

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 711**

**Representatives Rezabek, Boggs**

---

**A BILL**

To amend sections 1716.01, 1716.07, and 1716.08 of 1  
the Revised Code relative to the solicitation of 2  
charitable contributions. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1716.01, 1716.07, and 1716.08 of 4  
the Revised Code be amended to read as follows: 5

**Sec. 1716.01.** As used in this chapter: 6

(A) (1) "Charitable organization" means either of the 7  
following: 8

(a) Any person that is determined by the internal revenue 9  
service to be a tax exempt organization pursuant to section 10  
501(c) (3) of the Internal Revenue Code; 11

(b) Any person that is or holds itself out to be 12  
established for any benevolent, philanthropic, patriotic, 13  
educational, humane, scientific, public health, environmental 14  
conservation, civic, or other eleemosynary purpose or for the 15  
benefit of law enforcement personnel, firefighters, or other 16  
persons who protect the public safety, or any person who in any 17  
manner employs a charitable appeal as the basis of any 18

solicitation or an appeal that suggests that there is a 19  
charitable purpose to any solicitation. 20

(2) "Charitable organization" is not limited to only those 21  
organizations to which contributions are tax deductible under 22  
section 170 of the Internal Revenue Code. 23

"Charitable organization" does not include an employer who 24  
is not engaged in the business of soliciting contributions or 25  
conducting charitable sales promotions but who incidentally 26  
solicits contributions for a charitable organization or purpose; 27  
or a compensated employee of an employer not engaged in the 28  
business of soliciting contributions or conducting charitable 29  
sales promotions, when the employee solicits contributions or 30  
conducts charitable sales promotions at the direction of the 31  
employee's employer. 32

(B) (1) "Charitable purpose" means either of the following: 33

(a) Any purpose described in section 501(c)(3) of the 34  
Internal Revenue Code; 35

(b) Any benevolent, philanthropic, patriotic, educational, 36  
humane, scientific, public health, environmental conservation, 37  
civic, or other eleemosynary objective or any objective that 38  
benefits law enforcement personnel, firefighters, or other 39  
persons who protect the public safety. 40

(2) "Charitable purpose" is not limited to only those 41  
purposes for which contributions are tax deductible under 42  
section 170 of the Internal Revenue Code. 43

(C) "Charitable sales promotion" means any advertising or 44  
sale conducted by a person who represents that the purchase or 45  
use of goods or services offered by the person will benefit, in 46  
whole or in part, any charitable organization or charitable 47

purpose. The provision of advertising services to a charitable organization, either for compensation or as a donation, does not of itself constitute a charitable sales promotion.

(D) "Collection receptacle" means a receptacle used to collect donated clothing, shoes, household items, or other goods for resale.

(E) "Commercial co-venturer" means any person who for profit regularly and primarily is engaged in trade or commerce other than in connection with soliciting for charitable organizations or charitable purposes and who conducts a charitable sales promotion.

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

~~(F)~~(G) "Deceptive act or practice" means knowingly misrepresenting any material fact related to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion, when the misrepresentation induces any person to make a contribution to a charitable organization, for a charitable purpose, or in response to a charitable sales promotion.

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

(I) "Fund-raising counsel" means any person who, for

compensation, plans, manages, advises, consults, or prepares 77  
material for or with respect to the solicitation in this state 78  
of contributions for any charitable organization or at any time 79  
has custody of contributions from a solicitation, but does not 80  
solicit contributions and does not employ, procure, or otherwise 81  
engage any compensated person to solicit contributions. "Fund- 82  
raising counsel" does not include the following: 83

(1) An attorney, investment counselor, or banker who in 84  
the conduct of the attorney's, investment counselor's, or 85  
banker's profession advises a client; 86

(2) A charitable organization or a bona fide officer, 87  
employee, or volunteer of a charitable organization, when the 88  
charitable organization has full knowledge of the services being 89  
performed on its behalf and either of the following applies: 90

