

Introduced: 4/28/79
Referred: Judiciary and
Finance

BY THE JUDICIARY COMMITTEE
BY REQUEST

1 IN THE SENATE

2 SENATE BILL NO. 282

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of charitable organi-
7 zations and the solicitation of contributions for
8 charitable purposes."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds
11 that charities perform valuable social services at a cost-saving to the
12 state -- responsibilities which otherwise would have to be assumed by state
13 or local government or go untended. The voluntary association of citizens to
14 achieve desirable social benefits or to solve community problems is a highly
15 valued American tradition. However, many solicitations for charitable pur-
16 poses have involved situations in which funds are solicited from the people
17 of this state for charitable purposes but an insignificant amount, if any, of
18 the money solicited and collected actually is received by any charity.
19 Therefore, in the interest of protecting the public welfare and promoting
20 citizens' charitable endeavors, the state should ensure that money and other
21 property collected in fund-raising campaigns are used solely for the chari-
22 table purposes promised during that campaign, to preclude the diversion of
23 funds from necessary philanthropies for personal use or gain and to make
24 certain that full information concerning charities, their purposes, their
25 management, and their methods of solicitation is made available to protect
26 the public from the unscrupulous, so that worthwhile charitable organizations
27 will thrive while those unworthy of public support will be exposed.

28 * Sec. 2. AS 10 is amended by adding a new chapter to read:

29 CHAPTER 50. CHARITABLE ORGANIZATIONS AND

1 SOLICITATION OF CONTRIBUTIONS.

2 ARTICLE 1. CHARITABLE ORGANIZATIONS.

3 Sec. 10.50.010. REGISTRATION OF CHARITABLE ORGANIZATIONS. (a) A
4 charitable organization, except one exempted by AS 10.50.020, which
5 intends to solicit contributions from persons in this state or from a
6 governmental agency in this state shall, before solicitation, register
7 with the department by filing a statement, on a form prescribed by the
8 department, which includes the following information:

9 (1) the name of the organization and any name under which it
10 intends to solicit contributions;

11 (2) the names and addresses of the officers, directors,
12 trustees, and executive or management personnel of the organization and
13 of the individuals responsible for the distribution of the funds
14 collected;

15 (3) the addresses of the organization and the addresses of
16 its offices in this state; if the organization does not maintain an
17 office, the name and address of the person having custody of its finan-
18 cial records;

19 (4) where and when the organization was legally established,
20 the form of its organization, and its tax-exempt status;

21 (5) the purposes for which the organization is organized and
22 the purposes for which the contributions to be solicited will be used;

23 (6) the date on which the fiscal year of the organization
24 ends;

25 (7) whether the organization is authorized by a governmental
26 agency to solicit contributions and whether it is or has been enjoined
27 by a court from soliciting contributions;

28 (8) the names and addresses of professional fund raisers who
29 are acting or have agreed to act for the organization;

1 (9) a description of the methods of solicitation;

2 (10) the period of time during which the solicitation is to be
3 conducted;

4 (11) whether the solicitation is to be conducted by voluntary
5 unpaid solicitors, by paid solicitors, or by both.

6 (b) The registration form shall be signed by the president, or
7 other authorized officer, and the chief fiscal officer of the organiza-
8 tion.

9 (c) A filing fee of \$10 shall be paid to the department at the
10 time of registration.

11 (d) The registration remains in effect unless it expires under (f)
12 of this section, is cancelled as provided in this chapter, or is with-
13 drawn by the organization.

14 (e) A registered organization shall notify the department within
15 10 days of a change in the information required to be furnished by the
16 organization under (a) of this section.

17 (f) A registration of a charitable organization expires the day
18 after the date the organization should have filed, but failed to file,
19 an annual report in accordance with AS 10.50.030, and the organization
20 may not file a new registration until it has filed the required annual
21 report with the department. If the annual report is subsequently filed,
22 the organization may file a new registration upon payment of a fee of
23 \$10 to the department.

24 (g) Registration statements, financial reports, professional fund
25 raisers' contracts, and other documents required to be filed under this
26 chapter are public records in the department.

