

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 7. GENERAL BUSINESS REGULATIONS [16000 - 18001]

(Division 7 added by Stats. 1941, Ch. 61.)

PART 3. REPRESENTATIONS TO THE PUBLIC [17500 - 17930]

(Part 3 added by Stats. 1941, Ch. 63.)

CHAPTER 1. Advertising [17500 - 17606]

(Chapter 1 added by Stats. 1941, Ch. 63.)

ARTICLE 1.3. Charitable Solicitations [17510 - 17510.95]

(Article 1.3 added by Stats. 1972, Ch. 1113.)

17510.

(a) The Legislature finds that there exists in the area of solicitations and sales solicitations for charitable purposes a condition which has worked fraud, deceit and imposition upon the people of the state which existing legal remedies are inadequate to correct. Many solicitations or sales solicitations for charitable purposes have involved situations where funds are solicited from the citizens of this state for charitable purposes, but an insignificant amount, if any, of the money solicited and collected actually is received by any charity. The charitable solicitation industry has a significant impact upon the well-being of the people of this state. The provisions of this article relating to solicitations and sale solicitations for charitable purposes are, therefore, necessary for the public welfare.

(b) The Legislature declares that the purpose of this article is to safeguard the public against fraud, deceit and imposition, and to foster and encourage fair solicitations and sales solicitations for charitable purposes, wherein the person from whom the money is being solicited will know what portion of the money will actually be utilized for charitable purposes. This article will promote legitimate solicitations and sales solicitation for charitable purposes and restrict harmful solicitation methods, thus the people of this state will not be misled into giving solicitors a substantial amount of money which may not in fact be used for charitable purposes.

(Amended by Stats. 1980, Ch. 1267, Sec. 1.)

17510.1.

As used in this article, "sale" shall include a gift made with the hope or expectation

17510.2.

(a) As used in this article, "solicitation for charitable purposes," means any request,

(3) Any statement is made to the effect that the gift or any part thereof will go to or be used for any charitable purpose or organization.

(4) The name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) As used in this article, "sales solicitation for charitable purposes" means the sale of, offer to sell, or attempt to sell any advertisement, advertising space, book, card, chance, coupon device, magazine subscription, membership, merchandise, ticket of admission or any other thing or service in connection with which any of the following applies:

(1) Any appeal is made for charitable purposes.

(2) The name of any charity, philanthropic or charitable organization is used or referred to in any such appeal as an inducement for making any such sale.

(3) Any statement is made to the effect that the whole or any part of the proceeds from the sale will go to or be used for any charitable purpose or organization.

(4) The name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the sales solicitation is for the sole benefit of the actual active membership of the organization.

(c) A solicitation for charitable purposes, or a sale, offer or attempt to sell for charitable purposes, shall include the making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever any such solicitation.

(d) For purposes of this article, "charity" shall include any person who, or any nonprofit community organization, fraternal, benevolent, educational, philanthropic, or service organization, or governmental employee organization which, solicits or obtains contributions solicited from the public for charitable purposes or holds any assets for charitable purposes.

(Amended by Stats. 1998, Ch. 445, Sec. 1. Effective January 1, 1999.)

17510.25.

(a) A charity, as defined in subdivision (e), may engage in a solicitation for charitable purposes that involves persons standing in a public roadway soliciting contributions from passing motorists, if both of the following requirements are met:

(1) The persons to be engaged in the solicitation are law enforcement personnel, firefighters, or other persons employed to protect the public safety of a local agency, as defined in subdivision (d), and that are soliciting solely in an area that is within the service area of that local agency.

(2) The charity files an application with the city, county, or city and county, as applicable, having jurisdiction over the location or locations where the solicitation is to occur. The application shall be filed not later than 10 business days before the date that the solicitation is to begin and shall include all of the following:

- (A) The date or dates and times of day when the solicitation is to occur.
- (B) The location or locations where the solicitation is to occur.
- (C) The manner and conditions under which the solicitation is to occur.
- (D) Proof of a valid liability insurance policy in the amount of at least one million dollars (\$1,000,000) insuring the charity, the local agency referenced in paragraph (1), and the city, county, or city and county referenced in this paragraph against bodily injury and property damage arising out of or in connection with the solicitation.
- (b) The city, county, or city and county shall approve the application within five business days of the filing date of the application, but may impose reasonable conditions in writing that are consistent with the intent of this section and that are based on articulated public safety concerns.
- (c) By acting under this section, a local agency referred to in paragraph (1) of subdivision (a) and a city, county, or city and county referred to in paragraph (2) of subdivision (a) do not waive or limit any immunity from liability provided by any other provision of law.
- (d) For purposes of this section, "local agency" means a city, county, city and county, special district, joint powers authority, or other political subdivision of the state.
- (e) For purposes of this section, "charity" means a charity subject to supervision by the Attorney General pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.
- (f) The Legislature finds and declares that the extraordinary liability insurance requirement contained in this section is necessary in order to protect the public safety due solely to the particular and unique circumstances governed by this section that involve charitable solicitations from passing motorists in a public roadway, where the activity of solicitation may present a recognizable potential safety hazard.
- (g) This section is not intended to prevent a local agency from adopting an ordinance regulating the time, place, or manner of charitable solicitations in a public roadway by other persons or charities.

