

1 **CHARITABLE SOLICITATIONS ACT AMENDMENTS**
2 2024 GENERAL SESSION
3 STATE OF UTAH
4 **Chief Sponsor: A. Cory Maloy**
5 Senate Sponsor: Curtis S. Bramble

6
7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to charitable solicitations.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ removes a requirement that charitable organizations register with the Division of
- 14 Consumer Protection;
- 15 ▶ requires a charitable organization to provide certain tax documents in a manner
- 16 described by the Division of Consumer Protection;
- 17 ▶ prohibits deceptive acts related to charitable solicitations;
- 18 ▶ adds regulations and filing requirements for professional fund raisers and professional
- 19 fund raising campaigns;
- 20 ▶ grants rulemaking authority; and
- 21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 **AMENDS:**

- 28 **13-2-6**, as last amended by Laws of Utah 2021, Chapter 226
- 29 **13-11-4**, as last amended by Laws of Utah 2021, Chapters 138, 154
- 30 **13-22-2**, as last amended by Laws of Utah 2023, Chapter 17
- 31 **13-22-3**, as last amended by Laws of Utah 2008, Chapter 382

28 **13-22-4**, as last amended by Laws of Utah 1994, Chapter 185
 29 **13-22-5**, as last amended by Laws of Utah 2018, Chapter 267
 30 **13-22-9**, as last amended by Laws of Utah 2018, Chapter 267
 31 **13-22-11**, as last amended by Laws of Utah 2016, Chapter 377
 32 **13-22-12**, as last amended by Laws of Utah 2008, Chapter 382
 33 **13-22-13**, as last amended by Laws of Utah 1994, Chapter 185
 34 **13-22-14**, as last amended by Laws of Utah 2001, Chapter 210
 35 **13-22-16**, as last amended by Laws of Utah 2015, Chapter 120
 36 **13-22-17**, as last amended by Laws of Utah 1996, Chapter 187
 37 **13-22-22**, as enacted by Laws of Utah 2001, Chapter 210
 38 **13-25a-102**, as last amended by Laws of Utah 2022, Chapter 324
 39 **13-25a-111**, as last amended by Laws of Utah 2010, Chapter 379
 40 **16-6a-102**, as last amended by Laws of Utah 2023, Chapter 503
 41 **16-6a-203**, as last amended by Laws of Utah 2015, Chapter 240
 42 **16-6a-1503**, as last amended by Laws of Utah 2008, Chapters 249, 364
 43 **42-2-6.6**, as last amended by Laws of Utah 2023, Chapter 458

44 ENACTS:

45 **13-22-24**, as Utah Code Annotated 1953

46 REPEALS AND REENACTS:

47 **13-22-15**, as last amended by Laws of Utah 2015, Chapter 120

48 REPEALS:

49 **13-22-6**, as last amended by Laws of Utah 2020, Chapter 419

50 **13-22-8**, as last amended by Laws of Utah 2023, Chapter 17

51 **13-22-21**, as last amended by Laws of Utah 2018, Chapter 267

52

53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **13-2-6** is amended to read:

55 **13-2-6 . Enforcement powers.**

56 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division
 57 shall have authority to convene administrative hearings, issue cease and desist orders,
 58 and impose fines under all the chapters identified in Section 13-2-1.

59 (2) ~~[Any]~~ A person who intentionally violates a final cease and desist order entered by the
 60 division of which the person has notice is guilty of a third degree felony.

61 (3) If the division has reasonable cause to believe that ~~[any]~~ a person has violated or is

- 62 violating any chapter listed in Section 13-2-1, the division may promptly issue the
63 alleged violator a citation signed by the division's director or the director's designee.
- 64 (a) Each citation shall be in writing and shall:
- 65 (i) set forth with particularity the nature of the violation, including a reference to the
66 statutory or administrative rule provision violated;
- 67 (ii) state that ~~any~~ a request for review of the citation shall be made in writing and be
68 received by the division no more than 20 calendar days after the day on which the
69 division issues the citation;
- 70 (iii) state the consequences of failing to make a timely request for review; and
71 (iv) state all other information required by Subsection 63G-4-201(2).
- 72 (b) In computing ~~any~~ a time period ~~prescribed by~~ under this section, the following
73 days may not be included:
- 74 (i) the day on which the division issues a citation; and
75 (ii) the day on which the division receives a request for review of a citation.
- 76 (c) (i) Except as provided in Subsection (3)(c)(iii), if the presiding officer finds that
77 there is not substantial evidence that the recipient violated a chapter listed in
78 Section 13-2-1:
- 79 (A) the citation may not become final; and
80 (B) the division shall immediately vacate the citation and promptly notify the
81 recipient in writing.
- 82 (ii) Except as provided in Subsection (3)(c)(iv), if the presiding officer finds that
83 there is substantial evidence that the recipient violated a chapter listed in Section
84 13-2-1:
- 85 (A) the citation shall become final; and
86 (B) the division may enter a cease and desist order against the recipient.
- 87 (iii) For a citation issued for a violation of Chapter 41, Price Controls During
88 Emergencies Act, if the presiding officer finds that there is not clear and
89 convincing evidence that the recipient violated the chapter:
- 90 (A) the citation may not become final; and
91 (B) the division shall immediately vacate the citation and promptly notify the
92 recipient in writing.
- 93 (iv) For a citation issued for a violation of Chapter 41, Price Controls During
94 Emergencies Act, if the presiding officer finds that there is clear and convincing
95 evidence that the recipient violated the chapter:

