

Chapter 30

Telephone Solicitation

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37-30-1 Definition of terms.

37-30-1. Definition of terms. Terms used in this chapter mean:

(1) "Charitable organization," any person who is or holds himself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or eleemosynary purpose, or for the benefit of law enforcement officers, firefighters or other persons who protect the public safety;

(2) "Charitable purpose," any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or eleemosynary objective;

(3) "Charitable sales promotion," any advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer are to benefit a charitable organization or purpose;

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

(5) "Gross revenue," income of any kind from all sources, including all amounts received and all amounts pledged as the result of any solicitation by a paid solicitor;

(6) "Membership," that which entitles a person to the privileges, professional standing, honors or other direct benefit of the organization and the right to vote, elect officers and hold office in the organization;

(7) "Paid solicitor," any person or for-profit organization, who for compensation, contracts for a charitable organization any service in connection with which contributions are solicited by such person or by any person directly or indirectly employed, procured or engaged to solicit for such compensation. A bona fide nontemporary salaried officer, employee or temporary employee of a charitable organization is not a paid solicitor;

(8) "Solicit" and "solicitation," any request directly or indirectly for money, credit, property, financial assistance or other thing of any kind or value on the plea or representation that such money, credit, property, financial assistance or other thing of any kind or value is to be used for a charitable purpose or benefit a charitable organization.

Source:(1)

37-30-2 Sale of items associated with charity as solicitation--Includes offer or attempt to sell.

37-30-2. Sale of items associated with charity as solicitation--Includes offer or attempt to sell. For the purposes of this chapter, "solicitation" includes, the sale of, offer or attempt to sell, by telephone, any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower,

ticket, candy, light bulbs, cookies or other tangible item in connection with an appeal made for any charitable organization or purpose, or if the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or if in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale is to be used for any charitable purpose or benefit any charitable organization.

Source:(2)

37-30-3 Solicitor to register with attorney general--Registration periods--Information to be provided by solicitor--Failure to register as misdemeanor.

37-30-3. Solicitor to register with attorney general--Registration periods--Information to be provided by solicitor--Failure to register as misdemeanor. Every paid solicitor shall register each time with the attorney general no less than thirty days prior to conducting any solicitation. The initial registration for a paid solicitor shall be valid for one year and may be renewed for an additional one-year period if the solicitation campaign lasts more than one year. Application for registration shall be made on forms prescribed by the attorney general.

The paid solicitor shall provide the following information on or with the registration form:

- (1) Legally established name;
- (2) Name or names under which it solicits contributions;
- (3) Form of organization;
- (4) Date and place of organization;
- (5) Street address of principal office in this state, or, if none, the name and street address of the person having custody of books and records within this state;
- (6) Names and addresses of officers, directors, trustees and chief executive officer;
- (7) Federal and state tax status;
- (8) Denial at any time by any governmental agency or court of the right to solicit contributions;
- (9) Copy of the completed solicitation notice as provided by § 37-30-6;
- (10) Copy of the contract between the charitable organization and the paid solicitor as provided by § 37-30-7;
- (11) Copies of executed documents required by §§ 37-30-8 and 37-30-9; and
- (12) Such other information as the attorney general may require, by rules promulgated pursuant to chapter 1-26, to promote fairness of the solicitation and to assure full and fair disclosure of all material information to the attorney general.

The paid solicitor or authorized officer shall sign the registration form and shall certify that the statements therein are true and correct to the best of their knowledge. Any paid solicitor who fails to register as provided by this section is guilty of a Class 1 misdemeanor.

Source:(3)

37-30-4 Attorney general's approval of application required prior to solicitation--Period for review--Basis for denial of registration.

37-30-4. Attorney general's approval of application required prior to solicitation--Period for review--Basis for denial of registration. No paid solicitor may commence a solicitation until the application is reviewed and approved by the attorney general. The attorney general shall review the application within forty-five days of receiving the application. The attorney general, pursuant to chapter 1-26, may deny registration of a paid solicitor if the application fails to comply with this chapter and rules promulgated pursuant to chapter 1-26.

Source:(4)

37-30-5 Applicant must file bond--Requirements as to bond--Failure to provide bond as misdemeanor.