27 Sec. 10.50.020. EXEMPTIONS. (a) The following are not required
28 to register with the department:

29 (1) an educational institution confining its solicitation of

1 contributions to its student body, alumni, faculty, and trustees, and
2 their families, or a public library, if the annual financial report of
3 the institution or library is kept open for public inspection;

4 (2) the following when soliciting contributions only from
5 persons who are enrolled as members of the organization or who regularly
6 participate in the activity of the organization: a fraternal, patriotic,
7 social, alumni, historical, or veterans organization;

8 (3) a person requesting a contribution for the relief of an
9 individual, specified by name at the time of the solicitation, if all of
10 the contributions collected, without deductions, are turned over to the
11 named beneficiary;

12 (4) an organization which seeks to solicit \$5,000 or less in
13 contributions during the current fiscal year from persons or a govern-
14 mental agency inside or outside this state and which has not received
15 more than \$5,000 during any of the three preceding fiscal years from
16 contributions solicited from persons or a governmental agency inside or
17 outside this state.

18 (b) A religious charitable organization is exempt from this chap-
19 ter when soliciting contributions from persons attending a religious
20 service, religious instruction, or a religious meeting conducted by the
21 religious charitable organization.

22 (c) A religious charitable organization, when soliciting contribu-
23 tions from persons in this state while they are not attending a reli-
24 gious service, religious instruction, or a religious meeting or when
25 soliciting contributions from a governmental agency in this state, is
26 exempt from this chapter except as provided in AS 10.50.025.

27 **Sec. 10.50.025. REGISTRATION OF CERTAIN RELIGIOUS CHARITABLE**
28 **ORGANIZATIONS.** A religious charitable organization which intends to
29 solicit contributions from persons or a governmental agency in this

1 state as described in AS 10.50.020(c) shall, before solicitation, regis-
2 ter with the department by filing a statement, on a form prescribed by
3 the department, which includes the following information:

4 (1) the name of the organization and any name under which it
5 intends to solicit contributions;

6 (2) the names and addresses of the officers of the organiza-
7 tion, including the chief fiscal officer, and the person in charge of
8 solicitation;

9 (3) the addresses of the organization and the addresses of
10 its offices in this state; if the organization does not maintain an
11 office, the name and address of the person having custody of its finan-
12 cial records;

13 (4) the tax-exempt status of the organization;

14 (5) the purposes for which the contributions to be solicited
15 will be used;

16 (6) the names and addresses of professional fund raisers who
17 are acting or have agreed to act for the organization;

18 (7) a description of the methods of solicitation;

19 (8) the period of time during which the solicitation is to be
20 conducted;

21 (9) whether the solicitation is to be conducted by voluntary
22 unpaid solicitors, by paid solicitors, or by both.

23 Sec. 10.50.030. ANNUAL REPORTS. (a) A charitable organization
24 registered under AS 10.50.010 shall, within six months after the close
25 of its fiscal year, file a report with the department on forms pre-
26 scribed by the department. The report must include a financial state-
27 ment covering the fiscal year, clearly setting out the gross income,
28 expenses, and net income inuring to the benefit of the charitable organi-
29 zation, a balance sheet as of the close of the fiscal year, and a

1 schedule of the activities carried on by the organization in the perfor-
2 mance of its purposes, and the amounts expended for them, during the
3 fiscal year. An organization shall report its expenditures in accor-
4 dance with accepted accounting standards and classification of accounts.
5 The report must also include a statement of changes in the information
6 required to be contained in the registration form filed on behalf of the
7 organization. The report shall be signed by the president or other
8 authorized officer and the chief fiscal officer of the organization. If
9 the organization received more than \$10,000 during the fiscal year from
10 contributions solicited from persons or a governmental agency inside or
11 outside this state, the report must be accompanied by an opinion signed
12 by an independent public accountant that the financial statement and
13 balance sheet fairly represent the financial operations and position of
14 the organization.