- 96 (A) the citation shall become final; and
- 97 (B) the division may enter a cease and desist order against the recipient.
- 98 (d) (i) A citation issued under this chapter may be personally served upon [any] a
- 99 person upon whom a summons may be served in accordance with the Utah Rules
- 100 of Civil Procedure.
- 101 (ii) A citation also may be served by first-class mail, postage prepaid.
- 102 (e) (i) If the recipient fails to make a request for review within 20 calendar days after
- 103 the day on which the division issues the citation, the citation shall become the
- 104 final order of the division.
- 105 (ii) The period to contest the citation may be extended by the director for good cause
- 106 shown.
- 107 (f) If the chapter violated allows for an administrative fine, after a citation becomes
- 108 final, the director may impose the administrative fine.
- 109 (4) (a) A person who has violated, is violating, or has attempted to violate a chapter
- 110 identified in Section 13-2-1 is subject to the division's jurisdiction if:
- 111 (i) the violation or attempted violation is committed wholly or partly within the state;
- 112 (ii) conduct committed outside the state constitutes an attempt to commit a violation
- 113 within the state; or
- 114 (iii) transactional resources located within the state are used by the offender to
- 115 directly or indirectly facilitate a violation or attempted violation.
- 116 (b) As used in this section, "transactional resources" means:
- 117 (i) [any] a mail drop or mail box, regardless of whether the mail drop or mail box is
- 118 located on the premises of a United States Post Office;
- 119 (ii) [any] a telephone or facsimile transmission device;
- 120 (iii) [any] an Internet connection by a resident or inhabitant of this state with a
- 121 resident- or nonresident-maintained Internet site;
- 122 (iv) [any] a business office or private residence used for a business-related purpose;
- 123 (v) [any] an account with or services of a financial institution;
- 124 (vi) the services of a common or private carrier; or
- 125 (vii) the use of [any] a city, county, or state asset or facility, including [any] a road or
- 126 highway.
- 127 (5) The director or the director's designee, for the purposes outlined in [any] a chapter
- 128 administered by the division, may administer oaths, issue subpoenas, compel the
- 129 attendance of witnesses, conduct audits, compel sworn responses to written questions, or

- 130 compel the production of papers, books, accounts, documents, or evidence.
- 131 (6) (a) An administrative action filed under this chapter or a chapter listed in Section
132 13-2-1 shall be commenced no later than 10 years after the day on which the alleged
133 violation occurs.
- 134 (b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be
135 commenced no later than five years after the day on which the alleged violation
136 occurs.
- 137 (c) The provisions of this Subsection (6) control over the provisions of Title 78B,
138 Chapter 2, Statutes of Limitations.
- 139 Section 2. Section **13-11-4** is amended to read:
- 140 **13-11-4 . Deceptive act or practice by supplier.**
- 141 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
142 violates this chapter whether it occurs before, during, or after the transaction.
- 143 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
144 practice if the supplier knowingly or intentionally:
- 145 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
146 performance characteristics, accessories, uses, or benefits, if it has not;
- 147 (b) indicates that the subject of a consumer transaction is of a particular standard,
148 quality, grade, style, or model, if it is not;
- 149 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
150 has been used to an extent that is materially different from the fact;
- 151 (d) indicates that the subject of a consumer transaction is available to the consumer for a
152 reason that does not exist, including any of the following reasons falsely used in an
153 advertisement:
- 154 (i) "going out of business";
- 155 (ii) "bankruptcy sale";
- 156 (iii) "lost our lease";
- 157 (iv) "building coming down";
- 158 (v) "forced out of business";
- 159 (vi) "final days";
- 160 (vii) "liquidation sale";
- 161 (viii) "fire sale";
- 162 (ix) "quitting business"; or
- 163 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through

