

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 711

Representatives Rezabek, Boggs

A BILL

To amend sections 1716.01, 1716.07, and 1716.08 of 1
the Revised Code relative to the solicitation of 2
charitable contributions. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1716.01, 1716.07, and 1716.08 of 4
the Revised Code be amended to read as follows: 5

Sec. 1716.01. As used in this chapter: 6

(A) (1) "Charitable organization" means either of the 7
following: 8

(a) Any person that is determined by the internal revenue 9
service to be a tax exempt organization pursuant to section 10
501(c) (3) of the Internal Revenue Code; 11

(b) Any person that is or holds itself out to be 12
established for any benevolent, philanthropic, patriotic, 13
educational, humane, scientific, public health, environmental 14
conservation, civic, or other eleemosynary purpose or for the 15
benefit of law enforcement personnel, firefighters, or other 16
persons who protect the public safety, or any person who in any 17
manner employs a charitable appeal as the basis of any 18

solicitation or an appeal that suggests that there is a 19
charitable purpose to any solicitation. 20

(2) "Charitable organization" is not limited to only those 21
organizations to which contributions are tax deductible under 22
section 170 of the Internal Revenue Code. 23

"Charitable organization" does not include an employer who 24
is not engaged in the business of soliciting contributions or 25
conducting charitable sales promotions but who incidentally 26
solicits contributions for a charitable organization or purpose; 27
or a compensated employee of an employer not engaged in the 28
business of soliciting contributions or conducting charitable 29
sales promotions, when the employee solicits contributions or 30
conducts charitable sales promotions at the direction of the 31
employee's employer. 32

(B) (1) "Charitable purpose" means either of the following: 33

(a) Any purpose described in section 501(c)(3) of the 34
Internal Revenue Code; 35

(b) Any benevolent, philanthropic, patriotic, educational, 36
humane, scientific, public health, environmental conservation, 37
civic, or other eleemosynary objective or any objective that 38
benefits law enforcement personnel, firefighters, or other 39
persons who protect the public safety. 40

(2) "Charitable purpose" is not limited to only those 41
purposes for which contributions are tax deductible under 42
section 170 of the Internal Revenue Code. 43

(C) "Charitable sales promotion" means any advertising or 44
sale conducted by a person who represents that the purchase or 45
use of goods or services offered by the person will benefit, in 46
whole or in part, any charitable organization or charitable 47

purpose. The provision of advertising services to a charitable organization, either for compensation or as a donation, does not of itself constitute a charitable sales promotion.

(D) "Collection receptacle" means a receptacle used to collect donated clothing, shoes, household items, or other goods for resale.

(E) "Commercial co-venturer" means any person who for profit regularly and primarily is engaged in trade or commerce other than in connection with soliciting for charitable organizations or charitable purposes and who conducts a charitable sales promotion.

~~(E)~~(F) "Contribution" means the promise, pledge, or grant of any money or property, financial assistance, or any other thing of value in response to a solicitation. "Contribution" does not include any bona fide fees, or any dues or assessments paid by members, provided that membership is not conferred solely as a consideration for making a contribution in response to a solicitation.

~~(F)~~(G) "Deceptive act or practice" means knowingly misrepresenting any material fact related to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion, when the misrepresentation induces any person to make a contribution to a charitable organization, for a charitable purpose, or in response to a charitable sales promotion.

~~(G)~~(H) "Elderly person" and "disabled adult" have the same meanings as in section 2913.01 of the Revised Code.

(I) "Fund-raising counsel" means any person who, for

compensation, plans, manages, advises, consults, or prepares 77
material for or with respect to the solicitation in this state 78
of contributions for any charitable organization or at any time 79
has custody of contributions from a solicitation, but does not 80
solicit contributions and does not employ, procure, or otherwise 81
engage any compensated person to solicit contributions. "Fund- 82
raising counsel" does not include the following: 83

(1) An attorney, investment counselor, or banker who in 84
the conduct of the attorney's, investment counselor's, or 85
banker's profession advises a client; 86

(2) A charitable organization or a bona fide officer, 87
employee, or volunteer of a charitable organization, when the 88
charitable organization has full knowledge of the services being 89
performed on its behalf and either of the following applies: 90

(a) The services performed by the charitable organization, 91
bona fide officer, employee, or volunteer are performed on 92
behalf of the charitable organization that employs the bona fide 93
officer or employee or engages the services of the bona fide 94
volunteer; 95

(b) The charitable organization on whose behalf the 96
services are performed shares some element of common control or 97
an historic or continuing relationship with the charitable 98
organization that performs the services or employs the bona fide 99
officer or employee or engages the services of the bona fide 100
volunteer; 101