(a) The services performed by the charitable organization, 91  
bona fide officer, employee, or volunteer are performed on 92  
behalf of the charitable organization that employs the bona fide 93  
officer or employee or engages the services of the bona fide 94  
volunteer; 95

(b) The charitable organization on whose behalf the 96  
services are performed shares some element of common control or 97  
an historic or continuing relationship with the charitable 98  
organization that performs the services or employs the bona fide 99  
officer or employee or engages the services of the bona fide 100  
volunteer; 101

(3) An employer who is not engaged in the business of 102  
soliciting contributions or conducting charitable sales 103  
promotions but who incidentally solicits contributions for a 104  
charitable organization or purpose without compensation; 105

(4) A compensated employee of an employer who is not 106  
engaged in the business of soliciting contributions or 107  
conducting charitable sales promotions, when the employee 108  
solicits contributions or conducts charitable sales promotions 109  
at the direction of the employee's employer. 110

~~(H)~~(J) "Internal Revenue Code" means the "Internal Revenue 111  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 112

~~(I)~~(K) "Person" has the same meaning as in section 1.59 of 113  
the Revised Code and includes a group, foundation, or any other 114  
entity however styled. 115

~~(J)~~(L) "Professional solicitor" means any person who, for 116  
compensation, performs on behalf of or for the benefit of a 117  
charitable organization any service in connection with which 118  
contributions are or will be solicited in this state by the 119  
compensated person or by any person it employs, procures, or 120  
otherwise engages directly or indirectly to solicit 121  
contributions. "Professional solicitor" does not include the 122  
following: 123

(1) An attorney, investment counselor, or banker who in 124  
the conduct of the attorney's, investment counselor's, or 125  
banker's profession advises a client; 126

(2) A charitable organization or a bona fide officer, 127  
employee, or volunteer of a charitable organization, when the 128  
charitable organization has full knowledge of the services being 129  
performed on its behalf and either of the following applies: 130

(a) The services performed by the charitable organization, 131  
bona fide officer, employee, or volunteer are performed on 132  
behalf of the charitable organization that employs the bona fide 133  
officer or employee or engages the services of the bona fide 134

volunteer;	135
(b) The charitable organization on whose behalf the	136
services are performed shares some element of common control or	137
an historic or continuing relationship with the charitable	138
organization that performs the services or employs the bona fide	139
officer or employee or engages the services of the bona fide	140
volunteer;	141
(3) An employer who is not engaged in the business of	142
soliciting contributions or conducting charitable sales	143
promotions but who incidentally solicits contributions for a	144
charitable organization or purpose without compensation;	145
(4) A compensated employee of an employer who is not	146
engaged in the business of soliciting contributions or	147
conducting charitable sales promotions, when the employee	148
solicits contributions or conducts charitable sales promotions	149
at the direction of the employee's employer.	150
<del>(K)</del> <u>(M)</u> (1) "Solicit" or "solicitation" means to request or	151
a request directly or indirectly for money, property, financial	152
assistance, or any other thing of value on the plea or	153
representation that such money, property, financial assistance,	154
or other thing of value or a portion of <del>it</del> <u>the contribution will</u>	155
<u>or may be used for a <u>any</u> charitable purpose</u> <del>or will benefit a</del>	156
<del>charitable organization</del> . "Solicit" or "solicitation" includes	157
but is not limited to the following methods of requesting or	158
securing the promise, pledge, or grant of money, property,	159
financial assistance, or any other thing of value:	160
(a) Any oral or written request;	161
(b) Making any announcement to the press, on radio or	162
television, by telephone or telegraph, or by any other	163

communication device concerning an appeal or campaign by or for 164  
any charitable organization or for any charitable purpose; 165

(c) Distributing, circulating, posting, or publishing any 166  
handbill, written advertisement, or other publication that 167  
directly or by implication seeks to obtain any contribution; 168

