

Senate Study Bill 3191 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

A BILL FOR

1 An Act relating to charitable solicitations, by providing
2 for registration requirements, providing for fees and
3 appropriations, imposing penalties, and including effective
4 date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 13D.1 Definitions.

2 1. "*Business association*" means the same as defined in
3 section 202B.102.

4 2. "*Charitable organization*" means a person who solicits or
5 purports to solicit contributions for a charitable purpose and
6 who receives contributions.

7 3. "*Charitable purpose*" means a benevolent, educational,
8 philanthropic, humane, scientific, patriotic, social welfare or
9 advocacy, public health, environmental, conservation, civic,
10 or other charitable objective.

11 4. "*Charitable sales promotion*" means an advertising or
12 sales campaign which is conducted by a commercial coventurer
13 and which represents that the purchase or use of goods or
14 services offered by the commercial coventurer will benefit, in
15 whole or in part, a charitable organization or purpose.

16 5. "*Commercial coventurer*" means a person who, for profit,
17 is regularly and primarily engaged in trade or commerce, other
18 than in connection with soliciting for charitable organizations
19 or purposes, and who conducts a charitable sales promotion.

20 6. a. "*Contribution*" means the grant, promise, or pledge
21 of money, credit, property, financial assistance, or any other
22 thing of value provided in response to a solicitation.

23 b. "*Contribution*" does not include bona fide fees, dues,
24 or assessments paid by members of a charitable organization
25 if membership in the organization is not conferred primarily
26 as consideration for making a contribution in response to a
27 solicitation.

28 7. "*Internal Revenue Code*" means 26 U.S.C. § 1 et seq.,
29 designated as the Internal Revenue Code of 1986 by the Tax
30 Reform Act of 1986, Pub. L. No. 99-514, including amendments.

31 8. "*Internal revenue service*" means the internal revenue
32 service of the United States department of the treasury.

33 9. "*Political organization*" means a political party, a
34 candidate for federal or state office, or a political action
35 committee formed pursuant to the federal Election Campaign

1 Act, 2 U.S.C. § 431 et seq., and required to file financial
2 information with federal or state elections commissions.

3 10. "*Professional commercial fund-raiser*" means any person
4 who for compensation solicits contributions in Iowa for a
5 charitable organization other than the person. A person whose
6 sole responsibility is to mail fund-raising literature is not a
7 professional commercial fund-raiser.

8 a. "*Professional commercial fund-raiser*" includes any
9 person, other than a bona fide officer or regular employee of
10 a charitable organization, who is retained by a charitable
11 organization for a fixed fee or rate under a written agreement
12 to plan, manage, advise, consult, or prepare material for or
13 with respect to the solicitation in this state of contributions
14 for a charitable organization but who does not solicit
15 contributions or employ, procure, or engage any compensated
16 person to solicit contributions.

17 b. (1) An attorney licensed to practice law, an investment
18 adviser or investment adviser representative as defined in
19 section 502.102, or a person engaged in banking as provided in
20 section 554.4105, who advises a person to make a charitable
21 contribution is not, as a result of such advice, a professional
22 commercial fund-raiser.

23 (2) A bona fide salaried officer, employee, or volunteer
24 of a charitable organization is not a professional commercial
25 fund-raiser.

26 (3) A political organization is not a professional
27 commercial fund-raiser.

28 (4) A religious organization is not a professional
29 commercial fund-raiser.

30 11. "*Record*" means a book, financial statement, paper,
31 correspondence, memorandum, agreement, or other information in
32 a printed or electronic form that the attorney general deems
33 relevant or material to an inquiry made under this chapter.

34 12. "*Religious organization*" means an organization that
35 is exempt from filing a federal annual information return

1 pursuant to 26 U.S.C. § 6033(a)(3)(A)(i) or (iii), 26 U.S.C. §
2 6033(a)(3)(C)(i), or pursuant to 26 C.F.R. § 1.6033-2(g)(1)(i)
3 through (iv), or 26 C.F.R. § 1.6033-2(g)(1)(vii).