15 (b) A charitable organization registered under AS 10.50.010, which
16 is the parent organization of one or more chapters in the state, and its
17 chapters, may comply with the reporting requirements of (a) of this
18 section by filing a consolidated report on forms prescribed by the
19 department. There must be appended to a consolidated report a schedule
20 containing the information that may be prescribed by the department,
21 reflecting the activities of each chapter. The schedule shall contain a
22 certification, under penalty of perjury, by an official of the organiza-
23 tion certifying that the information contained in it is true. The
24 failure of a parent organization to file an appropriate consolidated
25 report does not excuse either the parent organization or any of its
26 chapters from complying with (a) of this section.

27 (c) The department shall notify an organization which fails to
28 comply with (a) of this section within the prescribed time that its
29 registration has expired. An annual report which does not contain the

1 required information is not considered to be filed until the missing
2 information is supplied. However, the department may extend the period
3 of time for filing a report, including the supplying of missing informa-
4 tion, by a period of no more than six months.

5 (d) As used in this section, "chapter" means, by whatever designa-
6 tion, a branch, auxiliary, affiliate, or other subordinate unit of a
7 charitable organization registered under AS 10.50.010, if the policies,
8 fund raising, and expenditures of the unit are supervised or controlled
9 by the parent organization.

10 Sec. 10.50.040. EXAMINATION BY ATTORNEY GENERAL. (a) The records
11 and reports maintained by a charitable organization required to register
12 under AS 10.50.010 must be kept available for inspection by the attorney
13 general at the principal office of the organization.

14 (b) A charitable organization required to register under AS 10.50.-
15 010 is subject to examination by the attorney general to ascertain the
16 condition of its affairs and to what extent, if at all, it has failed to
17 comply with trusts which it has assumed or has departed from the general
18 purpose for which it was formed. In case of a failure or departure, the
19 attorney general shall institute the proceedings necessary to correct
20 the noncompliance or departure.

21 Sec. 10.50.050. ENFORCEMENT BY ATTORNEY GENERAL. (a) In addition
22 to any other action authorized by law, the attorney general may bring an
23 action in the superior court against a charitable organization required
24 to register under AS 10.50.010 and any persons acting for it to enjoin
25 the organization and persons from soliciting or collecting funds or
26 property or doing acts in furtherance of soliciting or collecting, and
27 to cancel the registration statement previously filed with the depart-
28 ment, when the attorney general believes that the charitable organiza-
29 tion

- 1 (1) is operating in violation of this chapter;
- 2 (2) has made a material false statement in an application,
- 3 registration, or statement required to be filed under this chapter;
- 4 (3) has refused or failed, or its principal officers have
- 5 refused or failed, after notice, to produce records of the organization;
- 6 (4) is employing or about to employ, in the solicitation or
- 7 collection of contributions for the charitable organization, a device,
- 8 scheme, or artifice to defraud or to obtain money or property by means
- 9 of deception, by means of a false pretense, representation, or promise,
- 10 or by means of a knowing omission of a material fact; or
- 11 (5) is soliciting funds by mail when the solicitation in-
- 12 cludes sending goods, wares, or merchandise not ordered or requested by
- 13 the recipient and less than 50 per cent of the total amount of the funds
- 14 so raised is or will be devoted to the purported purposes of the chari-
- 15 table organization.

16 (b) The attorney general may exercise the authority granted in
17 this section against a charitable organization which operates under the
18 pretense of being an organization exempted under AS 10.50.020 and is not
19 in fact an organization entitled to an exemption.

20 Sec. 10.50.060. NONRESIDENT CHARITABLE ORGANIZATIONS; SERVICE OF
21 PROCESS. (a) A charitable organization required to register under
22 AS 10.50.010 which has its principal place of business outside the
23 state, or is organized under the laws of another state, is considered to
24 have irrevocably appointed the commissioner as its agent upon whom may
25 be served any process, notice, or demand directed to the charitable
26 organization, or to a partner, principal officer, or director of the
27 organization, in an action or proceeding brought under this chapter.

28 (b) Service is made upon the commissioner as agent by filing with
29 him or his designee within the Department of Commerce and Economic

1 Development duplicate copies of the process, notice, or demand. When
2 process, notice, or demand is served on the commissioner, he shall
3 immediately forward a copy of it by registered mail to the charitable
4 organization at its principal address.