(d) Selling or offering or attempting to sell any 169  
advertisement, advertising space, book, card, tag, coupon, 170  
chance, device, magazine, membership, merchandise, subscription, 171  
sponsorship, flower, ticket, admission, candy, cookies, or other 172  
tangible item, or any right of any description in connection 173  
with which an appeal is made for any charitable organization or 174  
charitable purpose, or when the name of any charitable 175  
organization is used or referred to in any such appeal as an 176  
inducement or reason for making the sale, or when in connection 177  
with the sale or offer or attempt to sell, any statement is made 178  
that all or part of the proceeds from the sale will be used for 179  
any charitable purpose or will benefit any charitable 180  
organization; 181

(e) A collection receptacle. 182

(2) A solicitation is considered as having taken place for 183  
purposes of division ~~(K)~~(M) (1) of this section whether or not 184  
the person making the solicitation receives any contribution. A 185  
solicitation does not occur when a person applies for a grant or 186  
an award to the government or to an organization that is exempt 187  
from federal income taxation under section 501(a) and described 188  
in section 501(c) (3) of the Internal Revenue Code. 189

~~(L)~~(N) "Theft offense" has the same meaning as in section 190  
2913.01 of the Revised Code. 191

~~(M) "Elderly person" and "disabled adult" have the same~~ 192

~~meanings as in section 2913.01 of the Revised Code.~~ 193

**Sec. 1716.07.** (A) No professional solicitor shall engage 194  
in any solicitation unless it has complied with the requirements 195  
of this chapter and any rules adopted under this chapter. 196

(B) Every professional solicitor, before engaging in any 197  
solicitation, shall register with the attorney general. 198  
Applications for registration or renewal of registration shall 199  
be in writing, under oath, and in the form prescribed by the 200  
attorney general, and shall be accompanied by a fee in the 201  
amount of two hundred dollars. Any corporation, partnership, 202  
association, or other entity that intends to act as a 203  
professional solicitor may register for and pay a single fee of 204  
two hundred dollars on behalf of all its members, officers, 205  
employees, agents, and solicitors. In that case, the names and 206  
addresses of all the officers, employees, and agents of the 207  
professional solicitor and all other persons with whom the 208  
professional solicitor has contracted to work under its 209  
direction, including solicitors, shall be listed in the 210  
application or furnished to the attorney general within five 211  
days of the date of employment or contractual arrangement. The 212  
application shall contain any other information that the 213  
attorney general may require. The registration shall be for a 214  
period of one year or part of one year and shall expire on the 215  
thirty-first day of March of each year. Upon application and 216  
payment of the fee specified in this division and filing of the 217  
bond prescribed in division (C) of this section, the 218  
registration may be renewed for additional one-year periods. All 219  
fees prescribed in this division shall be paid into the state 220  
treasury to the credit of the charitable law fund established 221  
under section 109.32 of the Revised Code. 222



(C) At the time of making an application for registration 223  
or renewal of registration, the professional solicitor shall 224  
file with and have approved by the attorney general a bond in 225  
which the professional solicitor shall be the principal obligor, 226  
in the sum of twenty-five thousand dollars, with one or more 227  
sureties authorized to do business in this state. The 228  
professional solicitor shall maintain the bond in effect as long 229  
as the registration is in effect; however, the liability of the 230  
surety under the bond shall not exceed an all-time aggregate 231  
liability of twenty-five thousand dollars. The bond, which may 232  
be in the form of a rider to a larger blanket liability bond, 233  
shall run to the state and to any person who may have a cause of 234  
action against the principal obligor of the bond for any 235  
liability arising out of a violation by the obligor of any 236  
provision of this chapter or any rule adopted pursuant to this 237  
chapter. 238

(D) (1) Prior to the commencement of any solicitation, the 239  
professional solicitor shall file all of the following with the 240  
attorney general: 241

(a) A completed document called "Solicitation Notice" upon 242  
a form prescribed by the attorney general and containing all of 243  
the information specified in division (D) (2) of this section; 244