4 13. *a. "Solicit" or "solicitation" means a request,*
5 *made directly or indirectly, for a contribution on the*
6 *representation that the contribution will be used for a*
7 *charitable purpose. A solicitation is deemed to have taken*
8 *place whether or not the person making the solicitation*
9 *receives a contribution.*

10 *b. "Solicitation" does not include an application for*
11 *a grant from any governmental entity or private nonprofit*
12 *foundation.*

13 14. *"Solicitation campaign" means more than one solicitation*
14 *made by the same person, if the solicitations are similar in*
15 *content or are based on a similar representation, and any of*
16 *the following applies:*

17 *a. The solicitations result in or are represented to result*
18 *in an event.*

19 *b. The solicitations occur or are intended to occur for a*
20 *specific time period.*

21 *c. The solicitations occur for an indefinite period of time*
22 *within the same calendar year.*

23 15. *"Volunteer" means a person who performs a service for a*
24 *charitable organization or charitable purpose and who does not*
25 *receive financial remuneration or who has not been expressly*
26 *nor impliedly promised to be paid financial remuneration for*
27 *performing such service.*

28 **Sec. 2. NEW SECTION. 13D.2 Charitable organizations —**
29 **registration requirements.**

30 1. A charitable organization must be registered with the
31 attorney general prior to soliciting contributions in this
32 state by any means, having contributions solicited in this
33 state on its behalf by any other person, or participating in
34 a charitable sales promotion.

35 2. In order to be registered, a charitable organization must

1 file a registration statement with the attorney general and
2 must comply with the annual renewal requirement as provided in
3 this chapter.

4 3. A registration statement shall contain information
5 required by the attorney general, including but not limited to
6 all of the following:

7 a. The name of the charitable organization, the purpose for
8 which it is organized, and the name or names under which it
9 intends to solicit contributions.

10 b. The mailing address, electronic mail address, and
11 telephone number of the principal place of business of the
12 charitable organization and the mailing address, electronic
13 mail address, and telephone number of each of its offices in
14 this state. If the charitable organization does not maintain
15 an office in this state, the registration statement shall
16 include the name, mailing address, electronic mail address,
17 and telephone number of the person who has custody of the
18 charitable organization's financial records.

19 c. The name and address of each officer, director, trustee,
20 or executive personnel of the charitable organization.

21 d. The last day of the fiscal year of the charitable
22 organization.

23 e. The place and date when the charitable organization was
24 legally established, the legal form of its organization, and
25 its tax-exempt status.

26 f. The name and address of each professional commercial
27 fund-raiser and each commercial coventurer who is acting or has
28 agreed to act on behalf of the charitable organization. If the
29 professional commercial fund-raiser or commercial coventurer
30 is a business association organized as a legal entity, the
31 charitable organization shall list only the name and address of
32 the business association.

33 g. Any other information determined relevant by the attorney
34 general.

35 4. A charitable organization required to register under

1 this chapter shall file a financial report with the attorney
2 general. The financial report shall include information for
3 the charitable organization's most recent fiscal year. The
4 charitable organization shall file the financial report on or
5 before the fifteenth day of the fifth calendar month after the
6 close of each fiscal year of the charitable organization.

7 *a.* The charitable organization may file, in lieu of a
8 financial report, a copy of its completed federal tax form
9 990 as promulgated by the internal revenue service for the
10 charitable organization's most recent fiscal year, including
11 all schedules except schedules of donors, for the most recent
12 fiscal year.

13 *b.* A charitable organization may apply to the attorney
14 general requesting an extension of time to file a financial
15 report or a copy of a federal tax form 990 as provided in
16 paragraph "a". The attorney general shall consider and approve
17 or disapprove such applications under terms, conditions,
18 and procedures that are substantially similar to the terms,
19 conditions, and procedures established by the internal revenue
20 service when considering and approving or disapproving an
21 extension of time to file a federal tax form 990. During the
22 extension period the charitable organization shall file a copy
23 of its most recently filed federal tax form 990 or such other
24 financial information that the attorney general may require.

25 *c.* A charitable organization that was first legally
26 established within twelve months prior to being required to
27 register and thus cannot complete a financial report or a
28 federal tax form 990 as provided in paragraph "a", shall file a
29 preliminary financial report based on a good faith estimate for
30 its first full fiscal year.