(3) An employer who is not engaged in the business of 102
soliciting contributions or conducting charitable sales 103
promotions but who incidentally solicits contributions for a 104
charitable organization or purpose without compensation; 105

(4) A compensated employee of an employer who is not 106
engaged in the business of soliciting contributions or 107
conducting charitable sales promotions, when the employee 108
solicits contributions or conducts charitable sales promotions 109
at the direction of the employee's employer. 110

~~(H)~~(J) "Internal Revenue Code" means the "Internal Revenue 111
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 112

~~(I)~~(K) "Person" has the same meaning as in section 1.59 of 113
the Revised Code and includes a group, foundation, or any other 114
entity however styled. 115

~~(J)~~(L) "Professional solicitor" means any person who, for 116
compensation, performs on behalf of or for the benefit of a 117
charitable organization any service in connection with which 118
contributions are or will be solicited in this state by the 119
compensated person or by any person it employs, procures, or 120
otherwise engages directly or indirectly to solicit 121
contributions. "Professional solicitor" does not include the 122
following: 123

(1) An attorney, investment counselor, or banker who in 124
the conduct of the attorney's, investment counselor's, or 125
banker's profession advises a client; 126

(2) A charitable organization or a bona fide officer, 127
employee, or volunteer of a charitable organization, when the 128
charitable organization has full knowledge of the services being 129
performed on its behalf and either of the following applies: 130

(a) The services performed by the charitable organization, 131
bona fide officer, employee, or volunteer are performed on 132
behalf of the charitable organization that employs the bona fide 133
officer or employee or engages the services of the bona fide 134

volunteer;	135
(b) The charitable organization on whose behalf the	136
services are performed shares some element of common control or	137
an historic or continuing relationship with the charitable	138
organization that performs the services or employs the bona fide	139
officer or employee or engages the services of the bona fide	140
volunteer;	141
(3) An employer who is not engaged in the business of	142
soliciting contributions or conducting charitable sales	143
promotions but who incidentally solicits contributions for a	144
charitable organization or purpose without compensation;	145
(4) A compensated employee of an employer who is not	146
engaged in the business of soliciting contributions or	147
conducting charitable sales promotions, when the employee	148
solicits contributions or conducts charitable sales promotions	149
at the direction of the employee's employer.	150
(K) <u>(M)</u> (1) "Solicit" or "solicitation" means to request or	151
a request directly or indirectly for money, property, financial	152
assistance, or any other thing of value on the plea or	153
representation that such money, property, financial assistance,	154
or other thing of value or a portion of it <u>the contribution will</u>	155
<u>or may be used for a <u>any</u> charitable purpose</u> or will benefit a	156
charitable organization . "Solicit" or "solicitation" includes	157
but is not limited to the following methods of requesting or	158
securing the promise, pledge, or grant of money, property,	159
financial assistance, or any other thing of value:	160
(a) Any oral or written request;	161
(b) Making any announcement to the press, on radio or	162
television, by telephone or telegraph, or by any other	163

communication device concerning an appeal or campaign by or for 164
any charitable organization or for any charitable purpose; 165

(c) Distributing, circulating, posting, or publishing any 166
handbill, written advertisement, or other publication that 167
directly or by implication seeks to obtain any contribution; 168

(d) Selling or offering or attempting to sell any 169
advertisement, advertising space, book, card, tag, coupon, 170
chance, device, magazine, membership, merchandise, subscription, 171
sponsorship, flower, ticket, admission, candy, cookies, or other 172
tangible item, or any right of any description in connection 173
with which an appeal is made for any charitable organization or 174
charitable purpose, or when the name of any charitable 175
organization is used or referred to in any such appeal as an 176
inducement or reason for making the sale, or when in connection 177
with the sale or offer or attempt to sell, any statement is made 178
that all or part of the proceeds from the sale will be used for 179
any charitable purpose or will benefit any charitable 180
organization; 181

(e) A collection receptacle. 182

(2) A solicitation is considered as having taken place for 183
purposes of division ~~(K)~~(M) (1) of this section whether or not 184
the person making the solicitation receives any contribution. A 185
solicitation does not occur when a person applies for a grant or 186
an award to the government or to an organization that is exempt 187
from federal income taxation under section 501(a) and described 188
in section 501(c) (3) of the Internal Revenue Code. 189

~~(L)~~(N) "Theft offense" has the same meaning as in section 190
2913.01 of the Revised Code. 191

~~(M) "Elderly person" and "disabled adult" have the same~~ 192

~~meanings as in section 2913.01 of the Revised Code.~~ 193

Sec. 1716.07. (A) No professional solicitor shall engage 194
in any solicitation unless it has complied with the requirements 195
of this chapter and any rules adopted under this chapter. 196