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applicant for registration or for a renewal of registration as a paid solicitor shall, at the time of making such application, file with and have approved by the attorney general a bond from a surety company qualified to do business in the state. The bond shall be for the sum of twenty thousand dollars if the applicant would be collecting contributions solicited or otherwise having physical access to such contributions. The bond shall be for the sum of ten thousand dollars if the applicant would only be soliciting contributions and not be collecting or otherwise having physical access to such contributions. Registration of any additional solicitation campaigns during the paid solicitor's registration period does not require any additional bond. The paid solicitor shall maintain the bond in effect as long as the registration is in effect. The 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 liabilities resulting from the obligor's conduct of any activities subject to the provisions of this chapter, or arising out of a violation of this chapter or any rules adopted pursuant to this chapter. Any paid solicitor who fails to provide a bond as provided by this section is guilty of a Class 2 misdemeanor.

Source:(5)

37-30-6 Solicitation notice--Form and contents--Failure to comply as misdemeanor.

37-30-6. Solicitation notice--Form and contents--Failure to comply as misdemeanor. A solicitation notice shall be on forms prescribed by the attorney general, in writing and under oath, and shall include a description of the solicitation event or campaign, the location and telephone number from which the solicitation is to be conducted, the names and residence street addresses of all employees, agents or other persons however styled who are to solicit during such campaign and the account number and location of all bank accounts where receipts from such campaign are to be deposited. Copies of campaign solicitation literature, including the text of any solicitation to be made orally, shall be attached to the solicitation notice. The charitable organization on whose behalf the paid solicitor is acting shall certify that the solicitation notice and accompanying material are true and complete. Any violation of this section is a Class 1 misdemeanor.

Source:(6)

37-30-7 Contract between solicitor and charitable organization--Requirements--Failure to comply as misdemeanor.

37-30-7. Contract between solicitor and charitable organization--Requirements--Failure to comply as misdemeanor. A contract between a paid solicitor and a charitable organization shall be in writing, shall clearly state the respective obligations of the paid solicitor and the charitable organization and shall state the minimum amount which the charitable organization shall receive as a result of the solicitation campaign, which minimum amount shall be stated as a percentage of the gross revenue. Such minimum amount may not include any amount which the charitable organization is to pay as expenses of the solicitation campaign. Any violation of this section is a Class 1 misdemeanor.

Source:(7)

37-30-8 Solicitor required to have written consent before permitted to use name of charitable organization--Failure to comply as misdemeanor.

37-30-8. Solicitor required to have written consent before permitted to use name of charitable organization--Failure to comply as misdemeanor. A paid solicitor may not represent that any part of the contributions received will be given or donated to any charitable organization unless such organization has consented in writing to the use of its name, prior to the solicitation. Such written consent shall be signed by two authorized officers, directors or trustees of the charitable organization. Any violation of this section is a Class 1 misdemeanor.

Source:(8)

37-30-9 Solicitor required to have written commitment where charitable organization

agrees to accept donated tickets to an event--Failure to comply as misdemeanor.

37-30-9. Solicitor required to have written commitment where charitable organization agrees to accept donated tickets to an event--Failure to comply as misdemeanor. No paid solicitor may represent that tickets to an event are to be donated for use by another, unless the paid solicitor has first obtained a commitment, in writing, from a charitable organization stating that it will accept donated tickets and specifying the number of tickets which it is willing to accept and provided no more contributions for donated tickets shall be solicited than the number of ticket commitments received from the charitable organization. Any violation of this section is a Class 1 misdemeanor.

Source:(9)

37-30-10 Employee of paid solicitor--Requirements.

37-30-10. Employee of paid solicitor--Requirements. A paid solicitor shall require that any person he directly or indirectly employs, procures, or engages to solicit comply with the provisions of §§ 37-30-8 and 37-30-9.

Source:(10)

37-30-11 Solicitor required to file financial report--Time period--Form and contents--Failure to file reports as misdemeanor.

