

STATUTES



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

CONSUMER STATUTES RELATING TO CHARITABLE SOLICITATION
AND
CHARITABLE SOLICITATION CONSULTATION

PLEASE BE FAMILIAR WITH THESE REGULATIONS
BEFORE CONDUCTING BUSINESS IN THIS
COMMONWEALTH

THANK YOU

367.650 Definitions for KRS 367.650 to 367.670.

As used in KRS 367.650 to 367.670 unless the context requires otherwise:

(1) "Charitable or civic purpose" means any purpose or activity which holds itself out to be benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary or fraternal, or to be established for a social welfare or advocacy, public health, environmental conservation, or civic purpose, or is designed to serve the welfare of society generally, or any class or group to which society is morally obligated, or a specific community or to preserve or improve the culture thereof or environment enjoyed thereby.

(2) "Charitable organization" means any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or a person who is or holds himself out to be established for a charitable or civic purpose; or a person who employs a charitable or civic appeal as the basis of a solicitation, or employs an appeal that suggests there is a charitable or civic purpose to a solicitation.

(3) "Contribution" means the grant, promise, or pledge of money, credit, property, financial assistance, or other thing of any kind or value in response to a solicitation for a charitable or civic purpose. It does not include: (a) Bona fide fees, dues, or assessments paid by members, if that membership is not conferred solely as consideration for making a contribution in response to a solicitation; or (b) Money, property, or compensated services received from any governmental authority.

(4) "Solicit" and "solicitation" mean, respectively, to engage in, and the act of, requesting, directly or indirectly, that an addressed person or limited audience or the public generally make a contribution. Solicitation shall be deemed to have taken place when the request is made, whether or not the requested contribution is made.

(5) "Person" means any individual, corporation, trust, partnership, organization, foundation, society, or other legal entity.

(6) "Professional solicitor" means a person who for compensation or other financial consideration solicits contributions in this state, directly or indirectly, for or on behalf of a charitable organization. A person qualifies as a professional solicitor if he is hired on a fee, commission, or percentage basis and the work is performed by him or his agents or the employees or volunteers of the benefiting charitable organization under the direction, supervision, or instruction of the solicitor. A professional solicitor conducts or supervises specific fundraising activities or events in which gifts are solicited, received, and deposited by the professional solicitor or his agents, expenses are paid, and net proceeds delivered to the charitable organization. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a professional solicitor, unless he is employed or engaged as a fundraising consultant or a professional solicitor by another charitable organization.

(7) "Fundraising consultant" means any person who, for compensation, plans, manages, advises, consults, or develops material for or with respect to the solicitation for any charitable organization. A fundraising consultant shall not, at any time, have custody of contributions from a solicitation or solicit contributions, directly or indirectly. If a fundraising consultant's fee is related to the amount of contributions received from a solicitation in which he took part, the consultant is considered a professional solicitor. A fundraising consultant shall not employ, procure, or otherwise engage any compensated person to solicit contributions. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a fundraising consultant, unless he is employed or engaged as a fundraising consultant or a professional solicitor by another charitable organization.

(8) "Religious organization" means any organization, the activity of which is protected by Section 1(2) of the Constitution of Kentucky and the First Amendment to the Constitution of the United States.

(9) "Solicitor" means a natural person who, by personal contact, transmitted oral communication or writing which identifies that person, requests a specific person to make a contribution for charitable or civic purposes.

367.652 Registration of professional solicitors and fundraising consultants -- Prohibitions -- Background check.

(1) A professional solicitor shall file a registration statement with, and obtain the approval of, the Attorney General before acting as a professional solicitor. The registration statement shall be attested to by the professional solicitor, if an individual, or by the principal officer of the professional solicitor, if the solicitor is a business entity. The statement shall be accompanied by a fee of three hundred dollars (\$300), plus the costs of a background investigation to the Attorney General's office. The funds shall be placed in a trust or agency account pursuant to KRS 45.253. If a professional solicitor is a corporation or partnership, a single fee shall cover all its partners, members, employees, directors, agents, or officers.

(2) Each registration shall expire on December 31 of the calendar year in which it is filed and may be renewed by reapplying and paying the prescribed fee.

(3) At the time of filing the registration statement, a professional solicitor shall file with and have approved by the Attorney General a full cash or surety bond in the amount of twenty-five thousand dollars (\$25,000). The bond shall be in favor of the Attorney General and shall be held for any person having prevailed in a cause of action against the solicitor for liabilities resulting from the solicitor's violation of KRS 367.650 to 367.670 or any administrative regulation promulgated pursuant to these sections. The bond shall be in a form prescribed by the Attorney General. If a surety bond is issued, it shall be issued by an insurer authorized to transact surety insurance in this state pursuant to KRS Chapter 304. The Attorney General may require that any cash offered

as security for a full cash bond be held in escrow by a financial institution located in the state, subject to an escrow agreement approved by the Attorney General.