(B) Every professional solicitor, before engaging in any 197
solicitation, shall register with the attorney general. 198
Applications for registration or renewal of registration shall 199
be in writing, under oath, and in the form prescribed by the 200
attorney general, and shall be accompanied by a fee in the 201
amount of two hundred dollars. Any corporation, partnership, 202
association, or other entity that intends to act as a 203
professional solicitor may register for and pay a single fee of 204
two hundred dollars on behalf of all its members, officers, 205
employees, agents, and solicitors. In that case, the names and 206
addresses of all the officers, employees, and agents of the 207
professional solicitor and all other persons with whom the 208
professional solicitor has contracted to work under its 209
direction, including solicitors, shall be listed in the 210
application or furnished to the attorney general within five 211
days of the date of employment or contractual arrangement. The 212
application shall contain any other information that the 213
attorney general may require. The registration shall be for a 214
period of one year or part of one year and shall expire on the 215
thirty-first day of March of each year. Upon application and 216
payment of the fee specified in this division and filing of the 217
bond prescribed in division (C) of this section, the 218
registration may be renewed for additional one-year periods. All 219
fees prescribed in this division shall be paid into the state 220
treasury to the credit of the charitable law fund established 221
under section 109.32 of the Revised Code. 222

(C) At the time of making an application for registration 223
or renewal of registration, the professional solicitor shall 224
file with and have approved by the attorney general a bond in 225
which the professional solicitor shall be the principal obligor, 226
in the sum of twenty-five thousand dollars, with one or more 227
sureties authorized to do business in this state. The 228
professional solicitor shall maintain the bond in effect as long 229
as the registration is in effect; however, the liability of the 230
surety under the bond shall not exceed an all-time aggregate 231
liability of twenty-five thousand dollars. The bond, which may 232
be in the form of a rider to a larger blanket liability bond, 233
shall run to the state and to any person who may have a cause of 234
action against the principal obligor of the bond for any 235
liability arising out of a violation by the obligor of any 236
provision of this chapter or any rule adopted pursuant to this 237
chapter. 238

(D) (1) Prior to the commencement of any solicitation, the 239
professional solicitor shall file all of the following with the 240
attorney general: 241

(a) A completed document called "Solicitation Notice" upon 242
a form prescribed by the attorney general and containing all of 243
the information specified in division (D) (2) of this section; 244

(b) A copy of the contract described in division (A) of 245
section 1716.08 of the Revised Code; 246

(c) A sworn statement by the charitable organization on 247
whose behalf the professional solicitor is acting certifying 248
that the solicitation notice and any accompanying material are 249
true and correct to the best of its knowledge. 250

(2) The solicitation notice shall include all of the 251

following:	252
(a) The fund-raising methods to be used;	253
(b) The projected dates when the solicitation will commence and terminate;	254 255
(c) The location and telephone number from where the solicitation will be conducted if it will be conducted by telephone;	256 257 258
(d) <u>The address where the collection receptacles are located, if the solicitation will be made through collection receptacles;</u>	259 260 261
<u>(e)</u> The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;	262 263 264
(e) <u>(f)</u> A statement of whether the professional solicitor will at any time have custody of any contributions;	265 266
(f) <u>(g)</u> A full and fair description of the charitable program for which the solicitation campaign is being carried out;	267 268 269
(g) <u>(h)</u> The written and signed consent of every charitable organization on whose behalf the professional solicitor will be soliciting contributions or whose name will be mentioned during the solicitation.	270 271 272 273
(E) Not later than ninety days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional solicitor shall provide to the charitable organization and file with the attorney general a financial report of the campaign, including the gross revenue received and	274 275 276 277 278 279

, an itemization of all expenses incurred, and any other 280
information required by the attorney general. The report shall 281
be completed on a form prescribed by the attorney general and 282
signed by an authorized official of the professional solicitor 283
who shall certify under oath that the report is true and 284
correct. 285

(F) Each contribution collected by or in the custody of 286
the professional solicitor shall be solely in the name of the 287
charitable organization on whose behalf the contribution was 288
solicited. Not later than two days after receipt of each 289
contribution, the professional solicitor shall deposit the 290
entire amount of the contribution in an account at a bank or 291
other federally insured financial institution, which shall be in 292
the name of that charitable organization. The charitable 293
organization shall have sole control of all withdrawals from the 294
account and the professional solicitor shall not be given the 295
authority to withdraw any deposited funds from the account. 296