37-30-11. Solicitor required to file financial report--Time period--Form and contents--Failure to file reports as misdemeanor. A paid solicitor shall file a financial report for the campaign with the attorney general no more than ninety days after a solicitation campaign has been completed, and on the anniversary of the commencement of any solicitation campaign which lasts more than one year. The financial report shall include gross revenue and an itemization of all expenditures incurred. The report shall be completed on a form prescribed by the attorney general. An authorized official of the paid solicitor and two authorized officials of the charitable organization shall sign such report and they shall certify, under oath, that such report is true and complete to the best of their knowledge. Any paid solicitor who fails to report as provided by this section is guilty of a Class 1 misdemeanor.

Source:(11)

37-30-12 Solicitor required to maintain records--Time periods--Contents of records--Failure to keep records as misdemeanor.

37-30-12. Solicitor required to maintain records--Time periods--Contents of records--Failure to keep records as misdemeanor. A paid solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of each such campaign the following records, which shall be available to the attorney general for inspection upon request:

(1) The name and address of each contributor and the date and amount of the contribution, provided the attorney general shall not disclose this information except to the extent necessary for investigative or law enforcement purposes;

(2) The name and residence of each employee, agent or other person involved in the solicitation; and

(3) Records of all income received and expenses incurred in the course of the solicitation campaign.

Any paid solicitor who fails to keep records as provided by this section is guilty of a Class 2 misdemeanor.

Source:(12)

37-30-13 Where solicitor sells tickets to an event--Record keeping requirements--Contents of records--Failure to comply as misdemeanor.

37-30-13. Where solicitor sells tickets to an event--Record keeping requirements--Contents of records--Failure to comply as misdemeanor. If a paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall maintain, for not less than three years after the completion

of such event, the following records, which shall be available to the attorney general for inspection upon request:

(1) The name and address of contributors donating tickets and the number of tickets donated by each contributor; and

(2) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

Any paid solicitor who fails to keep records as provided by this section is guilty of a Class 2 misdemeanor.

Source:(13)

37-30-14 All funds to be deposited in bank account--Charitable organization to have sole or joint control--Failure to comply as misdemeanor.

37-30-14. All funds to be deposited in bank account--Charitable organization to have sole or joint control--Failure to comply as misdemeanor. All funds collected by the paid solicitor shall be deposited in a bank account. The bank account shall be in the name of the charitable organization with whom the paid solicitor has contracted and the charitable organization shall have sole or joint control of the account. Any violation of this section is a Class 2 misdemeanor.

Source:(14)

37-30-15 Solicitor required to make written report as to material changes in filed information--Time requirements--Failure to comply as misdemeanor.

37-30-15. Solicitor required to make written report as to material changes in filed information--Time requirements--Failure to comply as misdemeanor. Any material change in any information filed with the attorney general pursuant to this chapter shall be reported in writing by the paid solicitor to the attorney general not more than thirty days after such change occurs. However, any material change to the campaign solicitation literature filed with the attorney general pursuant to § 37-30-6 shall be reported in writing by the paid solicitor to the attorney general not more than seven days after such change occurs. Any violation of this section is a Class 2 misdemeanor.

Source:(15)

37-30-16 Prior conviction of felony or certain misdemeanors precludes operation as solicitor.

37-30-16. Prior conviction of felony or certain misdemeanors precludes operation as solicitor. No person may act as a paid solicitor if such person, any officer or director thereof, any person with a controlling interest therein, or any person the paid solicitor employs, engages or procures to solicit for compensation, has been convicted by a court of any state or the United States of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose. Any denial, suspension or revocation of the registration of a paid solicitor based on a violation of this section shall be made in accordance with the provisions of chapter 1-26.

Source:(16)

37-30-17 Misdemeanors involving knowing misrepresentations and false, misleading or unauthorized solicitation practices--Use of unregistered paid solicitor as misdemeanor.

37-30-17. Misdemeanors involving knowing misrepresentations and false, misleading or unauthorized solicitation practices--Use of unregistered paid solicitor as misdemeanor. It is a Class 1 misdemeanor for:

- (1) Any person to knowingly misrepresent the purpose or beneficiary of a solicitation;
- (2) Any person to knowingly misrepresent the purpose or nature of a charitable organization;
- (3) Any person to use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;
- (4) Any person to knowingly misrepresent that any other person sponsors or endorses a solicitation;

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(5) Any person to use the name of a charitable organization, or to display any emblem, device or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;

(6) Any charitable organization to use the name which is the same as or confusingly similar to the name of another charitable organization unless the latter organization shall consent in writing to its use;

(7) Any person to knowingly make any false or misleading statement on any document required by this chapter; or

(8) Any charitable organization to use the services of an unregistered paid solicitor.