(4) The registration statement shall be filed in a form prescribed by the Attorney General and shall include:

- (a) The name, address, and telephone number of the professional solicitor and the agent authorized to accept service of process in this state;
- (b) The names in which the professional solicitor is doing business in Kentucky and any names used in the past;
- (c) The names and addresses of any charity sharing in the charitable contributions received in this state;
- (d) A copy of any articles of incorporation and by-laws of the solicitor, fundraising consultant, and the charitable organization, and any tax-exempt status letter from the Internal Revenue Service;
- (e) The names, addresses, and occupations of persons employed by or who have contracted with the professional solicitor and a statement of whether those persons have been convicted of a felony or a misdemeanor involving moral turpitude or arising from their conduct as solicitors for a charitable organization or purpose;
- (f) A copy of the financial statement for the professional solicitor's preceding fiscal year, which shall set out the total profits and revenue from all fundraising activities, the balance sheet, the kind and amounts of funds raised, specific costs in raising funds, the percentage of funds raised on behalf of the charitable organization which are actually paid to the organization for charitable purposes, and the location of the original financial records;
- (g) A statement of whether the professional solicitor has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction;
- (h) A statement indicating the method by which the solicitation is made, a description of the promotional plan together with copies of all advertisements, the location of all telephones being used, and the time period during and the areas in which the solicitations are made; and
- (i) Any other information which may be required by the Attorney General for the public interest or for the protection of contributors.

(5) A fundraising consultant shall file a registration statement with and obtain the approval of the Attorney General before acting as a consultant. The registration statement shall be attested to by the fundraising consultant, if the consultant is an individual, or by the principal officer of the fundraising consultant, if the consultant is a business entity. The statement shall be accompanied by a fee of fifty dollars (\$50), plus the costs of a background investigation. The fees shall be placed in a trust or agency account pursuant to KRS 45.253. If a fundraising consultant is a corporation or partnership, a single fee shall cover all its partners, members, employees, directors, agents, or officers.

(6) Each registration shall expire on December 31 of the calendar year in which it is filed and may be renewed by reapplying and paying the fee.

(7) The professional solicitor and fundraising consultant shall report in writing to the Attorney General any material change in the registration statement occurring after filing. The report shall be filed within seven (7) calendar days after the change occurs.

(8) No person shall act as a professional solicitor or fundraising consultant if he, his officers, directors, or any person with a controlling interest in the business, or any person the professional solicitor or fundraising consultant employs or procures to solicit for compensation or to advise, consult, plan, or manage in regards to the solicitation campaign, has been convicted by a court of any state or the United States of a felony or a misdemeanor involving moral turpitude or arising from his conduct as a solicitor or consultant for a charitable organization or purpose. A background check on each person set out in this subsection shall be performed by the Attorney General's office. The actual cost of the investigation shall be added to the registration fee.

367.653 Contracts -- Requirements -- Filing of contract and promotion registration statement -- Violability of contract with unregistered party.

(1) A contract between a charitable organization and a professional solicitor or a charitable organization and a fundraising consultant shall be in writing. The contract shall be signed by two (2) authorized officials of the charitable organization, one (1) of whom shall be a member of the organization's governing body and the authorized contracting officer for the professional solicitor or fundraising consultant.

(2) The contract shall clearly state:

- (a) The respective obligations of each party;
- (b) The percentage of the gross revenue from the campaign that the charitable organization will receive;
- (c) The goods or services to be offered to the public;
- (d) The geographic area where the campaign will take place;
- (e) The date the campaign will begin and end;
- (f) A fundraising budget; and
- (g) Provisions for a final accounting.

The contract shall also identify the services to be provided by the professional solicitor or the fundraising consultant and shall indicate whether the solicitor or the consultant will, at any time, have custody of any contributions. The contract may further be defined by administrative regulations promulgated by the Attorney General pursuant to this section.

(3) At least fourteen (14) calendar days prior to the performance of any service pursuant to the contract, a professional solicitor or fundraising consultant shall file with the Attorney General a copy of the contract. No solicitation pursuant to the contract shall begin until the Attorney General has certified that the contract meets the statutory requirements.

(4) When filing the contract, a professional solicitor shall also file a written promotion registration statement with the Attorney General. The statement shall be attested to by

the professional solicitor's authorized contracting officer and shall be in the form as prescribed by the Attorney General in administrative regulations. The contract filed by a professional solicitor shall be valid only if it complies with this section and is accompanied by a promotion registration statement.