(b) A copy of the contract described in division (A) of 245  
section 1716.08 of the Revised Code; 246

(c) A sworn statement by the charitable organization on 247  
whose behalf the professional solicitor is acting certifying 248  
that the solicitation notice and any accompanying material are 249  
true and correct to the best of its knowledge. 250

(2) The solicitation notice shall include all of the 251

following:	252
(a) The fund-raising methods to be used;	253
(b) The projected dates when the solicitation will commence and terminate;	254 255
(c) The location and telephone number from where the solicitation will be conducted if it will be conducted by telephone;	256 257 258
(d) <u>The address where the collection receptacles are located, if the solicitation will be made through collection receptacles;</u>	259 260 261
<u>(e)</u> The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;	262 263 264
<del>(e)</del> <u>(f)</u> A statement of whether the professional solicitor will at any time have custody of any contributions;	265 266
<del>(f)</del> <u>(g)</u> A full and fair description of the charitable program for which the solicitation campaign is being carried out;	267 268 269
<del>(g)</del> <u>(h)</u> The written and signed consent of every charitable organization on whose behalf the professional solicitor will be soliciting contributions or whose name will be mentioned during the solicitation.	270 271 272 273
(E) Not later than ninety days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional solicitor shall provide to the charitable organization and file with the attorney general a financial report of the campaign, including the gross revenue received <del>and</del>	274 275 276 277 278 279

an itemization of all expenses incurred, and any other 280  
information required by the attorney general. The report shall 281  
be completed on a form prescribed by the attorney general and 282  
signed by an authorized official of the professional solicitor 283  
who shall certify under oath that the report is true and 284  
correct. 285

(F) Each contribution collected by or in the custody of 286  
the professional solicitor shall be solely in the name of the 287  
charitable organization on whose behalf the contribution was 288  
solicited. Not later than two days after receipt of each 289  
contribution, the professional solicitor shall deposit the 290  
entire amount of the contribution in an account at a bank or 291  
other federally insured financial institution, which shall be in 292  
the name of that charitable organization. The charitable 293  
organization shall have sole control of all withdrawals from the 294  
account and the professional solicitor shall not be given the 295  
authority to withdraw any deposited funds from the account. 296

(G) (1) During each solicitation campaign and for not less 297  
than three years after its completion, the professional 298  
solicitor shall maintain the following records: 299

(a) The name and, if known to the professional solicitor, 300  
the address and telephone number of each contributor and the 301  
date and amount of the contribution, provided that the attorney 302  
general shall not disclose that information except to the extent 303  
necessary for investigative or law enforcement purposes; 304

(b) The name and residence address of each employee, 305  
agent, and any other person, however designated, who is involved 306  
in the solicitation, the amount of compensation paid to each, 307  
and the dates on which the payments were made; 308

(c) A record of all contributions that at any time are in the custody of the professional solicitor;	309 310
(d) A record of all expenses incurred by the professional solicitor for the payment of which the professional solicitor is liable;	311 312 313
(e) A record of all expenses incurred by the professional solicitor for the payment of which the charitable organization is liable;	314 315 316
(f) The location of each bank or financial institution in which the professional solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made;	317 318 319 320
(g) A copy of each pitch sheet or solicitation script used during the solicitation campaign;	321 322
(h) If a refund of a contribution has been requested, the name and address of each person requesting the refund, and if a refund was made, its amount and the date it was made.	323 324 325
(i) Any other record of such information as the attorney general may require.	326 327
(2) If the professional solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the professional solicitor also shall maintain for the same period as specified in division (G)(1) of this section the following records:	328 329 330 331 332
(a) The name and address of each contributor that purchases or donates tickets and the number of tickets purchased or donated by the contributor;	333 334 335
(b) The name and address of each organization that	336

receives the donated tickets for the use of others, and the 337  
number of tickets received by the organization. 338