Source:(17)

37-30-18 Attorney general may investigate complaint--Investigatory powers.

37-30-18. Attorney general may investigate complaint--Investigatory powers. The attorney general may, upon receiving a complaint, conduct an investigation to determine whether any person has violated a provision of this chapter. For the purpose of any investigation or proceeding under this section the attorney general may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the attorney general deems relevant or material to the inquiry.

Source:(18)

37-30-19 Power of attorney general to compel testimony--Use of such testimony in criminal proceedings prohibited--Exceptions.

37-30-19. Power of attorney general to compel testimony--Use of such testimony in criminal proceedings prohibited--Exceptions. No individual is excused from attending and testifying or from producing any documents or records, or an obedience to the subpoena of the attorney general, or in any proceeding instituted by the attorney general, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him. However, no testimony or other information compelled or any information directly or indirectly derived from the compelled testimony or information may be used against the individual in any criminal proceeding except for a prosecution for perjury, giving a false statement, or contempt.

Source:(19)

37-30-20 Power of attorney general to deny, suspend or revoke registration of paid solicitor.

37-30-20. Power of attorney general to deny, suspend or revoke registration of paid solicitor. The attorney general may, pursuant to chapter 1-26, deny, suspend, or revoke the registration of any paid solicitor which has violated any of the provisions of this chapter. The attorney general may accept a written assurance of compliance when the attorney general determines that a violation of this chapter is not material and the public interest would not be served by a denial, suspension, or revocation of such registration.

Source:(20)

37-30-21 Power of attorney general to bring action for injunction--Restraint of violations.

37-30-21. Power of attorney general to bring action for injunction--Restraint of violations. If it appears to the attorney general that a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this chapter, or any rule promulgated under the provisions of this chapter, the attorney general may bring an action in the circuit court to enjoin the acts or practices to enforce compliance with this chapter, or any rule promulgated under the provisions of this chapter. In addition, the attorney general may use the process provided by chapter 21-34 to restrain violations of this chapter.

Source:(21)

37-30-22 Documents required to be filed--Status as public records--Exceptions.

37-30-22. Documents required to be filed--Status as public records--Exceptions. Registration forms, annual reports, and other documents required to be filed by this chapter shall become public records when filed in the Office of the Attorney General. However, investigative data obtained by the attorney general in anticipation of or in connection with litigation or an administrative proceeding are not public records.

Source:(22)

37-30-23 "Automatic telephone dialing system" defined.

37-30-23. "Automatic telephone dialing system" defined. For the purposes of §§ 37-30-23 to 37-30-29, inclusive, an automatic telephone dialing system is any automatic terminal equipment which stores or produces numbers to be called randomly or sequentially and which delivers a prerecorded message to the number called without assistance of a live operator.

Source:(23)

37-30-24 "Telephone solicitation" defined.

37-30-24. "Telephone solicitation" defined. For the purposes of §§ 37-30-23 to 37-30-29, inclusive, a telephone solicitation is the unsolicited initiation of a telephone call to a residential telephone customer for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. Telephone solicitation does not include:

(1) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(2) Calls made for a not-for-profit organization to its own list of bona fide or active members of the organization;

(3) Calls limited to polling or soliciting the expression of ideas, opinions or votes;

(4) Business-to-business contacts or contacts with residential customers with whom a business or credit relationship exists; or

(5) Calls utilized for relaying messages for private purposes, including voice messaging services or message delivery services.

Source:(24)

37-30-25 Registration as to intended use of automatic telephone dialing system--Failure to comply as misdemeanor.

37-30-25. Registration as to intended use of automatic telephone dialing system--Failure to comply as misdemeanor. Any person intending to use an automatic telephone dialing system for a telephone solicitation in this state shall, at least ten business days prior to using the system, register with the public utilities commission, on forms prescribed by him, the following information:

(1) Name of the registrant;

(2) Telephone number of the registrant;

(3) Address of the registrant;

(4) Name under which the registrant is doing or intends to do business;

(5) Complete street addresses of all locations from which the registrant will be conducting business; and

(6) Nature of the solicitation.