31 5. *a.* A charitable organization required to register under
32 this chapter shall file with the attorney general a statement
33 of amendment reflecting any changes materially affecting the
34 charitable organization's identity or business, including but
35 not limited to a change to its:

- 1 (1) Name.
- 2 (2) Address.
- 3 (3) Officers, directors, trustees, or executive personnel.
- 4 (4) Form of business association.
- 5 (5) Tax status.

6 *b.* The statement of amendment shall be filed concurrently
 7 with the next financial report required to be filed pursuant to
 8 this chapter.

9 6. Each chapter, branch, or affiliate of a charitable
 10 organization that is required to file a registration statement
 11 or statement of amendment under this section shall file a
 12 separate registration statement or statement of amendment, or
 13 shall report the necessary information to its parent charitable
 14 organization which shall file a consolidated registration
 15 statement or statement of amendment.

16 7. Each registration application, financial report, or
 17 statement of amendment required to be filed pursuant to this
 18 section shall be signed and sworn to under oath by an officer
 19 of the charitable organization, which may include but is not
 20 limited to its chief fiscal officer.

21 **Sec. 3. NEW SECTION. 13D.3 Charitable organizations —**
 22 **filing fees.**

23 1. A charitable organization required to file a financial
 24 report or a federal tax form 990 in lieu of the financial
 25 report as provided in section 13D.2, shall pay an annual filing
 26 fee to the attorney general.

27 2. The amount of the annual filing fee shall be based on the
 28 total receipts collected by the charitable organization from
 29 all solicitations in this state during the period covered in
 30 its financial report, or its federal tax form 990, being filed.

31 *a.* For receipts of \$50,000 or
 32 more but less than \$100,000 \$25

33 *b.* For receipts of \$100,000 or
 34 more but less than \$250,000 \$50

35 *c.* For receipts of \$250,000 or

1	more but less than \$500,000	\$75
2	<i>d.</i> For receipts of \$500,000 or	
3	more but less than \$1,000,000	\$100
4	<i>e.</i> For receipts of \$1,000,000 or	
5	more but less than \$2,000,000	\$200
6	<i>f.</i> For receipts of \$2,000,000 or	
7	more but less than \$5,000,000	\$300
8	<i>g.</i> For receipts of \$5,000,000 or	
9	more	\$500

10 Sec. 4. NEW SECTION. 13D.4 Charitable organizations —
11 exemptions.

12 A charitable organization is not required to be registered
13 and is not required to file a financial report as provided in
14 section 13D.2, if the charitable organization is any of the
15 following:

16 1. A political organization.

17 2. A religious organization.

18 3. *a.* A charitable organization, if any of the following
19 applies:

20 (1) It is required to furnish the internal revenue service
21 an electronic annual notification pursuant to the Internal
22 Revenue Code, 26 U.S.C. § 6033(i).

23 (2) It does not receive contributions from more than ten
24 persons during the charitable organization's fiscal year.

25 *b.* The exemption authorized in paragraph "a" does not
26 apply to a charitable organization that has contracted with a
27 professional commercial fund-raiser to solicit contributions in
28 this state for the charitable organization.

29 4. *a.* A foundation acting solely for the support of an
30 institution governed by the state board of regents.

31 *b.* A foundation acting solely for the support of an
32 institution governed by chapter 260C.

33 *c.* A private foundation as defined in the Internal Revenue
34 Code, 26 U.S.C. § 509(a), organized for the support of a
35 government body.

1 Sec. 5. NEW SECTION. 13D.5 **Attorney general — electronic**
2 **filing.**

3 The attorney general shall take steps to cooperate with
4 other states and the federal government to establish a joint
5 state and federal electronic filing project for charitable
6 organizations making solicitations as provided in this chapter.
7 To every extent feasible, the project shall involve state
8 government offices regulating charitable promotion and the
9 internal revenue service to enable and promote the electronic
10 filing of uniform multistate registration statements and
11 federal annual information returns.

12 Sec. 6. NEW SECTION. 13D.6 **Charitable organizations — use**
13 **of another organization's name in solicitation.**

14 A charitable organization shall not solicit contributions
15 for a charitable purpose in this state, where the charitable
16 organization claims that a portion or all of the contributions
17 received will be given to another charitable organization
18 in this state, without permission from the other charitable
19 organization that its name may be referred to as part of the
20 solicitation.