(3) Any of the records described in divisions (G) (1) and 339  
(2) of this section shall be made available to the attorney 340  
general upon the attorney general's request and shall be 341  
furnished to the attorney general within ten days of the 342  
request. 343

(H) Unless otherwise provided in this section or section 344  
1716.08 of the Revised Code, any change in any information filed 345  
with the attorney general pursuant to this section and section 346  
1716.08 of the Revised Code shall be reported in writing to the 347  
attorney general within seven days after the change occurs. 348

(I) No person shall serve as a professional solicitor, or 349  
be a member, officer, employee, or agent of any professional 350  
solicitor, who has been convicted in the last five years of 351  
either of the following: 352

(1) Any violation of this chapter or any rule adopted 353  
under this chapter, or of any charitable solicitation 354  
legislation or regulation of a political subdivision of this 355  
state or charitable solicitation law of any other jurisdiction 356  
that is similar to this chapter; 357

(2) A felony in this or another state. 358

(J) If a professional solicitor fails to comply in a 359  
timely or complete manner with any of the requirements under 360  
this section, the professional solicitor is liable for and, in 361  
addition to any fee required in this section, shall pay two 362  
hundred dollars for each late filing. Each registration, renewal 363  
of registration, bond, solicitation notice, contract, sworn 364  
statement, or financial report shall be considered a separate 365

filing for the purposes of this section. Any fees required by 366  
this section are in addition to, and not in place of, penalties 367  
prescribed in this chapter. 368

**Sec. 1716.08.** (A) Every contract entered into by any 369  
professional solicitor with any charitable organization shall be 370  
in writing, shall clearly state the respective obligations of 371  
the professional solicitor and the charitable organization, and 372  
shall contain the ~~percentage of the gross revenue from the~~ 373  
~~solicitation campaign minimum amount~~ that the charitable 374  
organization will receive as a result of the solicitation 375  
campaign. ~~That percentage shall be either~~ The minimum amount may 376  
be stated as a fixed percentage of the gross revenue from the 377  
solicitation campaign or a reasonable estimate of the percentage 378  
of the gross revenue, subject to and in accordance with 379  
divisions (A) (1), (2), and (3) of this section. It may also be 380  
stated as the price per pound of items collected or in any other 381  
reasonable manner. 382

(1) If the compensation of the professional solicitor is 383  
contingent upon the number of contributions or the amount of 384  
revenue received from the solicitation campaign, the stated 385  
percentage of the gross revenue that the charitable organization 386  
will receive shall be a fixed percentage of the gross revenue. 387

(2) If the compensation of the professional solicitor is 388  
not contingent upon the number of contributions or the amount of 389  
revenue received from the solicitation campaign, the stated 390  
percentage of the gross revenue that the charitable organization 391  
will receive shall be a reasonable estimate of the percentage of 392  
the gross revenue, and the contract shall include the following: 393

(a) The assumptions upon which the estimate is based, 394  
which assumptions shall be based upon all of the relevant facts 395

known to the professional solicitor regarding the solicitation 396  
to be conducted and the past performance of the solicitation 397  
campaigns conducted by the professional solicitor; 398

(b) A provision that the charitable organization is 399  
guaranteed a percentage of the gross revenue that is not less 400  
than ninety per cent of the amount of the reasonable estimate of 401  
that percentage. 402

(3) The stated percentages prescribed in divisions (A) (1) 403  
and (2) of this section shall exclude any amount that the 404  
charitable organization, pursuant to the contract entered into 405  
with the professional solicitor, will pay as expenses of the 406  
solicitation campaign, including the costs of merchandise or 407  
services sold or events staged. 408

(B) A professional solicitor shall comply with, and shall 409  
be responsible for complying or causing compliance with each of 410  
the following requirements: 411

(1) Prior to verbally requesting a contribution, or 412  
contemporaneously with and accompanying a written request for a 413  
contribution, the following shall be clearly and conspicuously 414  
disclosed at the point of solicitation: 415

