

CHAPTER 1716: Charitable Organizations

Section 1716.01 Definitions.

As used in this chapter:

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

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

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

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

"Charitable organization" does not include an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose; or a compensated employee of an employer not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of his employer.

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

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

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

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

(C) "Charitable sales promotion" means any advertising or sale conducted by a person who represents that the purchase or use of goods or services offered by the person will benefit, in whole or in part, any charitable organization or charitable 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) "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) "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) "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) "Fund-raising counsel" means any person who, for compensation, plans, manages, advises, consults, or prepares material for or with respect to the solicitation in this state of contributions for any charitable organization or at any time has custody of contributions from a solicitation, but does not solicit contributions and does not employ, procure, or otherwise engage any compensated person to solicit contributions. "Fund-raising counsel" does not include the following:

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

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

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

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

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

(4) A compensated employee of an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits

contributions or conducts charitable sales promotions at the direction of the employee's employer.

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

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

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

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

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

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

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

(3) An employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a

charitable organization or purpose without compensation;

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

(K)(1) "Solicit" or "solicitation" means to request or a request directly or indirectly for money, property, financial assistance, or any other thing of value on the plea or representation that such money, property, financial assistance, or other thing of value or a portion of it will be used for a charitable purpose or will benefit a charitable organization. "Solicit" or "solicitation" includes but is not limited to the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, or any other thing of value:

(a) Any oral or written request;

(b) Making any announcement to the press, on radio or television, by telephone or telegraph, or by any other communication device concerning an appeal or campaign by or for any charitable organization or for any charitable purpose;

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

(d) Selling or offering or attempting to sell any advertisement, advertising space, book, card, tag, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, ticket, admission, candy, cookies, or other tangible item, or any right of any description in connection with which an appeal is made for any charitable organization or charitable purpose, or when the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making the sale, or when in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the

sale will be used for any charitable purpose or will benefit any charitable organization.

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

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

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

Section 1716.02 Charitable organizations to file annual registration statement; fees.

(A) Every charitable organization, except those exempted under section 1716.03 of the Revised Code, that intends to solicit contributions in this state by any means or have contributions solicited in this state on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion, prior to engaging in any of these activities and annually thereafter, shall file a registration statement with the attorney general upon a form prescribed by the attorney general. Each chapter, branch, or affiliate of a charitable organization that is required to file a registration statement under this section either shall file a separate registration statement or report the necessary information to its parent charitable organization that then shall file a consolidated registration statement. The annual registration statement shall be refiled on or before the fifteenth day of the fifth calendar month after the close of each fiscal year in which the charitable organization solicited in this state, or by the date of any applicable extension of the federal filing date, whichever is later. No

charitable organization that is required to register under this chapter prior to registration, shall solicit contributions in this state by any means, have contributions solicited in this state on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or participate in a charitable sales promotion.

(B) The registration statement shall be signed and sworn to under penalties of perjury by the treasurer or chief fiscal officer of the charitable organization and shall contain the following information:

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

(2) The address and telephone number of the principal place of business of the charitable organization and the address and telephone number of every office, chapter, branch, or affiliate of the charitable organization located in this state or, if the charitable organization does not maintain an office in this state, the name, address, and telephone number of the person that has custody of its financial records;

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

(4) The annual financial report of the charitable organization for the immediately preceding fiscal year as required under section 1716.04 of the Revised Code;

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

(6) A statement of whether the charitable organization is registered with or otherwise authorized by any other governmental authority in this state or another state to solicit contributions;

(7) A statement of whether the charitable organization has had its registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state;

(8) A statement of whether the charitable organization intends to solicit contributions

from the public directly by using its own resources or to have solicitations made on its behalf through the use of another charitable organization, fund-raising counsel, professional solicitors, or commercial co-venturers;

(9) The names, addresses, and the telephone numbers of any other charitable organization, fund-raising counsel, professional solicitors, and commercial co-venturers who act or will act on behalf of the charitable organization, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other remunerations to be paid the other charitable organization, fund-raising counsel, professional solicitors, and commercial co-venturers. If any of the information required by division (B)(9) of this section is not available at the time of registration, that information shall be submitted to the attorney general at a later date but before any solicitation occurs.