5 ARTICLE 2. PROFESSIONAL FUND RAISERS AND SOLICITORS.

6 Sec. 10.50.070. PROFESSIONAL FUND RAISERS. (a) A person may not
7 act as a professional fund raiser for a charitable organization required
8 to register under AS 10.50.010 before he has registered with the depart-
9 ment or after the expiration or cancellation of his registration or its
10 renewal. An application for registration or renewal must be in writing,
11 under oath, in the form prescribed by the department, and accompanied by
12 a fee of \$25. The applicant at the time of making application shall
13 file with, and have approved by, the department a bond in which the
14 applicant is the principal obligor in the sum of \$5,000 with one or more
15 sureties whose liability in the aggregate as sureties will equal at
16 least that sum. The bond must run to the attorney general for the use
17 of the state to pay a person who may have a cause of action against the
18 principal obligor of the bond for malfeasance or misfeasance, including
19 deception, in the conduct of solicitation. Registration is for a period
20 of one year, or part of it, expiring on March 31. Registration may be
21 renewed for additional one-year periods in the same manner as an initial
22 registration. Applications and bonds filed under this section are
23 public records in the department.

24 (b) A professional fund raiser shall maintain accurate, current
25 records of his activities while required to be registered under this
26 section. He shall keep the records in his office available for inspec-
27 tion by the attorney general until at least three years after the period
28 of the registration to which they relate.

29 Sec. 10.50.080. CONTRACTS. Contracts entered into between a pro-

1 professional fund raiser and a charitable organization must be in writing
2 and a copy of the contract filed with the department within 10 days
3 after it is executed by the professional fund raiser who is a party to
4 it. Copies of these contracts shall be kept on file in the offices of
5 the charitable organization and the professional fund raiser during the
6 contract's term and until the expiration of a period of three years
7 after the solicitation of contributions provided for in the contract
8 terminates.

9 Sec. 10.50.090. PROFESSIONAL SOLICITOR. (a) A person may not act
10 as a professional solicitor in the employ of a professional fund raiser
11 required to register under AS 10.50.070 before he has registered with
12 the department or after the expiration or cancellation of the registra-
13 tion or its renewal. An application for registration shall be in writ-
14 ing, under oath, on the form prescribed by the department, and accom-
15 panied by a fee of \$10. The registration shall be for a period of one
16 year, or part of it, expiring on March 31, and may be renewed for addi-
17 tional one-year periods in the same manner as an initial registration.
18 Applications for registration and renewals, when filed with the depart-
19 ment, are public records in the department.

20 (b) A professional solicitor shall clearly disclose the informa-
21 tion in (1) and (2) of this subsection at the beginning of each solicita-
22 tion for a sale or a donation and the information in (3) and (4) of this
23 subsection before the end of each solicitation for a sale or a donation:

24 (1) that the visitor, caller, or writer is a paid profes-
25 sional solicitor;

26 (2) the name of the professional fund raiser employing the
27 solicitor;

28 (3) the actual or estimated percentage of gross or net pro-
29 ceeds to be received by the charitable organization from the fund-

1 raising activities;

2 (4) that the charitable organization is registered with the
3 state, that an annual financial report or other descriptive program and
4 financial information is on record with the state, and that a copy of it
5 will be made available to the prospective donor upon request.

6 Sec. 10.50.100. ENFORCEMENT BY ATTORNEY GENERAL. In addition to
7 any other action authorized by law, the attorney general may bring an
8 action in the superior court against a professional fund raiser, profes-
9 sional solicitor, or any other person to enjoin a solicitation or
10 collection or any act in furtherance of a solicitation or collection, or
11 to cancel a registration statement previously filed with the department,
12 when the attorney general believes that the professional fund raiser,
13 professional solicitor, or other person

14 (1) is operating in violation of this chapter;

15 (2) has made a false statement in an application, registra-
16 tion, or statement required to be filed under this chapter;

17 (3) has refused or failed, after notice, to produce a record
18 demanded of him; or

19 (4) is employing or about to employ, in a solicitation or
20 collection of contributions for a charitable organization, a device,
21 scheme, or artifice to defraud or to obtain money or property by means
22 of deception, by means of a false pretense, representation, or promise,
23 or by means of a knowing omission of a material fact.