A violation of this section is a Class 2 misdemeanor.

Source:(25)

37-30-26 Required contents of message--Failure to comply as misdemeanor.

37-30-26. Required contents of message--Failure to comply as misdemeanor. Any telephone solicitation

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message shall disclose immediately after telephone contact the name of the person, company or organization making the call and the purpose of the call and the goods or services being offered, if any. A violation of this section is a Class 2 misdemeanor.

Source:(26)

37-30-27 Forbidden uses of automatic telephone dialing system--Failure to comply as misdemeanor.

37-30-27. Forbidden uses of automatic telephone dialing system--Failure to comply as misdemeanor. No person may use an automated telephone dialing system to make a telephone solicitation to:

(1) Any emergency telephone in this state including the emergency telephone numbers of any hospital, physician, health care facility, ambulance service or fire or law enforcement officer or facility;

(2) Any paging or cellular phone within the state; or

(3) Any unlisted, unpublished, toll-free long distance or direct inward dial telephone number within the state.

A violation of this section is a Class 2 misdemeanor.

Source:(27)

37-30-28 Permissible hours as to use of automated telephone dialing system--Disconnection requirements--Failure to comply as misdemeanor.

37-30-28. Permissible hours as to use of automated telephone dialing system--Disconnection requirements--Failure to comply as misdemeanor. No person may use an automated telephone dialing system to make a telephone solicitation to any telephone number in the state except weekdays between 9 a.m. and 9 p.m., according to the time in this state. In addition, the person using the device to place the call shall ensure that the device disconnects no more than twenty seconds following the disconnection of the telephone number called. A violation of this section is a Class 2 misdemeanor.

Source:(28)

37-30-29 Registrant responsible for automatic dialer requirements.

37-30-29. Registrant responsible for automatic dialer requirements. The registrant is responsible for the automatic dialer requirements contained in §§ 37-30-27 and 37-30-28.

Source:(29)

Endnotes

1 (Popup - Source)

Source:

SL 1990, ch 314, § 1.

2 (Popup - Source)

Source:

SL 1990, ch 314, § 2.

3 (Popup - Source)

Source:

SL 1990, ch 314, § 3.

4 (Popup - Source)

Source:

SL 1990, ch 314, § 4.

5 (Popup - Source)

Source:

SL 1990, ch 314, § 5.

6 (Popup - Source)

Source:

SL 1990, ch 314, § 6.

7 (Popup - Source)

Source:

SL 1990, ch 314, § 7.

8 (Popup - Source)

Source:

SL 1990, ch 314, § 8.

9 (Popup - Source)

Source:

SL 1990, ch 314, § 9.

10 (Popup - Source)

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SL 1990, ch 314, § 10.

11 (Popup - Source)

Source:

SL 1990, ch 314, § 11.

12 (Popup - Source)

Source:

SL 1990, ch 314, § 12.

13 (Popup - Source)

Source:

SL 1990, ch 314, § 13.

14 (Popup - Source)

Source:

SL 1990, ch 314, § 14.

15 (Popup - Source)

Source:

SL 1990, ch 314, § 15.

16 (Popup - Source)

Source:

SL 1990, ch 314, § 16.

17 (Popup - Source)

Source:

SL 1990, ch 314, § 17.

18 (Popup - Source)

Source:

SL 1990, ch 314, § 18.

19 (Popup - Source)

Source:

SL 1990, ch 314, § 19.

20 (Popup - Source)

Source:

SL 1990, ch 314, § 20.

21 (Popup - Source)

Source:

SL 1990, ch 314, § 21.

22 (Popup - Source)

Source:

SL 1990, ch 314, § 22.

23 (Popup - Source)

Source:

SL 1991, ch 322, § 1.

24 (Popup - Source)

Source:

SL 1991, ch 322, § 2.

25 (Popup - Source)

Source:

SL 1991, ch 322, § 3.

26 (Popup - Source)

Source:

SL 1991, ch 322, § 4.

27 (Popup - Source)

Source:

SL 1991, ch 322, § 6.

28 (Popup - Source)

Source:

SL 1991, ch 322, § 7.

29 (Popup - Source)

Source:

SL 1991, ch 322, § 5.