(10) The charitable purpose or purposes for which the contributions to be solicited will be used;

(11) The names, addresses, and telephone numbers of the persons within the charitable organization that will have final responsibility for the custody of the contributions;

(12) The names of the persons within the charitable organization that will be responsible for the final distribution of the contributions;

(13) The period of time during which, and the counties in which, the solicitation is planned to be conducted;

(14) A schedule of the activities carried on by the charitable organization in the performance of its purposes;

(15) Any other information that the attorney general may, by rule, require.

(C)(1) With the initial registration only, every charitable organization that is required to register under this chapter also shall file with the attorney general the following:

(a) A copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other

organizational instrument, and a copy of the bylaws of the charitable organization;

(b) A statement setting forth the place where and the date when the charitable organization was legally established, the form of its organization, and its tax exempt status, with a copy of its federal tax exemption determination letter.

(2)(a) With the next annual registration statement filed after its adoption, the charitable organization shall file with the attorney general a copy of any amendment to its organizational instrument as specified in division (C)(1)(a) of this section and a copy of any amendment to its bylaws.

(b) Within thirty days after its receipt, the charitable organization shall file with the attorney general a copy of any federal tax exemption determination letter or any correspondence rescinding its tax exempt status that is received after the initial registration. Not later than thirty days after being notified by the internal revenue service of any challenge to or investigation of its continued entitlement to federal tax exemption, the charitable organization shall notify the attorney general of this fact.

(D)(1) Except as otherwise provided in division (D)(2) of this section, every charitable organization that is required to register under this chapter shall pay the following fees with each registration:

(a) Fifty dollars, if the contributions received for the last calendar or fiscal year were five thousand dollars or more but less than twenty-five thousand dollars;

(b) One hundred dollars, if the contributions received for the last calendar or fiscal year were twenty-five thousand dollars or more but less than fifty thousand dollars;

(c) Two hundred dollars, if the contributions received for the last calendar or fiscal year were fifty thousand dollars or more.

(2) A charitable organization that is required to register under this chapter and whose contributions received for the last calendar or fiscal year were less than five

thousand dollars shall not pay any registration fee.

(3) The amount of registration fees that a charitable organization is required to pay under division (D)(1) of this section shall be based on the amount of contributions that it receives from persons in this state. If, for any reporting year, a charitable organization cannot determine from its records the exact amount of contributions it received from persons in this state, it shall compute the amount of the registration fee upon the estimated amount of contributions it received from persons in this state, with the estimated amount to be explained in writing at the time the registration fee is paid. At the request of the attorney general, the charitable organization shall substantiate the estimated amount of contributions it received from persons in this state.

(4) All registration fees shall be paid into the state treasury to the credit of the charitable law fund established under section 109.32 of the Revised Code.

Section 1716.03 Exempt organizations.

The following shall not be required to file a registration statement as provided in section 1716.02 of the Revised Code:

(A) Any religious agencies and organizations, and charities, agencies, and organizations operated, supervised, or controlled by a religious organization;

(B) Any charitable organization that meets all of the following requirements:

(1) It has been in continuous existence in this state for a period of at least two years;

(2) It has received from the internal revenue service a determination letter that is currently in effect, stating that the charitable organization is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(3) It has registered with the attorney general as a charitable trust pursuant to section 109.26 of the Revised Code;

(4) It has filed an annual report with and paid the required fee to the attorney general pursuant to section 109.31 of the Revised Code.