24 Sec. 10.50.110. NONRESIDENT PROFESSIONAL FUND RAISERS AND PRO-
25 FESSIOAL SOLICITORS; SERVICE OF PROCESS. (a) A professional fund
26 raiser or professional solicitor who has his principal place of business
27 outside this state or is organized under the laws of another state and
28 who solicits contributions from persons or a governmental agency in this
29 state is considered to have irrevocably appointed the commissioner as

1 his agent upon whom may be served any process, notice, or demand
2 directed to the professional fund raiser, the professional solicitor, or
3 any partner, principal officer, or director of the business, in an
4 action or proceeding brought under this chapter. A professional fund
5 raiser or professional solicitor who has his principal place of business
6 inside this state may file with the commissioner a designation, properly
7 acknowledged, irrevocably appointing the commissioner as his agent upon
8 whom any process, notice, or demand may be served.

9 (b) Service is made upon the commissioner as agent by leaving with
10 him or his designee within the Department of Commerce and Economic
11 Development duplicate copies of the process, notice, or demand. When
12 process, notice, or demand is served on the commissioner as agent, he
13 shall immediately forward a copy of it by registered mail to the pro-
14 fessional fund raiser or professional solicitor at his registered
15 office.

16 ARTICLE 3. MISCELLANEOUS PROVISIONS.

17 Sec. 10.50.800. IDENTIFICATION CARDS REQUIRED. (a) Every person
18 soliciting contributions for a charitable organization which is required
19 to register under AS 10.50.010, shall have readily available for pros-
20 pective contributors an identification card which includes the following
21 information in legible form:

22 (1) the name of the charitable organization for which the
23 contributions are solicited;

24 (2) that the charitable organization has registered with the
25 department;

26 (3) the date the charitable organization registered with the
27 department;

28 (4) other information from the registration statement that
29 may be required by regulations of the department.

1 Sec. 10.50.810. UNAUTHORIZED USE OF NAMES. (a) A person may not,
2 for the purpose of soliciting contributions from persons or a governmen-
3 tal agency in this state for a charitable organization, use the name of
4 any person other than an officer, director, or trustee of the charitable
5 organization for which contributions are solicited without the written
6 consent of that other person.

7 (b) A person is considered to have used the name of another person
8 for the purpose of soliciting contributions for a charitable organiza-
9 tion if the latter person's name is listed on stationery, in an adver-
10 tisement, in a brochure, or in correspondence soliciting a contribution
11 for a charitable organization or if the latter person's name is listed
12 or referred to in connection with a solicitation of a contribution as
13 one who has contributed to, sponsored, endorsed, or received benefits
14 from the charitable organization or its activities.

15 (c) Nothing in this section prevents the publication of names of
16 contributors, without their consent, in an annual or other periodic
17 report issued by a charitable organization for the purpose of reporting
18 contributions to contributors.

19 Sec. 10.50.820. USE OF SIMILAR NAME, SYMBOL, OR STATEMENT. A
20 charitable organization, professional fund raiser, professional solici-
21 tor, or other person soliciting contributions for a charitable organi-
22 zation may not use a name, symbol, or statement so closely related or
23 similar to that used by another charitable organization or governmental
24 agency that the use of it would tend to confuse or mislead the public.

25 Sec. 10.50.830. SOLICITATION BY UNREGISTERED ORGANIZATIONS OR FUND
26 RAISERS. (a) A charitable organization required to register under
27 AS 10.50.010 may not employ a professional fund raiser required to
28 register under this chapter unless the professional fund raiser is
29 registered.

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(b) A professional fund raiser required to register under this chapter may not enter into a contract or raise funds for an organization required to register under this chapter unless the organization is registered.

(c) A professional fund raiser required to register under this chapter may not employ a professional solicitor who is not registered under this chapter.

(d) In addition to other remedies provided by law, the attorney general may bring an action to enjoin a violation of this section.

Sec. 10.50.840. SOLICITING CONTRIBUTIONS FOR NONEXISTENT ORGANIZATIONS. A person may not solicit or collect contributions for a non-existent organization.