(G) (1) During each solicitation campaign and for not less 297
than three years after its completion, the professional 298
solicitor shall maintain the following records: 299

(a) The name and, if known to the professional solicitor, 300
the address and telephone number of each contributor and the 301
date and amount of the contribution, provided that the attorney 302
general shall not disclose that information except to the extent 303
necessary for investigative or law enforcement purposes; 304

(b) The name and residence address of each employee, 305
agent, and any other person, however designated, who is involved 306
in the solicitation, the amount of compensation paid to each, 307
and the dates on which the payments were made; 308

(c) A record of all contributions that at any time are in the custody of the professional solicitor;	309 310
(d) A record of all expenses incurred by the professional solicitor for the payment of which the professional solicitor is liable;	311 312 313
(e) A record of all expenses incurred by the professional solicitor for the payment of which the charitable organization is liable;	314 315 316
(f) The location of each bank or financial institution in which the professional solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made;	317 318 319 320
(g) A copy of each pitch sheet or solicitation script used during the solicitation campaign;	321 322
(h) If a refund of a contribution has been requested, the name and address of each person requesting the refund, and if a refund was made, its amount and the date it was made.	323 324 325
(i) Any other record of such information as the attorney general may require.	326 327
(2) If the professional solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the professional solicitor also shall maintain for the same period as specified in division (G)(1) of this section the following records:	328 329 330 331 332
(a) The name and address of each contributor that purchases or donates tickets and the number of tickets purchased or donated by the contributor;	333 334 335
(b) The name and address of each organization that	336

receives the donated tickets for the use of others, and the 337
number of tickets received by the organization. 338

(3) Any of the records described in divisions (G) (1) and 339
(2) of this section shall be made available to the attorney 340
general upon the attorney general's request and shall be 341
furnished to the attorney general within ten days of the 342
request. 343

(H) Unless otherwise provided in this section or section 344
1716.08 of the Revised Code, any change in any information filed 345
with the attorney general pursuant to this section and section 346
1716.08 of the Revised Code shall be reported in writing to the 347
attorney general within seven days after the change occurs. 348

(I) No person shall serve as a professional solicitor, or 349
be a member, officer, employee, or agent of any professional 350
solicitor, who has been convicted in the last five years of 351
either of the following: 352

(1) Any violation of this chapter or any rule adopted 353
under this chapter, or of any charitable solicitation 354
legislation or regulation of a political subdivision of this 355
state or charitable solicitation law of any other jurisdiction 356
that is similar to this chapter; 357

(2) A felony in this or another state. 358

(J) If a professional solicitor fails to comply in a 359
timely or complete manner with any of the requirements under 360
this section, the professional solicitor is liable for and, in 361
addition to any fee required in this section, shall pay two 362
hundred dollars for each late filing. Each registration, renewal 363
of registration, bond, solicitation notice, contract, sworn 364
statement, or financial report shall be considered a separate 365

filing for the purposes of this section. Any fees required by 366
this section are in addition to, and not in place of, penalties 367
prescribed in this chapter. 368

Sec. 1716.08. (A) Every contract entered into by any 369
professional solicitor with any charitable organization shall be 370
in writing, shall clearly state the respective obligations of 371
the professional solicitor and the charitable organization, and 372
shall contain the ~~percentage of the gross revenue from the~~ 373
~~solicitation campaign minimum amount~~ that the charitable 374
organization will receive as a result of the solicitation 375
campaign. ~~That percentage shall be either~~ The minimum amount may 376
be stated as a fixed percentage of the gross revenue from the 377
solicitation campaign or a reasonable estimate of the percentage 378
of the gross revenue, subject to and in accordance with 379
divisions (A) (1), (2), and (3) of this section. It may also be 380
stated as the price per pound of items collected or in any other 381
reasonable manner. 382

(1) If the compensation of the professional solicitor is 383
contingent upon the number of contributions or the amount of 384
revenue received from the solicitation campaign, the stated 385
percentage of the gross revenue that the charitable organization 386
will receive shall be a fixed percentage of the gross revenue. 387

(2) If the compensation of the professional solicitor is 388
not contingent upon the number of contributions or the amount of 389
revenue received from the solicitation campaign, the stated 390
percentage of the gross revenue that the charitable organization 391
will receive shall be a reasonable estimate of the percentage of 392
the gross revenue, and the contract shall include the following: 393

(a) The assumptions upon which the estimate is based, 394
which assumptions shall be based upon all of the relevant facts 395

known to the professional solicitor regarding the solicitation 396
to be conducted and the past performance of the solicitation 397
campaigns conducted by the professional solicitor; 398