(C) Any educational institution, when solicitation of contributions is confined to alumni, faculty, trustees, or the student membership and their families;

(D) Every person other than an individual, when solicitation of contributions for a charitable purpose or on behalf of a charitable organization is confined to its existing membership, present or former employees, or present or former trustees;

(E) Any public primary or secondary school, when solicitation of contributions is confined to alumni, faculty, or the general population of the local school district;

(F) Any booster club that is organized and operated in conjunction with and for the benefit of students of public primary or secondary schools;

(G) Any charitable organization that does not receive gross revenue, excluding grants or awards from the government or an organization that is exempt from federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, in excess of twenty-five thousand dollars during its immediately preceding fiscal year, if the organization does not compensate any person primarily to solicit contributions.

If the gross revenue, excluding grants or awards from the government or an organization that is exempt from federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, of any charitable organization received during any fiscal year exceeds twenty-five thousand dollars, the charitable organization, within thirty days after the receipt of the revenue, shall file a registration statement with the attorney general pursuant to section 1716.02 of the Revised Code.

Section 1716.04 Annual financial report of registrants.

(A) Every charitable organization that is required to register pursuant to this chapter shall file an annual financial report with the attorney general upon a form prescribed by him. The report shall include all of the following:

(1) A balance sheet;

(2) A statement of support, revenue, and expenses, and any changes in the fund balance;

(3) The names and addresses of the charitable organizations, fund-raising counsel, professional solicitors, and commercial co-venturers used, if any, and the amounts of money received from each of them, if any.

(4) A statement of functional expenses that shall include, but not be limited to, expenses of the following categories:

(a) Program;

(b) Management and general;

(c) Fund-raising.

(5) Any other information that the attorney general, by rule, may require.

(B) The attorney general shall accept a copy or duplicate original of a financial statement, report, or return filed by the charitable organization with the internal revenue service. The attorney general, by rule, may require additional information as part of the annual financial report. Any consolidated financial report filed with the attorney general shall include information about the parent charitable organization as such and the financial information arising out of the activities of each chapter, branch, or affiliate of the charitable organization in this state that is covered by the financial statement, report, or return filed by the charitable organization with the internal revenue service.

Section 1716.05 Registration and duties of fund-raising counsel.

(A) No person shall act as a fund-raising counsel unless the person first has complied with the requirements of this chapter and any rules adopted under this chapter.

(B) Any fund-raising counsel that at any time has custody of contributions from a solicitation shall do all of the following:

(1) Register with the attorney general. Applications for registration or renewal of registration shall be in writing, under oath, and in the form prescribed by the attorney general, and shall be accompanied by a fee in the amount of two hundred dollars. Any corporation, partnership, association, or other entity that intends to act as a fund-raising counsel may register for and pay a single fee of two hundred dollars on behalf of all its members, officers, employees, and agents. In that case, the names and addresses of all the officers, employees, and agents of the fund-raising counsel and all other persons with whom the fund-raising counsel has contracted to work under its direction shall be listed in the application. The application shall contain any other information that the attorney general may require. The registration or renewal of registration shall be for a period of one year or part of one year and shall expire on the thirty-first day of March of each year. All fees prescribed in this division shall be paid into the state treasury to the credit of the charitable law fund established under section 109.32 of the Revised Code.

(2) At the time of making an application for registration or renewal of registration, file with and have approved by the attorney general a bond in which the fund-raising counsel shall be the principal obligor, in the sum of twenty-five thousand dollars, with one or more sureties authorized to do business in this state. The fund-raising counsel shall maintain the bond in effect as long as the registration is in effect; however, the liability of the surety under the bond shall not exceed an all-time aggregate liability of twenty-five thousand dollars. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this chapter or any rule adopted pursuant to this chapter.

(3) 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, furnish an accounting of all contributions collected and expenses paid, to the charitable organization with which the fund-raising counsel has contracted. The accounting shall be in writing and shall be retained by the charitable organization for three years. The fund-raising counsel shall file a copy of the accounting with the attorney general not later than seven days after it is furnished to the charitable organization.

(4) Not later than two days after receipt of each contribution, deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization with which the fund-raising counsel has contracted. Each contribution collected by the fund-raising counsel shall be solely in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the fund-raising counsel shall not be given the authority to withdraw any deposited funds from the account.