(5) No professional solicitor or fundraising consultant shall contract with a charitable organization unless the professional solicitor or fundraising consultant is registered with the Attorney General. A contract with an unregistered professional solicitor or fundraising consultant shall be violable at the option of the charitable organization.

367.656 Nonacceptance, revocation, suspension, or refusal to renew registration -- Judicial review -- Civil action.

(1) (a) A filing pursuant to KRS 367.653 and this section shall be accepted unless the Attorney General notifies the professional solicitor or fundraising consultant otherwise, within fourteen (14) calendar days of the receipt of filing. If a filing is not accepted, the Attorney General shall notify the affected charity at the time of rejection. Within seven (7) calendar days after receiving a notice that the filing requirements are not satisfied, the professional solicitor or fundraising consultant may request a hearing. The hearing shall be held in accordance with KRS Chapter 13B.

(b) A professional solicitor or fundraising consultant may submit an amended filing upon receiving notice that his prior filing has not been accepted.

(2) The Attorney General may revoke, suspend, or refuse to renew the registration of a professional solicitor or fundraising consultant if:

(a) He has violated any provision of KRS 367.650 to 367.670 or any administrative regulations promulgated by the Attorney General pursuant to those sections;

(b) He or any of his principal officers have refused or failed, after notice, to produce any records or disclose any information required pursuant to KRS 367.650 to 367.670, or any administrative regulations promulgated by the Attorney General pursuant to those sections.

(c) He has made a material false statement in an application, statement, or report required to be filed under KRS 367.650 to 367.670.

(3) Any party to a hearing who is aggrieved by the final order may seek judicial review by filing an appeal in the Franklin Circuit Court in accordance with KRS Chapter 13B.

(4) The Attorney General may bring a civil action directly in the Franklin Circuit Court or in the Circuit Court of any county in which the fundraising campaign involving the professional solicitor or fundraising consultant is being conducted to revoke or suspend the registration statement for any of the grounds set forth in this section.

367.657 Filing of federal Form 990 fulfills reporting requirement.

(1) Prior to any solicitation, every charitable organization required by the Internal Revenue Service to file a federal Form 990 and soliciting contributions in the

Commonwealth, or for which contributions are solicited shall file with the Attorney General a copy of its most recent federal Form 990 unless exempted by KRS 367.660.

(2) If a charitable organization is newly formed and a Form 990 has not yet been filed with the Internal Revenue Service, a notice of intent to solicit, in a form prescribed pursuant to administrative regulations promulgated by the Attorney General, shall be filed prior to any solicitation. Each chapter, branch, or affiliate of a charitable organization shall file a separate notice of intent or report the necessary information to its parent charitable organization that shall then file consolidated notice of intent to solicit. If a consolidated notice of intent is filed, information arising out of the activities of each chapter, branch, or affiliate of the charitable organization in this state shall be covered in the notice. A separate notice of intent shall be filed for each chapter, branch, or affiliate upon the request of the Attorney General. The notice shall expire on December 31 of the calendar year in which it was filed.

(3) The Form 990 shall be filed with the Attorney General each year in which contributors are solicited in the Commonwealth at the same time the form is filed with the Internal Revenue Service. If a Form 990 is not filed with the Internal Revenue Service, a new notice of intent to solicit shall be filed with the Attorney General.

367.658 Financial report of campaign -- Filing -- Audit.

Within ninety (90) days after the completion of a solicitation campaign or on the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, a professional solicitor shall file with the Attorney General a financial report of the campaign, including gross revenues and an itemization of all expenses incurred. This report shall be attested to by the authorized contracting agent for the professional solicitor and two (2) authorized officials of the charitable organization and shall be completed on a form prescribed by the Attorney General. This financial report shall be audited at the request of the Attorney General's office.

367.660 Exempt solicitations.

The following solicitations are exempt from the provisions of KRS 367.650 to 367.670:

(1) Solicitations by an organization of contributions from its members and their families only, if membership is not included in a solicitation to avoid the provisions of KRS 367.650 to 367.670, is not granted upon the basis of contributions alone, and is within the exception of KRS 367.650(3).

(2) Solicitations by a religious organization for funds for religious purposes such as maintenance of a house of worship, conduct of services, and propagation of its faith and tenets as distinguished from other charitable and civic purposes employed by nonreligious organizations.

(3) Solicitations by a publicly-owned or nonprofit privately-endowed educational institution regulated by the Kentucky Board of Education, the Council on Postsecondary Education, or an equivalent public authority of the jurisdiction where the institution is located, from the alumni, faculty members, student body of the institution and their families, and from corporations, for the continuance of an established educational program.