(Added by Stats. 2007, Ch. 446, Sec. 2. Effective January 1, 2008.)

17510.3.

- (a) Prior to any solicitation or sales solicitation for charitable purposes, the solicitor or seller shall exhibit to the prospective donor or purchaser a card entitled "Solicitation or Sale for Charitable Purposes Card." The card shall be signed and dated under penalty of perjury by an individual who is a principal, staff member, or officer of the soliciting organization. The card shall give the name and address of the soliciting organization or the person who signed the card and the name and business address of the paid individual who is doing the actual soliciting. In lieu of exhibiting a card, the solicitor or seller may distribute during the course of the solicitation any printed material, such as a solicitation brochure, provided the material complies with the standards set forth below, and provided that the solicitor or seller informs the prospective donor or purchaser that the information as required below is contained in the printed material.

Information on the card or printed material shall be presented in at least 10-point type and shall include the following:

- (1) The name and address of the combined campaign, each organization, or fund on behalf of which all or any part of the money collected will be utilized for charitable purposes.
 - (2) If there is no organization or fund, the manner in which the money collected will be utilized for charitable purposes.
 - (3) The non-tax-exempt status of the organization or fund, if the organization or fund for which the money or funds are being solicited does not have a charitable tax exemption under both federal and state law.
 - (4) The percentage of the total gift or purchase price which may be deducted as a charitable contribution under both federal and state law. If no portion is so deductible the card shall state that "This contribution is not tax deductible."
 - (5) If the organization making the solicitation represents any nongovernmental organization by any name which includes, but is not limited to, the term "officer," "peace officer," "police," "law enforcement," "reserve officer," "deputy," "California Highway Patrol," "Highway Patrol," "deputy sheriff," "firefighter," or "fire marshall," which would reasonably be understood to imply that the organization is composed of law enforcement or firefighting personnel, the solicitor shall give the total number of members in the organization and the number of members working or living within the county where the solicitation is being made, and if the solicitation is for advertising, the statewide circulation of the publication in which the solicited ad will appear.
 - (6) If the organization making the solicitation represents any nongovernmental organization by any name which includes, but is not limited to, the term "veteran" or "veterans," which would reasonably be understood to imply that the organization is composed of veterans, the solicitor shall give the total number of members in the organization and the number of members working or living within the county where the solicitation is being made. This paragraph does not apply to federally chartered or state incorporated veterans' organizations with 200 or more dues paying members or to a thrift store operated or controlled by a federally chartered or state incorporated veterans' organization. This paragraph does not apply to any state incorporated community-based organization that provides direct services to veterans and their families and qualifies as a tax-exempt organization under Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code and Section 23701d of the Revenue and Taxation Code.
- (b) Knowing and willful noncompliance by any individual volunteer who receives no compensation of any type from or in connection with a solicitation by any charitable organization shall subject the solicitor or seller to the penalties of the law.
- (c) When the solicitation is not a sales solicitation, any individual volunteer who receives no compensation of any type from, or in connection with, a solicitation by any charitable organization may comply with the disclosure provisions by providing the name and address of the charitable organization on behalf of which all or any part of the money collected will be utilized for charitable purposes, by stating the charitable purposes for which the solicitation is made, and by stating to the person solicited that information about revenues and expenses of the organization, including its administration and fundraising costs, may be obtained by contacting

the organization's office at the address disclosed. The organization shall provide this information to the person solicited within seven days after receipt of the request.

(d) A volunteer who receives no compensation of any type from, or in connection with, a solicitation or sales solicitation by a charitable organization which has qualified for a tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1954, and who is 18 years of age or younger, is not required to make any disclosures pursuant to this section.

(e) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Amended by Stats. 2005, Ch. 212, Sec. 1. Effective January 1, 2006.)

17510.4.

If the initial solicitation or sales solicitation is made by radio, television, letter, telephone, or any other means not involving direct personal contact with the person solicited, including over the Internet, this solicitation shall clearly disclose the information required by Section 17510.3. This disclosure requirement shall not apply to any radio or television solicitation of 60 seconds or less. If the gift is subsequently made or the sale is subsequently consummated, the solicitation or sale for charitable purposes card shall be mailed to or otherwise delivered to the donor, or to the buyer with the item or items purchased.

(Amended by Stats. 1998, Ch. 599, Sec. 5. Effective January 1, 1999.)

17510.5.

(a) The financial records of a soliciting organization shall be maintained on the basis of generally accepted accounting principles as defined by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, or the Financial Accounting Standards Board.

(b) The disclosure requirement of paragraph (7) of subdivision (a) of Section 17510.3 shall be based on the same accounting principles used to maintain the soliciting organization's financial records.

(Amended by Stats. 2004, Ch. 919, Sec. 1. Effective January 1, 2005.)

17510.6.

The provisions of this article shall not apply to solicitations, sales, offers, or attempts to sell within the membership of a charitable organization or upon its regular occupied premises, nor shall it apply to funds raised as authorized by Section 326.5 of the Penal Code.