21 Sec. 7. NEW SECTION. 13D.7 **Professional commercial**
22 **fund-raisers — registration and filing fee.**

23 1. A professional commercial fund-raiser must be registered
24 with the attorney general prior to soliciting contributions in
25 this state on behalf of a charitable organization.

26 2. In order to be registered, a professional commercial
27 fund-raiser shall file a registration statement as described in
28 this section.

29 3. A registration statement shall contain information
30 required by the attorney general, including but not limited to
31 all of the following:

32 a. The mailing address, electronic mail address, and
33 telephone number of the principal place of business of the
34 professional commercial fund-raiser, and the electronic mail
35 address and telephone number of its principal contact person.

1 *b.* A listing of the professional commercial fund-raiser's
2 clients.

3 *c.* Financial disclosure information concerning
4 contributions received and disbursements made during the
5 previous fiscal year. Financial disclosure information shall
6 not include an applicant's donor lists.

7 *d.* Copies of contracts executed by the professional
8 commercial fund-raiser and a charitable organization as
9 provided in section 13D.8.

10 *e.* Any other information deemed relevant by the attorney
11 general.

12 4. The attorney general may require that registration
13 information be updated on a quarterly basis.

14 5. A professional commercial fund-raiser shall pay
15 the attorney general a fee of one hundred dollars for each
16 registration.

17 6. A professional commercial fund-raiser shall file with
18 the attorney general a statement of amendment reflecting any
19 changes to its client list or to its existing contracts within
20 sixty days of such changes.

21 7. The registration of a professional commercial
22 fund-raiser with the attorney general is valid for twelve
23 months.

24 8. A professional commercial fund-raiser may submit an
25 application for renewal of registration in the same manner as
26 for initial registration.

27 Sec. 8. NEW SECTION. 13D.8 Professional commercial
28 fund-raiser — contracts with charitable organizations.

29 1. A contract executed between a professional commercial
30 fund-raiser and a charitable organization required to register
31 as provided in section 13D.2 shall be in writing and signed
32 by an authorized official of the charitable organization.
33 The professional commercial fund-raiser shall provide a copy
34 of the contract to the charitable organization prior to the
35 performance of any material services under the contract.

1 2. A contract executed between a professional commercial
2 fund-raiser and a charitable organization shall at least
3 contain all of the following provisions:

4 *a.* A statement of the charitable purpose for which the
5 solicitation campaign is being conducted.

6 *b.* A statement of the respective obligations of the
7 professional commercial fund-raiser and the charitable
8 organization.

9 *c.* Whether the professional commercial fund-raiser will at
10 any time have custody or control of contributions.

11 *d.* A clear statement of the fees that will be paid to the
12 professional commercial fund-raiser or, if the fees are to be
13 calculated based on a percentage of contributions or other
14 formula, a clear statement of the percentage or other formula.

15 *e.* The effective and termination dates of the contract.

16 3. Prior to commencing a solicitation campaign in the
17 state, the professional commercial fund-raiser must file with
18 the attorney general a description of the manner in which
19 the solicitation campaign will be conducted, including but
20 not limited to copies of any telephone calling scripts, mail
21 solicitations, and pledge mailing materials.

22 Sec. 9. NEW SECTION. 13D.9 **Rules and forms.**

23 1. The attorney general may adopt rules as necessary to
24 administer and enforce the provisions of this chapter.

25 2. The attorney general may prescribe forms determined
26 necessary or convenient to administer this chapter, including
27 but not limited to forms associated with registration
28 requirements for charitable organizations and professional
29 commercial fund-raisers.

30 Sec. 10. NEW SECTION. 13D.10 **Attorney general authority to**
31 **administer this chapter.**

32 1. The submission of records including but not limited to
33 contracts, scripts, and mail solicitations to the attorney
34 general pursuant to the filing requirements of this chapter
35 do not constitute attorney general approval of the records

1 submitted.

2 2. The attorney general may reject the registration of a
3 charitable organization or professional commercial fund-raiser
4 for failing to comply with the requirements of this chapter.