Sec. 10.50.850. WRITTEN RECEIPT REQUIRED. A charitable organization may not accept a contribution exceeding \$5 in money or tangible property without providing on request of the donor a written receipt acknowledging the contribution and personally signed by the person accepting the contribution.

Sec. 10.50.860. PROHIBITED REPRESENTATIONS. A person may not, in connection with the solicitation of contributions or the sale of tangible personal property or services, represent or lead anyone by any manner to believe that the person on whose behalf the solicitation or sale is being conducted is a bona fide charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if he has reason to believe that that representation or implied representation is not true.

Sec. 10.50.870. VIOLATIONS UNFAIR PRACTICE UNDER AS 45.50.471 - 45.50.561. For purposes of AS 45.50.471 - 45.50.561, the commission, by a professional fund raiser or professional solicitor, of an act or practice prohibited by this chapter is an unfair or deceptive act or

1 practice in the conduct of trade or commerce.

2 Sec. 10.50.880. ADMINISTRATIVE REGULATIONS. The attorney general
3 may adopt regulations under the Administrative Procedure Act (AS 44.62)
4 that he considers necessary for the effective administration of this
5 chapter.

6 Sec. 10.50.890. EXCHANGE OF INFORMATION, RECIPROCAL AGREEMENTS.
7 The attorney general may enter into reciprocal agreements with a like
8 authority in another state to exchange information made available to the
9 department under this chapter. Under these agreements the attorney
10 general may accept information filed by a charitable organization,
11 professional fund raiser, or professional solicitor with another state
12 in place of the information required to be filed under AS 10.50.010,
13 10.50.025, 10.50.070, or 10.50.090, if the information is substantially
14 similar to the information required to be filed under those sections.

15 Sec. 10.50.900. CONSTRUCTION; POWERS. This chapter and the powers
16 granted to the attorney general to enforce this chapter shall be liber-
17 ally construed to meet the objectives of this chapter.

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 10.50.910. DEFINITIONS. In this chapter

20 (1) "charitable organization" means a benevolent, philan-
21 thropic, patriotic, or eleemosynary person or one purporting to be the
22 same;

23 (2) "commissioner" means the commissioner of commerce and
24 economic development;

25 (3) "contribution"

26 (A) means the promise or grant of money or property of
27 any kind or value, including a grant or other financial assistance
28 from a governmental agency, whether or not property or services are
29 received by the contributors, so long as the solicitation for the

1 contribution is made for a charitable organization;

2 (B) does not include payments by members of an organiza-
3 tion for membership fees, dues, fines, or assessments or for ser-
4 vices rendered to individual members, if membership in the organiza-
5 tion confers a bona fide right, privilege, professional standing,
6 honor, or direct benefit other than the right to vote, elect
7 officers, or hold office;

8 (4) "department" means the Department of Law;

9 (5) "professional fund raiser"

10 (A) means a person who, for compensation or other con-
11 sideration, plans, conducts, manages, gives advice on, or acts as a
12 consultant on a drive or campaign in this state for the purpose of
13 soliciting contributions in this state for a charitable organiza-
14 tion or other person, or who engages in the business of or holds
15 himself out to persons or a governmental agency in this state as
16 independently engaged in the business of performing any of the
17 activities referred to in this subparagraph;

18 (B) does not include

19 (i) a bona fide officer or full-time or part-time
20 employee of a charitable organization which maintains a per-
21 manent place of business in this state;

22 (ii) an attorney, investment counsel, or banker who
23 advises a charitable organization on its solicitation cam-
24 paign;

25 (6) "professional solicitor"

26 (A) means a person who is employed or retained for
27 compensation by a professional fund raiser to solicit contributions
28 for charitable purposes from persons or a governmental agency in
29 this state;

1 (B) includes a professional fund raiser when he is
2 personally engaged in soliciting contributions;

3 (C) does not include an attorney, investment counsel, or
4 banker who advises a person to make a charitable contribution;

5 (7) "religious charitable organization" includes a religious
6 charitable corporation and any charity, agency, or organization
7 operated, supervised, or controlled by or in connection with a religious
8 charitable organization or corporation.

9 Sec. 10.50.910. SHORT TITLE. This chapter may be cited as the
10 Alaska Charitable Organizations and Solicitation Act.
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