(5) During each solicitation campaign and for not less than three years after its completion, maintain the following records that shall be made available to the attorney general upon the attorney general's request:

(a) A record of each contribution that at any time is in the custody of the fund-raising counsel, including the name and address of each contributor and the date and amount of the contribution, provided that the attorney general shall not disclose that information except to the extent necessary for investigative or law enforcement purposes;

(b) The location of each bank or financial institution in which the fund-raising counsel has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made.

(C) Unless otherwise provided in this section, any change in any information filed with the attorney general pursuant to this section shall be reported in writing to the attorney general within seven days after the change occurs.

(D) No person shall serve as a fund-raising counsel, or be a member, officer, employee, or agent of any fund-raising counsel, who has been convicted in the last five years of either of the following:

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

(2) A felony in this or another state.

(E) The information provided under this section to the attorney general by a fund-raising counsel shall be included in the reports and files required to be compiled and maintained by the attorney general pursuant to divisions (E) and (F) of section 1716.08 of the Revised Code.

Section 1716.07 Professional solicitors.

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

(B) Every professional solicitor, before engaging in any solicitation, shall register with the attorney general. Applications for registration or renewal of registration shall be in writing, under oath, and in the form prescribed by the attorney general, and shall be accompanied by a fee in the amount of two hundred dollars. Any corporation, partnership, association, or other entity that intends to act as a professional solicitor may register for and pay a single fee of two hundred dollars on behalf of all its members, officers, employees, agents, and solicitors. In that case, the names and addresses of all the officers, employees, and agents of the professional solicitor and all other persons with whom the professional solicitor has contracted

to work under its direction, including solicitors, shall be listed in the application or furnished to the attorney general within five days of the date of employment or contractual arrangement. The application shall contain any other information that the attorney general may require. The registration shall be for a period of one year or part of one year and shall expire on the thirty-first day of March of each year. Upon application and payment of the fee specified in this division and filing of the bond prescribed in division (C) of this section, the registration may be renewed for additional one-year periods. All fees prescribed in this division shall be paid into the state treasury to the credit of the charitable law fund established under section 109.32 of the Revised Code.

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

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

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

(b) A copy of the contract described in

division (A) of section 1716.08 of the Revised Code;

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

(2) The solicitation notice shall include all of the following:

(a) The fund-raising methods to be used;

(b) The projected dates when the solicitation will commence and terminate;

(c) The location and telephone number from where the solicitation will be conducted if it will be conducted by telephone;

(d) The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;

(e) A statement of whether the professional solicitor will at any time have custody of any contributions;

(f) A full and fair description of the charitable program for which the solicitation campaign is being carried out;

(g) 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.

(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 an itemization of all expenses incurred. The report shall be completed on a form prescribed by the attorney general and signed by an authorized official of the professional solicitor who shall certify under oath that the report is true and correct.

(F) Each contribution collected by or in the custody of the professional solicitor shall be solely in the name of the charitable organization

on whose behalf the contribution was solicited. Not later than two days after receipt of each contribution, the professional solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which shall be in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the professional solicitor shall not be given the authority to withdraw any deposited funds from the account.

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

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

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

(c) A record of all contributions that at any time are in the custody of the professional solicitor;

(d) A record of all expenses incurred by the professional solicitor for the payment of which the professional solicitor is liable;

(e) A record of all expenses incurred by the professional solicitor for the payment of which the charitable organization is liable;

(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;

(g) A copy of each pitch sheet or solicitation script used during the solicitation campaign;

(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.

(i) Any other record of such information as the attorney general may require.

(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:

(a) The name and address of each contributor that purchases or donates tickets and the number of tickets purchased or donated by the contributor;

(b) The name and address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

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

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

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

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

(2) A felony in this or another state.

Section 1716.08 Contracts with professional

solicitors; disclosure at point of solicitation; representations as to donations to other charities; donated tickets; annual report and file of attorney general.

