 2011, c. 286, Pt. A, §11, is further amended to read:

§5017. Denial or refusal to renew license; disciplinary action

The ~~commissioner~~ director or the ~~commissioner's~~ director's designee may deny the license application, refuse to renew the license or suspend or revoke the license of a person or an entity that has been, or whose principals, officers, directors, employees or fundraisers have been, convicted of, found guilty of, pled guilty or nolo contendere to or have been incarcerated by any federal or state court for any felony or for any misdemeanor involving dishonesty, including, but not limited to, fraud, theft, larceny, embezzlement or any crime arising from the conduct of a solicitation for a charitable organization.

The ~~commissioner~~ director or the ~~commissioner's~~ director's designee may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized under Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A.

Sec. 26. 9 MRSA §5018, as enacted by PL 2003, c. 541, §18, is amended to read:

§5018. Rulemaking

The ~~commissioner~~ director shall propose, revise, adopt and enforce rules necessary to carry out this chapter. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.