5 3. The attorney general may examine any information that the
6 attorney general deems is or may be relevant to a filing by a
7 charitable organization or professional commercial fund-raiser
8 pursuant to this chapter.

9 Sec. 11. NEW SECTION. 13D.11 **Enforcement — penalty.**

10 1. The attorney general shall enforce the provisions of this
11 chapter.

12 2. A violation of this chapter is a violation of section
13 714.16, subsection 2, paragraph "a". The provisions of section
14 714.16, including but not limited to provisions relating to
15 investigation, injunctive relief, and penalties, shall apply to
16 this chapter.

17 Sec. 12. NEW SECTION. 13D.12 **Funds collected — charitable**
18 **solicitations administration fund — appropriation.**

19 A charitable solicitations administration fund is created
20 as a separate fund in the state treasury to be administered
21 by the attorney general. Moneys collected by the attorney
22 general under this chapter shall be deposited in the fund.
23 The moneys in the fund are appropriated to the department of
24 justice exclusively for public education relating to charitable
25 solicitations and for enforcement of the provisions of this
26 chapter. Notwithstanding section 8.33, any moneys in the fund
27 shall not revert. Notwithstanding section 12C.7, subsection
28 2, interest or earnings on moneys deposited in the fund shall
29 be credited to the fund.

30 Sec. 13. Section 714H.2, Code Supplement 2009, is amended by
31 adding the following new subsections:

32 NEW SUBSECTION. 7A. "*Political organization*" means a
33 political party, a candidate for office, or a political action
34 committee required to file financial information with federal
35 or state election or campaign commissions.

1 NEW SUBSECTION. 7B. *“Religious organization”* means
2 a religious corporation, trust, foundation, association,
3 or organization incorporated or established for religious
4 purposes.

5 Sec. 14. Section 714H.3, subsection 1, Code Supplement
6 2009, is amended to read as follows:

7 1. A person shall not engage in a practice or act the
8 person knows or reasonably should know is an unfair practice,
9 deception, fraud, false pretense, or false promise, or the
10 misrepresentation, concealment, suppression, or omission of
11 a material fact, with the intent that others rely upon the
12 unfair practice, deception, fraud, false pretense, false
13 promise, misrepresentation, concealment, suppression, or
14 omission in connection with the advertisement, sale, or lease
15 of consumer merchandise, or the solicitation of contributions
16 for charitable purposes. For the purposes of this chapter,
17 a claimant alleging an unfair practice, deception, fraud,
18 false pretense, false promise, or misrepresentation must prove
19 that the prohibited practice related to a material fact or
20 facts. *“Solicitations of contributions for charitable purposes”*
21 does not include solicitations made on behalf of a political
22 organization ~~as defined in section 13C.1~~, solicitations made
23 on behalf of a religious organization ~~as defined in section~~
24 ~~13C.1~~, solicitations made on behalf of a state, regionally, or
25 nationally accredited college or university, or solicitations
26 made on behalf of a nonprofit foundation benefiting a state,
27 regionally, or nationally accredited college or university
28 subject to section 509(a)(1) or 509(a)(3) of the Internal
29 Revenue Code of 1986.

30 Sec. 15. CHARITABLE SOLICITATIONS ADMINISTRATION.

31 1. There is appropriated from the consumer education and
32 litigation fund created in section 714.16C to the department of
33 justice for the fiscal year beginning July 1, 2010, and ending
34 June 30, 2011, the following amount, or so much thereof as is
35 necessary, to be used for the purposes designated:

1 For supporting the administration and enforcement of this
2 Act, including the registration of charitable organizations
3 and professional fund-raisers and the collection and public
4 dissemination of information:

5 \$ 125,000

6 2. The department of justice shall repay the amount
7 appropriated in subsection 1 to the consumer education
8 and litigation fund from the charitable solicitations
9 administration fund, as created in this Act, not later than
10 June 30, 2012.

11 Sec. 16. REPEAL. Chapter 13C, Code 2009, is repealed.

12 Sec. 17. EFFECTIVE DATE. This Act takes effect January 1,
13 2011.

14 EXPLANATION

15 GENERAL. This bill provides for solicitations for
16 contributions by or on behalf of a charitable organization.
17 The bill eliminates Code chapter 13C referring to the same
18 subject and rewrites those provisions in proposed new Code
19 chapter 13D.