(A) Every contract entered into by any professional solicitor with any charitable organization shall be in writing, shall clearly state the respective obligations of the professional solicitor and the charitable organization, and shall contain the percentage of the gross revenue from the solicitation campaign that the charitable organization will receive. That percentage shall be either a fixed percentage of the gross revenue or a reasonable estimate of the percentage of the gross revenue, subject to and in accordance with divisions (A)(1), (2), and (3) of this section.

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

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

(a) The assumptions upon which the estimate is based, which assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted and the past performance of the solicitation campaigns conducted by the professional solicitor;

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

(3) The stated percentages prescribed in

divisions (A)(1) and (2) of this section shall exclude any amount that the charitable organization, pursuant to the contract entered into with the professional solicitor, will pay as expenses of the solicitation campaign, including the costs of merchandise or services sold or events staged.

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

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

(a) The name of the professional solicitor as it is on file with the attorney general and a statement that the solicitation is being conducted by the person as a professional solicitor;

(b) The name and address of each charitable organization on behalf of which all or any part of the contribution collected will be used. If the charitable organization has not received from the internal revenue service a determination letter that is currently in effect, stating that the organization is exempt from federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, the particular charitable purpose or purposes to be advanced with the funds raised shall be disclosed.

(2) If requested by the person being solicited, the professional solicitor shall inform that person of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue, as prescribed in division (A) of this section, that the charitable organization will receive as a benefit from the solicitation campaign.

(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) 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.

(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 shall place all information received by him 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 1716.09 Charitable sales promotions by commercial co-venturer.

(A) Prior to the commencement of any charitable sales promotion in this state conducted by a commercial co-venturer on behalf of a charitable organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion.

(B) In conducting a charitable sales promotion, if the actual dollar amount or percentage per unit of goods or services purchased or used that will benefit the charitable organization or charitable purpose has been determined, the commercial co-venturer shall disclose that amount or percentage in each advertisement for the charitable sales promotion. If the actual dollar amount or percentage per unit of goods or services purchased or used that will benefit the charitable organization or charitable purpose cannot reasonably be determined prior to the beginning of the charitable sales promotion, the commercial co-venturer shall disclose an estimated amount or percentage in each advertisement for the charitable sales promotion. The estimate shall be reasonable and shall be based on all the relevant facts known to the commercial co-venturer and the charitable organization.

(C) A commercial co-venturer shall keep a final accounting for each charitable sales promotion that it conducts for a period of three years following the completion of the charitable sales promotion. A commercial co-venturer shall provide a final accounting for each charitable sales promotion that it conducts to the charitable organization on whose behalf the charitable sales promotion was conducted not later than ten days after the charitable organization requests it. A commercial co-venturer shall provide to the attorney general a copy of the final accounting for each

charitable sales promotion that it conducts not later than ten days after the attorney general requests it.

Section 1716.10 Disclosures by organization at point of solicitation.

Every charitable organization, whether or not required to register pursuant to this chapter, that directly solicits contributions in this state shall make the following disclosures at the point of solicitation:

(A) The name of the charitable organization and the city of the principal place of business of the charitable organization;

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

Section 1716.11 Records of solicitation activities.

Every charitable organization, fund-raising counsel, professional solicitor, and commercial co-venturer, whether or not required to register pursuant to this chapter, shall keep true records of solicitation activities that are covered by this chapter or any rule adopted under this chapter. The records shall be made available to the attorney general for inspection and shall be furnished to him not later than ten days after his request. The records shall be retained for a period of at least three years.

Section 1716.12 Exchange of information with other states or with United States.

The attorney general may exchange any information with respect to charitable

organizations, fund-raising counsel, professional solicitors, or commercial co-venturers with the appropriate authority of any other state or of the United States. The attorney general may accept any information filed by a charitable organization with the appropriate authority of another state or of the United States in lieu of the information that the charitable organization is required to file pursuant to this chapter if the information substantially meets all the requirements of this chapter.