(a) The name, address, and telephone number of the 416  
professional solicitor ~~as it~~ that is on file with the attorney 417  
general and a statement that the solicitation is being conducted 418  
by the person as a professional solicitor and the contract 419  
disclosing the financial arrangements between the person and the 420  
charitable organization is on file with and available from the 421  
attorney general; 422

(b) The name and address of each charitable organization 423  
on behalf of which all or any part of the contribution collected 424

will be used. If the charitable organization has not received 425  
from the internal revenue service a determination letter that is 426  
currently in effect, stating that the organization is exempt 427  
from federal income taxation under section 501(a) and described 428  
in section 501(c) (3) of the Internal Revenue Code, the 429  
particular charitable purpose or purposes to be advanced with 430  
the funds raised shall be disclosed. 431

~~(2) If requested by the person being solicited, the 432  
professional solicitor shall inform that person of the fixed- 433  
percentage of the gross revenue or the reasonable estimate of- 434  
the percentage of the gross revenue, as prescribed in division 435  
(A) of this section, that the charitable organization will- 436  
receive as a benefit from the solicitation campaign. the 437  
solicitation is made by direct personal contact, the information 438  
required under division (B) (1) of this section shall be 439  
disclosed verbally and prominently in a written document that is 440  
shown to the person being solicited. 441~~

(3) If the solicitation is made through collection 442  
receptacles, the following information shall be displayed, in 443  
letters that are at least three inches in height and not less 444  
than one-half inch in width, on a permanent sign or label that 445  
is placed on each side of the receptacle and is in a color that 446  
contrasts with the color of the receptacle: 447

(a) The name, address, and telephone number of the 448  
charitable organization and of the professional solicitor that 449  
are on file with the attorney general; 450

(b) A statement that the contract disclosing the financial 451  
arrangements between the professional solicitor and the 452  
charitable organization is on file with and available from the 453  
attorney general. 454



(C) A professional solicitor shall not represent that any part of the contributions received will be given or donated to any other charitable organization unless that charitable organization has given its written and signed consent pursuant to division (D) (2) ~~(g)~~ (h) of section 1716.07 of the Revised Code.

(D) (1) A professional solicitor shall not represent that tickets to any event will be donated for use by another person, unless the following requirements are complied with:

(a) The professional solicitor shall have the written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(b) The written commitments are filed with the attorney general prior to any solicitation.

(2) The contributions solicited for donated tickets shall not be more than the amount representing the number of ticket commitments received from persons and filed with the attorney general pursuant to division (D) (1) of this section.

(3) Not later than seven calendar days prior to the date of the event, the professional solicitor shall give all donated tickets to each person that made the written commitment to accept them.

(E) The attorney general shall prepare an annual report setting forth the activities of all professional solicitors and all fund-raising counsel that at any time have custody of contributions from a solicitation who are required to comply with the provisions of this chapter and any rules adopted under the provisions of this chapter. The report is a public record

open to public inspection under section 149.43 of the Revised Code and shall be posted on the attorney general's internet web site not later than the first day of April of each year.

(F) The attorney general shall maintain a file for each registered professional solicitor and fund-raising counsel that at any time has custody of contributions from a solicitation. In that file, ~~he~~ the attorney general shall place all information received by ~~him~~ the attorney general from those registered professional solicitors or fund-raising counsel and any letters received from citizens and charitable organizations regarding the work of the professional fund raiser or fund-raising counsel. The files are public records open to public inspection under section 149.43 of the Revised Code.

**Section 2.** That existing sections 1716.01, 1716.07, and 1716.08 of the Revised Code are hereby repealed.

**Section 3.** In enacting this act, it is the intent of the General Assembly to do all of the following:

(A) Recognize the right of individuals or organizations to conduct charitable solicitation activities;

(B) Protect the public by requiring full disclosure of the identity of persons who solicit contributions from the public, the purposes for which the contributions are solicited, and the manner in which the contributions will actually be used;

(C) Prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.