(Repealed and added by Stats. 1980, Ch. 1267, Sec. 8.)

17510.7.

Compliance with any city or county ordinance which provides for disclosure of information relating to solicitations or sales solicitations for charitable purposes substantially similar to and no less than the disclosure requirements of this article shall be deemed to satisfy the requirements of this article. The provisions of this article are not intended to preempt any city or county ordinance.

(Amended by Stats. 1982, Ch. 509, Sec. 2.)

17510.8.

Notwithstanding any other provision of this article, there exists a fiduciary relationship between a charity or any person soliciting on behalf of a charity, and the person from whom a charitable contribution is being solicited. The acceptance of charitable contributions by a charity or any person soliciting on behalf of a charity establishes a charitable trust and a duty on the part of the charity and the person soliciting on behalf of the charity to use those charitable contributions for the declared charitable purposes for which they are sought. This section is declarative of existing trust law principles.

(Added by Stats. 1992, Ch. 1170, Sec. 1. Effective January 1, 1993.)

17510.85.

(a) An individual, corporation, or other legal entity who for compensation solicits funds or other property in this state for charitable purposes shall disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, telephone, or over the Internet, or at the same time as a written solicitation or sales solicitation:

(1) That the solicitation or sales solicitation is being conducted by a commercial fundraiser for charitable purposes.

(2) The name of the commercial fundraiser for charitable purposes as registered with the Attorney General pursuant to Section 12599 of the Government Code.

(b) The disclosures required pursuant to this section, if printed or if presented electronically, shall be in at least 12-point type, and shall be clear and conspicuous, as defined in Section 17601.

(Amended by Stats. 2015, Ch. 299, Sec. 1. Effective January 1, 2016.)

17510.87.

Any individual, corporation, or other legal entity who, for compensation, solicits funds or other property in this state for charitable purposes is prohibited from retaining more than 50 percent of the net proceeds collected as a fee for fundraising services. For purposes of this section only, a fee does not include a flat fee agreed upon prior to the initiation of direct solicitation that is associated with the development of a solicitation or marketing campaign for charitable purposes. A violation of this section shall not be a crime. However, it is subject to all applicable civil remedies. In addition, any person who collects any fee in excess of the limits imposed by this section shall be subject to a penalty in the amount of the

excess fee, which penalty may be collected in an action by any person authorized to bring an enforcement action under Chapter 5 (commencing with Section 17200) and distributed as provided in that chapter.

This section shall only apply to contracts entered into or renewed on or after January 1, 1995.

(Added by Stats. 1994, Ch. 1279, Sec. 1. Effective January 1, 1995.)

17510.9.

(a) A charity engaged in any solicitation or sales solicitation for charitable purposes, that collected more than 50 percent of its annual income and more than one million dollars (\$1,000,000) in charitable contributions from donors in this state during the previous calendar year, and that spent more than 25 percent of its annual income on "nonprogram activities," which is defined as the sum of the expenditures specified in subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (b), shall annually prepare and provide to the Attorney General's Registry of Charitable Trusts three copies of a one-page document that provides the information required by subdivision (b). If the charity is subject to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, the document shall be submitted together with the charity's report required by Section 12586 of the Government Code, and shall provide information consistent with that provided to the registry pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

(b) The contents of the document required pursuant to subdivision (a) shall be established by the Attorney General in a manner consistent with the procedures set forth in this subdivision and in subdivisions (a) and (b) of Section 12586 of the Government Code, and shall include, at a minimum, all of the following:

(1) Total revenue and contributions received of the charity.

(2) The dollar amount and the percentage of total revenue and charitable contributions allocated to funding each of the following administrative functions:

(A) Total salaries of all persons employed by the charity.

(B) Fundraising.

(C) Travel expenses.

(D) Overhead and other expenses related to managing and administering the charity.

(E) The salaries of the five highest compensated persons employed by the charity.

(3) The dollar amount and percentage of total revenue and charitable contributions allocated to programs.

(c) Each charity subject to this section shall make available for distribution the document required pursuant to subdivision (a) following a request made in person, by telephone, or by mail. Each request shall be accompanied by a stamped, self-addressed envelope provided by the requester.

(d) The Attorney General shall make available for public review at the Registry of Charitable Trusts in Sacramento and in the San Francisco and Los Angeles offices of the Attorney General, the documents provided by charities pursuant to subdivision (a), and shall maintain these documents separately from other documents provided

by charities pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

(Added by renumbering Section 17510.8 (as added by Stats. 1992, Ch. 1100) by Stats. 1993, Ch. 589, Sec. 17. Effective January 1, 1994.)

17510.95.

The Attorney General shall annually publish a report that includes information provided to the Registry of Charitable Trusts pursuant to Section 17510.9 for all charities reporting under that section. The report shall be made available to public main libraries in the state at no cost and to any person upon request and the payment of a reasonable fee to cover the costs of publication and distribution.

(Added by Stats. 1994, Ch. 491, Sec. 1. Effective January 1, 1995.)