Section 1716.13 Rules.

The attorney general from time to time may adopt such reasonable rules pursuant to Chapter 119 of the Revised Code as may be necessary to interpret or implement this chapter.

Section 1716.14 Prohibited acts and practices.

(A) The following acts and practices are hereby prohibited and declared unlawful as applied 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:

(1) Committing any deceptive act or practice;

(2) Misleading any person as to any material fact concerning the solicitation of contributions for a charitable organization or charitable purpose or concerning a charitable sales promotion;

(3) Using any representation that implies that the contribution is for or on behalf of a charitable organization, or using any emblem, device, or printed matter belonging to or associated with a charitable organization, without first having been authorized in writing to do so by the charitable organization;

(4) Using a name, symbol, or statement that is so closely related or similar to that used

by another charitable organization, public official, or public agency in such a manner that the use of the name, symbol, or statement tends to confuse or mislead a person being solicited for contributions, except that the name, symbol, or statement may be used if written permission is obtained from the other charitable organization, public official, or public agency and filed with the attorney general prior to any solicitation for a charitable purpose or prior to engaging in any charitable sales promotion;

(5) Misleading any person in any manner in the belief, or making or using any representation to any person that implies, that the organization on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for a charitable purpose if either of those is not the fact;

(6) Misleading any person in any manner in the belief, or making or using any representation to any person that implies, that any other person sponsors, endorses, or approves of the solicitation or charitable sales promotion when that other person has not given its consent in writing to that representation or to the use of its name for any of those purposes;

(7) Using or exploiting the fact of registration in such a manner as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the state;

(8) Representing directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign that is greater than that set forth in the contract filed with the attorney general pursuant to section 1716.08 of the Revised Code, or that a charitable organization will receive an actual or estimated dollar amount or percentage per unit of goods or services purchased or used in a charitable sales promotion, that is greater than that agreed to by the commercial co-venturer and the charitable organization;

(9) Filing false or misleading

information in any document required to be filed with the attorney general under this chapter;

(10) Filing false or misleading information in response to a request from the attorney general under section 1716.15 of the Revised Code;

(11) Failing to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign or a charitable sales promotion.

(12) Operating in violation of, or failing to comply with, any of the requirements of this chapter or any rule adopted under this chapter.

(B) The act of soliciting contributions for any charitable organization or charitable purpose or engaging in a charitable sales promotion without complying with the requirements of this chapter or any rule adopted pursuant to this chapter, is a nuisance.

Section 1716.15 Investigations by attorney general.

(A) In order to carry out his responsibilities under this chapter, upon reasonable cause to believe that any person has violated or is violating any provision of this chapter or any rule adopted under it, or has filed any document as required under this chapter that contains false or misleading information, the attorney general may conduct an investigation to determine whether there has been a violation or filing of false or misleading information. In the conduct of the investigation, the attorney general may do the following:

(1) Examine or cause to be examined any person or any documentary material that is relevant to the alleged violation or false or misleading information;

(2) Require the attendance during the examination of any person or require the production of any documentary material and the attendance of any person who has knowledge of the material, and take their testimony under oath. The testimony and examination shall take place in the county in which the person resides

or has a place of business, or in Franklin county if the person consents to it, is a nonresident of this state, or has no place of business in this state.

(3) Require any professional solicitor, fund-raising counsel that at any time has custody of contributions from a solicitation, or charitable organization to produce an audited financial report prepared in accordance with generally accepted accounting principles pursuant to section 1716.04 of the Revised Code and that has been examined by an independent certified public accountant for the purpose of expressing an opinion on the report.

(B) The attorney general shall give notice of the time, date, place, and cause of the examination or the taking of testimony not less than ten days prior to its date. Service of the notice may be made by any of the following means:

(1) Personal delivery of a duly executed copy of the notice to the person to be served or to a partner, officer, or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) Delivery by leaving a duly executed copy of the notice at the principal place of business in this state of the person to be served;

(3) Certified mail, return receipt requested, of a duly executed copy of the notice to the person to be served at his principal place of business in this state or, if the person has no principal place of business in this state, to the last address of that person known to the attorney general.

