

**R152. Commerce, Consumer Protection.**

**R152-22. Charitable Solicitations Act Rule.**

**R152-22-1. Authority.**

These rules are promulgated under Section 13-2-5(1) to facilitate the orderly administration of the Charitable Solicitations Act (hereafter, "the Act"), Title 13, Chapter 22.

**R152-22-2. Definitions. Clarifications.**

(1) The definitions set forth in Section 13-22-2 are incorporated herein.

(2) In addition the following definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Parent foundation" or "Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the parent charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws. For purposes of registration under Section 13-22-5 a parent foundation or organization is deemed to be soliciting, requesting, promoting, advertising, or sponsoring solicitation in the state within the meaning of said section and thus requiring registration if any part of the funds raised within the state or from residents and inhabitants of the state by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state inure to the benefit of the parent foundation or organization whether in the form of a percentage division or "split" or affiliation fee or fees paid by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state.

(1) In addition the following clarification of definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Vending device" as defined by Section 13-22-2(12) and "Vending device decal" as defined by Section 13-22-2(13) as they relate to the necessity of registering as a charitable organization, professional fund raiser, professional fund raising counsel or consultant creates a rebuttable presumption that the party utilizing such a vending device and or vending device decal is acting as such.

**R152-22-3. Application for Charitable Organization Permit.**

- (1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.
- (2) A statement of collections and expenditures shall be executed on the form authorized by the division.
- (3) Applicants or registrants shall submit to the division, on request:
- (a) an updated copy of a financial statement prepared by an independent certified public accountant;
  - (b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;
  - (c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;
  - (d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;
  - (e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;
  - (f) a copy of the applicant's or registrant's IRS Section 501(c)(3) tax exemption letter, if applicable;
  - (g) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks;
  - (h) as to the most recent tax year:
    - (A) if the applicant filed an IRS Form 990, a copy of the most recent IRS filing;
    - (B) if the applicant filed an IRS Form 990-EZ, 990-N, or 990-PF:
      - (I) a copy of the most recent IRS filing; and
      - (II) a completed Utah Statement of Functional Expenses;
    - (C) if the applicant is not required to file any type of IRS Form 990, a completed Utah Statement of Functional Expenses;
- or
- (D) if the applicant has no previous financial information, the financial portion of the application, completed on a pro forma basis; and
- (i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.
- (4) All initial applications and renewals of registration in accordance with Section 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

**R152-22-4. Financial Reports and IRS Form 990s.**

(1) Based on the intent of Section 13-22-15(4) an "annual financial report or IRS Form 990" means the most recent or previous fiscal year only will be accepted by the division.

(2) Based on the intent of Section 13-22-15(2) "within 30 days after the end of the year reported" means the end of the registration year just completed.

**R152-22-5. Notice of Claim of Exemption.**

(1) A charitable organization or individual claiming an exemption from registration under Section 13-22-8 shall file a notice of claim of exemption with the division, prior to conducting any solicitation.

- (2) A notice of claim of exemption shall contain:
- (a) a detailed description of the claimant and its charitable purposes;
  - (b) a citation to the exemption within Section 13-22-8 being claimed and a detailed explanation of why the exemption applies;
  - (c) any documents supporting the notice of claim of exemption;
  - (d) a notarized statement from the organization's chief executive officer or the individual certifying that the statements made in the notice of claim of exemption are true to the best of his knowledge; and
  - (e) such other additional information the division deems necessary to support such claim of exemption.
- (3) This rule does not relieve any exempt organization or individual of other applicable reporting requirements under the Act.
- (4) The division shall charge a reasonable fee to cover the expense of processing the notices of claim of exemption received pursuant to this rule.

**R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.**

- (1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.
- (2) The application shall include a copy of all contracts, agreements, or other documents showing:
- (a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;
  - (b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;
  - (c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;
  - (d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;
  - (e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;
  - (f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and
  - (g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.
- (3) All initial applications and renewals of registration in accordance with Section 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.
- (4) Professional fund raisers that provide services only through online or web-based software may submit a copy of the terms and conditions that all users must agree to along with evidence demonstrating that a user accepted the terms and conditions.

**R152-22-7. Incomplete Applications.**

- (1) Based on Sections 13-22-6(3) and 13-22-9(3) the division may grant a charitable organization, professional fund raiser, professional fund raising counsel or consultant a 10 calendar day "grace" period for an incomplete application prior to assessing a penalty fee.
- (2) Based on Section 13-22-6(1)(xiv)(B) and Section 13-22-6(3) if a charitable organization's initial application or renewal application is deemed incomplete due to the organization's professional fund raiser, professional fund raising counsel or consultant not being registered the division may assess a penalty fee accordingly.
- (3) Based on Sections 13-22-6(3) and 13-22-9(3) the division may as regards any charitable organization, professional fund raiser, professional fund raising counsel or consultant whose status is that of "incomplete" or "suspended" for more than 12 months permit such to elect to submit the accumulated penalty fee or cease solicitations in the state for a 1 year period prior to making reapplication.
- (4) Based on Sections 13-22-6(3) and 13-22-9(3) the division shall impose a penalty fee of \$25 for each calendar month or part of a calendar month after the date on which a permit application or renewal was due to be filed or such permit application or renewal remains incomplete.

**R152-22-8. Commencement of Solicitation.**

- (1) After registration and receipt of a current permit prior to commencement of each solicitation campaign thereafter each professional fund raiser, fund raising counsel or consultant or charitable organization shall notify the Division in writing at least ten (10) days in advance of its intent to commence a campaign.
- (2) Professional fund raisers, fund raising counsels or consultants shall not commence or conduct or continue solicitations on behalf of a charitable organization that is not currently registered. "Not currently registered" means not being in possession of a current permit during all times during the solicitation campaign. A professional fund raiser, fund raising counsel or consultant act at their own peril if prior to commencement of any individual solicitation campaign its fails or neglects to confirm with the division that the charitable organization is in fact currently registered and will be during the full extent of any proposed solicitation campaign.

**R152-22-9. Grounds for Denial, Suspension or Revocation Procedure.**

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny an initial or renewal application for registration as per Section 13-22-12(5), and suspend or revoke a registration, permit, or information card at anytime, on the grounds set forth in Section 13-22-12(3); and if the necessity of such denial, suspension or revocation in the director's opinion is based on facts known by the division or presented to the division showing that an immediate and significant danger to the public health, safety or welfare exists, and such threat requires immediate action by the director that such denial, suspension or revocation may issue forthwith as an emergency order, subject to the division's compliance with Section 63G-4-502.

(2) Any hearing convened in accordance with R152-22-11(1), shall be convened within 5 business days of the request for or order of the Division requiring the same. Administrative hearing determinations regarding such Division actions shall receive priority and decisions shall be expedited so as to be issued within no more than 5 business days of such hearings.

**KEY: charities, consumer protection, solicitations, registration**

**Date of Last Change: September 21, 2015**

**Notice of Continuation: November 24, 2021**

**Authorizing, and Implemented or Interpreted Law: 13-2-5; 13-22-6; 13-22-8; 13-22-9; 13-22-10**