20 The bill regulates charitable organizations that solicit
21 contributions for a charitable purpose associated with a
22 benevolent, educational, philanthropic, humane, scientific,
23 patriotic, social welfare or advocacy, public health,
24 environmental, conservation, civic, or other charitable
25 objective.

26 CHARITABLE ORGANIZATIONS. The bill contains a number of new
27 provisions regulating a charitable organization. According to
28 the bill, a charitable organization must be registered with
29 the attorney general prior to soliciting contributions in this
30 state. The registration statement must include information
31 regarding its business and fund-raising activities. The
32 charitable organization must also file amendment statements
33 that reflect material changes to the organization. The
34 charitable organization must file a financial report which
35 includes information for the charitable organization's most

1 recent fiscal year as provided by the attorney general or, in
2 the discretion of the attorney general, a copy of a completed
3 federal tax form 990 filed by nonprofit organizations. A
4 charitable organization must also pay filing fees with the fee
5 based on the amount of receipts collected by the charitable
6 organization.

7 The bill provides for a number of exceptions from
8 the registration requirements, which apply to religious
9 organizations; political parties, political candidates,
10 and political action committees; organizations that receive
11 contributions from 10 persons or less; and foundations
12 including those associated with the state board of regents and
13 community colleges.

14 The bill authorizes the attorney general to cooperate with
15 the federal government and state government to establish a
16 state electronic filing project.

17 PROFESSIONAL COMMERCIAL FUND-RAISERS. The bill provides
18 for the registration of professional commercial fund-raisers
19 who for compensation solicit contributions in Iowa for a
20 charitable organization (but does not include attorneys,
21 investment advisers, or investment adviser representatives
22 regulated under Code chapter 502, persons engaged in banking,
23 political organizations, or religious organizations). The
24 bill rewrites provisions contained in Code section 13C.2. It
25 retains requirements that prohibit a person from soliciting
26 contributions for charitable purposes in this state unless the
27 professional commercial fund-raiser registers with the attorney
28 general. It eliminates a number of requirements in Code
29 section 13C.2, including (1) the option to forgo registration
30 by promising to provide financial disclosure information to a
31 person or government entity requesting the information and (2)
32 a provision requiring the confidentiality of client lists owned
33 by a professional commercial fund-raiser. The bill increases
34 the fee required for registering from \$10 to \$100.

35 USE OF A CHARITABLE ORGANIZATION'S NAME. The bill retains

1 other provisions from Code chapter 13C, including provisions in
2 Code section 13C.3, which prohibit a charitable organization
3 from soliciting contributions for a charitable purpose where
4 the organization claims that a portion of or all of the
5 contributions received will be given to another charitable
6 organization in this state, without permission from the other
7 charitable organization.

8 ADMINISTRATION. The bill retains a provision that delegates
9 rule making authority to the attorney general, and authorizes
10 the attorney general to promulgate forms.

11 FUNDING. The bill establishes a charitable solicitations
12 administration fund under the control of the attorney general.
13 Moneys collected by the attorney general under the bill are
14 deposited in the fund, and are appropriated from the fund for
15 the use by the attorney general in administering and enforcing
16 its provisions.

17 PENALTIES. The bill also retains language from Code section
18 13C.8 which provides the attorney general with enforcement
19 authority, and makes a violation of the Code chapter a
20 fraudulent practice under Code section 714.16(2)(a). A
21 fraudulent practice is an offense that is punishable by a
22 range of penalties depending upon the amount of money or value
23 of property taken (see Code sections 714.9 through 714.13),
24 from fraudulent practice in the fifth degree punishable as a
25 simple misdemeanor to fraudulent practice in the first degree
26 punishable as a class "C" felony. A simple misdemeanor is
27 punishable by confinement for no more than 30 days or a fine of
28 at least \$65 but not more than \$625 or by both. A class "C"
29 felony is punishable by confinement for no more than 10 years
30 and a fine of at least \$1,000 but not more than \$10,000.

31 EFFECTIVE DATE. The bill takes effect on January 1, 2011.