(b) A provision that the charitable organization is 399
guaranteed a percentage of the gross revenue that is not less 400
than ninety per cent of the amount of the reasonable estimate of 401
that percentage. 402

(3) The stated percentages prescribed in divisions (A) (1) 403
and (2) of this section shall exclude any amount that the 404
charitable organization, pursuant to the contract entered into 405
with the professional solicitor, will pay as expenses of the 406
solicitation campaign, including the costs of merchandise or 407
services sold or events staged. 408

(B) A professional solicitor shall comply with, and shall 409
be responsible for complying or causing compliance with each of 410
the following requirements: 411

(1) Prior to verbally requesting a contribution, or 412
contemporaneously with and accompanying a written request for a 413
contribution, the following shall be clearly and conspicuously 414
disclosed at the point of solicitation: 415

(a) The name, address, and telephone number of the 416
professional solicitor ~~as it~~ that is on file with the attorney 417
general and a statement that the solicitation is being conducted 418
by the person as a professional solicitor and the contract 419
disclosing the financial arrangements between the person and the 420
charitable organization is on file with and available from the 421
attorney general; 422

(b) The name and address of each charitable organization 423
on behalf of which all or any part of the contribution collected 424

will be used. If the charitable organization has not received 425
from the internal revenue service a determination letter that is 426
currently in effect, stating that the organization is exempt 427
from federal income taxation under section 501(a) and described 428
in section 501(c) (3) of the Internal Revenue Code, the 429
particular charitable purpose or purposes to be advanced with 430
the funds raised shall be disclosed. 431

~~(2) If requested by the person being solicited, the 432
professional solicitor shall inform that person of the fixed- 433
percentage of the gross revenue or the reasonable estimate of- 434
the percentage of the gross revenue, as prescribed in division 435
(A) of this section, that the charitable organization will- 436
receive as a benefit from the solicitation campaign. the 437
solicitation is made by direct personal contact, the information 438
required under division (B) (1) of this section shall be 439
disclosed verbally and prominently in a written document that is 440
shown to the person being solicited. 441~~

(3) If the solicitation is made through collection 442
receptacles, the following information shall be displayed, in 443
letters that are at least three inches in height and not less 444
than one-half inch in width, on a permanent sign or label that 445
is placed on each side of the receptacle and is in a color that 446
contrasts with the color of the receptacle: 447

(a) The name, address, and telephone number of the 448
charitable organization and of the professional solicitor that 449
are on file with the attorney general; 450

(b) A statement that the contract disclosing the financial 451
arrangements between the professional solicitor and the 452
charitable organization is on file with and available from the 453
attorney general. 454

(C) A professional solicitor shall not represent that any part of the contributions received will be given or donated to any other charitable organization unless that charitable organization has given its written and signed consent pursuant to division (D) (2) ~~(g)~~ (h) of section 1716.07 of the Revised Code.

(D) (1) A professional solicitor shall not represent that tickets to any event will be donated for use by another person, unless the following requirements are complied with:

(a) The professional solicitor shall have the written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(b) The written commitments are filed with the attorney general prior to any solicitation.

(2) The contributions solicited for donated tickets shall not be more than the amount representing the number of ticket commitments received from persons and filed with the attorney general pursuant to division (D) (1) of this section.

(3) Not later than seven calendar days prior to the date of the event, the professional solicitor shall give all donated tickets to each person that made the written commitment to accept them.

(E) The attorney general shall prepare an annual report setting forth the activities of all professional solicitors and all fund-raising counsel that at any time have custody of contributions from a solicitation who are required to comply with the provisions of this chapter and any rules adopted under the provisions of this chapter. The report is a public record

open to public inspection under section 149.43 of the Revised Code and shall be posted on the attorney general's internet web site not later than the first day of April of each year.

(F) The attorney general shall maintain a file for each registered professional solicitor and fund-raising counsel that at any time has custody of contributions from a solicitation. In that file, ~~he~~ the attorney general shall place all information received by ~~him~~ the attorney general from those registered professional solicitors or fund-raising counsel and any letters received from citizens and charitable organizations regarding the work of the professional fund raiser or fund-raising counsel. The files are public records open to public inspection under section 149.43 of the Revised Code.

Section 2. That existing sections 1716.01, 1716.07, and 1716.08 of the Revised Code are hereby repealed.

Section 3. In enacting this act, it is the intent of the General Assembly to do all of the following:

(A) Recognize the right of individuals or organizations to conduct charitable solicitation activities;

(B) Protect the public by requiring full disclosure of the identity of persons who solicit contributions from the public, the purposes for which the contributions are solicited, and the manner in which the contributions will actually be used;

(C) Prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.