(C) The notice specified in division (B) of this section shall contain all of the following:

(1) The time, date, and place of the examination or the taking of testimony and, if known, the name and address of each person to be examined or to testify, or if that is not known, a general description sufficient to identify the person or the particular class or group to which he belongs;

(2) The section of the Revised Code, if any, or the chapter of the Administrative Code containing the rule adopted by the attorney

general, if any, that is allegedly violated and the general subject matter of the investigation;

(3) A description with reasonable specificity of the class or classes of documentary material that is required to be produced, if any, and the return date within which the documentary material is to be produced, which date shall be not less than ten days after the mailing of the notice.

(D) Every person upon whom the attorney general made service of the notice pursuant to this section shall comply with the terms of the notice unless otherwise provided by order of any court in this state.

(E) No person shall do any of the following:

(1) Fail to appear at any investigation under this section if he is required to do so;

(2) With the purpose to avoid, evade, or prevent compliance in whole or in part with any investigation under this section, remove, conceal, withhold, destroy, mutilate, alter, or by any means falsify any documentary material in the possession, custody, or control of any person who is subject to the notice prescribed in division (B) of this section;

(3) With the purpose to avoid, evade, or prevent compliance in whole or in part with any investigation under this section, knowingly conceal any information.

(F) The attorney general may file a petition in the court of common pleas of the county in which the person who is subject to the notice resides or has its principal place of business or in the court of common pleas of Franklin county if that person is not a resident of this state or has no principal place of business in this state, asking the court to issue an order for the enforcement of this section. The court may assess a civil penalty of not more than ten thousand dollars for each violation against any person who violates division (E) of this section, and may award the attorney general the costs of investigation and litigation and reasonable attorney's fees.

(G) Any disobedience of any final order issued by the court under this section may be

punished as for contempt of court or by imposing an additional civil penalty of not more than ten thousand dollars.

Section 1716.16 Civil actions to enforce provisions; acceptance of assurance of discontinuance of violation; penalties.

(A) In addition to other remedies authorized by law, the attorney general may bring a civil action to enforce this chapter or any rule adopted under this chapter. The attorney general is not required to use any procedure prescribed in Chapter 119 of the Revised Code prior to exercising any remedy set forth in this section.

(B) Upon a finding that any person has engaged or is engaging in any act or practice in violation of this chapter or any rule adopted under this chapter, a court may make any necessary order or enter a judgment including, but not limited to, an injunction, restitution, or an award of reasonable attorney's fees and costs of investigation and litigation, and may award to the state a civil penalty of not more than ten thousand dollars for each violation of this chapter or rule. In seeking injunctive relief, the attorney general shall not be required to establish irreparable harm but only shall establish a violation of a provision of this chapter or a rule adopted under this chapter or that the requested order promotes the public interest.

(C) In any case in which the attorney general has authority to institute an action or proceeding under this chapter, the attorney general may accept an assurance of discontinuance of any method, act, or practice that is in violation of this chapter or any rule adopted under it, from any person alleged to be engaged in or to have engaged in the unlawful method, act, or practice. The assurance may include a stipulation for the voluntary payment by the person of the costs of investigation, or of an amount to be held in escrow pending the outcome of any action or as restitution to any aggrieved person or both. The assurance of

discontinuance shall be in writing and shall be filed with the court of common pleas of Franklin county. Any evidence of a violation of the assurance of discontinuance shall be prima facie evidence of a violation of this chapter or any rule adopted under it in any subsequent action or proceeding brought by the attorney general. Any matter that has been closed by the acceptance of an assurance of discontinuance may at any time be reopened by the attorney general for further proceedings in the public interest.