(4) Local solicitations by a student group or parent-teacher association for its campus or group connected activities with the approval of the administration of the educational institution.

367.665 Applicability of remedies, powers, and duties of Attorney General provided by KRS 367.190 to 367.300 or by other provisions of law.

(1) All of the remedies, powers, and duties provided for the Attorney General by KRS 367.190 to 367.300 appertaining to acts declared unlawful by KRS 367.170 shall apply with equal force and effect to acts declared unlawful by KRS 367.650 to 367.670.

(2) Nothing in KRS 367.650 to 367.670 shall be construed to limit or restrict the powers, duties, remedies, or penalties available to the Attorney General, the Commonwealth, or any private person under any other provision of statutory or common law.

367.666 Interstate reciprocal agreements on exchanging information - Fiscal records -- Contribution deposit requirements -- Maintenance of records.

(1) The Attorney General may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional solicitors, and fundraising consultants.

(2) A professional solicitor shall maintain fiscal records concerning his charitable solicitations in the Commonwealth. These records shall be kept on file during each solicitation campaign and for at least three (3) years after completion of the solicitation campaign.

(3) Each contribution collected by or in the custody of a professional solicitor shall be solely in the name of the charitable organization for which the contribution was solicited. The professional solicitor shall deposit the contribution in an account at a bank or other financial institution within two (2) business days of receiving the contribution. The account shall be in the name of the charitable organization, which shall have sole control of all withdrawals from the account. Neither the professional solicitor nor the fundraising consultant shall withdraw any deposited funds from the account.

(4) The records shall be maintained by the professional solicitor or the fundraising consultant, if contributions are collected, and shall be available for inspection by the Attorney General no later than ten (10) business days after his request.

367.667 Prohibited acts and practices in charitable solicitations.

The following acts and practices in the conduct of charitable solicitation shall be considered unfair, false, misleading, or deceptive in violation of KRS 367.170:

- (1) Representing or leading anyone in any manner to believe that a solicitation is for or on behalf of a charitable organization; or utilizing any emblem, device, or printed matter belonging to or associated with a charitable organization; or otherwise representing that any part of the contributions received will be donated to a charitable organization without first being authorized in writing to do so by the charitable organization;
- (2) Utilizing a name, symbol, or statement so closely related or similar to that used by another charitable organization, public official, or public agency that its use would tend to confuse or mislead a solicited person; or
- (3) Representing when soliciting funds that a charity will be the recipient of the funds when the professional solicitor or his employer pursuant to a contract is allowed to or will receive more than fifty percent (50%) of the gross receipts of the funds solicited as his compensation. It shall be a defense in any action brought to enforce this subsection for the professional solicitor to show that he disclosed in a clear and conspicuous manner to the prospective donor the percentage of the funds which he was allowed by contract to receive.

367.668 Disclosure requirements.

- (1) Prior to orally requesting a contribution or when requesting a contribution in writing, a professional solicitor shall clearly disclose:
 - (a) His name as set out in the registration statement filed with the Attorney General pursuant to KRS 367.652 and the fact that he is being paid for his services.
 - (b) The name of the charitable organization he represents and a description of how the contributions raised by the solicitation will be used for a charitable or civic purpose.
- (2) Any individual who acts on behalf of the professional solicitor and identifies himself by name shall give his legal name.
- (3) Any responses given by or on behalf of a professional solicitor to an oral or written request for information shall be truthful.
- (4) The written confirmation, receipt, or reminder sent to a contributor or one who has pledged to contribute, following an oral solicitation, shall clearly include the information required by subsections (1) and (2) of this section.
- (5) If the person being solicited requests information regarding the amount or percentage of funds going to the charitable organization or for a charitable or civic purpose, the professional solicitor shall inform the person solicited of the percentage of the gross revenue or the reasonable estimate of the gross revenue that the charitable

organization will receive from the solicitation campaign. The Attorney General shall promulgate administrative regulations necessary to effectuate this disclosure.

367.669 Local ordinances, rules, and regulations.

KRS 367.650 to 367.670 does not preclude any city, county, urban-county, or charter county government from promulgating or enacting ordinances, rules, and regulations further regulating the solicitation of contributions within the respective city, county, urban-county, or charter county government. The provisions shall not alter any of the obligations set forth in KRS 367.650 to 367.670 or any administrative regulations promulgated pursuant to those sections but may add other requirements and rules as appear to be proper to the city, county, urban-county, or charter county government involved.

367.670 Powers of Attorney General not limited or restricted.

KRS 367.650 to 367.670 shall not be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General which he is authorized to exercise or perform under any other provision of law.