(D) In addition to any other sanction imposed by law, any charitable organization, fund-raising counsel, professional solicitor, commercial co-venturer, or any of their agents, or any other person that violates the terms of an assurance of discontinuance, an injunction, or any other order or judgment entered by a court under this section, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars for each violation that may be recovered in a civil action brought by the attorney general. Each violation shall be a separate offense, except that in the case of a violation through continuing failure to obey, or neglect in obeying, the order, each day of continuance of the failure or neglect shall be considered a separate offense.

(E) The civil penalties assessed under division (B) or (D) of this section or division (F) or (G) of section 1716.15 of the Revised Code shall be paid into the state treasury to the credit of the charitable law fund established under section 109.32 of the Revised Code.

Section 1716.17 Fiduciary duties as to solicitations and expenditures.

Every person who solicits, collects, or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee, or employee of that person who is concerned with the solicitation, collection, or expenditure of those contributions shall be considered a fiduciary and as acting in a

fiduciary capacity.

This section does not supersede or otherwise alter the standard of care or the limitations on the liability of volunteers under section 1702.30 or 2305.38 of the Revised Code.

Section 1716.99 Penalties.

(A) Whoever violates any provision of sections 1716.02 to 1716.17 of the Revised Code, other than division (A)(1) of section 1716.14 of the Revised Code, is guilty of a misdemeanor of the first degree.

Each occurrence of a solicitation of a contribution from any person in violation of any provision of sections 1716.02 to 1716.17 of the Revised Code, other than division (A)(1) of section 1716.14 of the Revised Code, is considered a separate offense.

(B) (1) Whoever violates division (A)(1) of section 1716.14 of the Revised Code is guilty of solicitation fraud and shall be punished as provided in divisions (B)(2) to (4) of this section.

(2) Except as otherwise provided in division (B)(4) of this section, division (B)(3) of this section applies to solicitation fraud, and solicitation fraud is one of the following:

(a) Except as otherwise provided in divisions (B)(2)(b) to (d) of this section, a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a theft offense or a violation of division (A)(1) of section 1716.14 of the Revised Code, a felony of the fifth degree.

(b) If the value of the contribution or contributions made in the violation is five hundred dollars or more but less than five thousand dollars, a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to a theft offense or a violation of division (A)(1) of section 1716.14 of the Revised Code, a felony of the fourth degree.

(c) If the value of the contribution or contributions made in the violation is five

thousand dollars or more but less than one hundred thousand dollars, a felony of the fourth degree or, if the offender previously has been convicted of or pleaded guilty to a theft offense or a violation of division (A)(1) of section 1716.14 of the Revised Code, a felony of the third degree.

(d) If the value of the contribution or contributions made in the violation is one hundred thousand dollars or more, a felony of the third degree.

(3) When an offender commits a series of offenses in violation of division (A)(1) of section 1716.14 of the Revised Code as part of a common scheme or plan to defraud multiple victims, all of the offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the contributions for purposes of determining the value as required by division (B)(2) of this section is the aggregate value of all contributions involved in all offenses in the common scheme or plan to defraud multiple victims. In prosecuting a single offense under this division, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more offenses as part of a common scheme or plan to defraud multiple victims as described in this division.

(4) If the victim of the offense is an elderly person or disabled adult, division (B)(4) of this section and section 2913.61 of the Revised Code apply to solicitation fraud, and solicitation fraud is one of the following:

(a) Except as otherwise provided in divisions (B)(4)(b) to (d) of this section, a felony of the fifth degree;

(b) If the value of the contributions made in the violation is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(c) If the value of the contributions made in the violation is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(d) If the value of the contributions made in the violation is twenty-five thousand dollars or more, a felony of the second degree.

(C) Any person who is found guilty of any act or omission prohibited under this chapter shall forfeit the bond described in section 1716.05 or 1716.07 of the Revised Code to the state treasury to the credit of the charitable law fund established under section 109.32 of the Revised Code and shall be prohibited from registering with the attorney general or from serving as a fund-raising counsel or professional solicitor in this state for a period of five years after conviction.

(1/31/01)