- 164 (ix);
- 165 (e) indicates that the subject of a consumer transaction has been supplied in accordance
166 with a previous representation, if it has not;
- 167 (f) indicates that the subject of a consumer transaction will be supplied in greater
168 quantity than the supplier intends;
- 169 (g) indicates that replacement or repair is needed, if it is not;
- 170 (h) indicates that a specific price advantage exists, if it does not;
- 171 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does
172 not have;
- 173 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a
174 disclaimer of warranties, particular warranty terms, or other rights, remedies, or
175 obligations, if the representation is false; or
176 (ii) fails to honor a warranty or a particular warranty term;
- 177 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
178 inducement for entering into a consumer transaction in return for giving the supplier
179 the names of prospective consumers or otherwise helping the supplier to enter into
180 other consumer transactions, if receipt of the benefit is contingent on an event
181 occurring after the consumer enters into the transaction;
- 182 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
183 services within the time advertised or otherwise represented or, if no specific time is
184 advertised or represented, fails to ship the goods or furnish the services within 30
185 days, unless within the applicable time period the supplier provides the buyer with
186 the option to:
- 187 (i) cancel the sales agreement and receive a refund of all previous payments to the
188 supplier if the refund is mailed or delivered to the buyer within 10 business days
189 after the day on which the seller receives written notification from the buyer of the
190 buyer's intent to cancel the sales agreement and receive the refund; or
- 191 (ii) extend the shipping date to a specific date proposed by the supplier;
- 192 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
193 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct
194 solicitation sale within three business days of the time of purchase if:
- 195 (i) the sale is made other than at the supplier's established place of business pursuant
196 to the supplier's personal contact, whether through mail, electronic mail, facsimile
197 transmission, telephone, or any other form of direct solicitation; and

- 198 (ii) the sale price exceeds \$25;
- 199 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
- 200 76, Chapter 6a, Pyramid Scheme Act;
- 201 ~~[(o) represents that the funds or property conveyed in response to a charitable~~
- 202 ~~solicitation will be donated or used for a particular purpose or will be donated to or~~
- 203 ~~used by a particular organization, if the representation is false;]~~
- 204 (o) in connection with a charitable solicitation:
- 205 (i) falsely indicates that:
- 206 (A) the supplier is affiliated with a charitable organization;
- 207 (B) the supplier is an employee, officer, or representative of a public safety
- 208 agency;
- 209 (C) the supplier has sponsorship or approval of a given charitable organization;
- 210 (D) a charitable contribution will be provided to a given charitable organization;
- 211 (E) providing a charitable contribution has an additional benefit, including a tax
- 212 benefit; or
- 213 (F) the recipient of the solicitation has previously contributed to a given charitable
- 214 organization;
- 215 (ii) uses a fictitious name or a name the supplier is not authorized to use; or
- 216 (iii) with intent to deceive:
- 217 (A) uses a name that is substantially similar to that of another charitable
- 218 organization; or
- 219 (B) falsely indicates that a charitable contribution will be used for a particular
- 220 purpose;
- 221 (p) if a consumer indicates the consumer's intention of making a claim for a motor
- 222 vehicle repair against the consumer's motor vehicle insurance policy:
- 223 (i) commences the repair without first giving the consumer oral and written notice of:
- 224 (A) the total estimated cost of the repair; and
- 225 (B) the total dollar amount the consumer is responsible to pay for the repair,
- 226 which dollar amount may not exceed the applicable deductible or other copay
- 227 arrangement in the consumer's insurance policy; or
- 228 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
- 229 consumer was initially told the consumer was responsible to pay as an insurance
- 230 deductible or other copay arrangement for a motor vehicle repair under Subsection
- 231 (2)(p)(i), even if that amount is less than the full amount the motor vehicle

- 232 insurance policy requires the insured to pay as a deductible or other copay
233 arrangement, unless:
- 234 (A) the consumer's insurance company denies that coverage exists for the repair,
235 in which case, the full amount of the repair may be charged and collected from
236 the consumer; or
- 237 (B) the consumer misstates, before the repair is commenced, the amount of money
238 the insurance policy requires the consumer to pay as a deductible or other
239 copay arrangement, in which case, the supplier may charge and collect from
240 the consumer an amount that does not exceed the amount the insurance policy
241 requires the consumer to pay as a deductible or other copay arrangement;
- 242 (q) includes in any contract, receipt, or other written documentation of a consumer
243 transaction, or any addendum to any contract, receipt, or other written documentation
244 of a consumer transaction, any confession of judgment or any waiver of any of the
245 rights to which a consumer is entitled under this chapter;
- 246 (r) charges a consumer for a consumer transaction or a portion of a consumer transaction
247 that has not previously been agreed to by the consumer;
- 248 (s) solicits or enters into a consumer transaction with a person who lacks the mental
249 ability to comprehend the nature and consequences of:
- 250 (i) the consumer transaction; or
251 (ii) the person's ability to benefit from the consumer transaction;
- 252 (t) solicits for the sale of a product or service by providing a consumer with an
253 unsolicited check or negotiable instrument the presentment or negotiation of which
254 obligates the consumer to purchase a product or service, unless the supplier is:
- 255 (i) a depository institution under Section 7-1-103;
256 (ii) an affiliate of a depository institution; or
257 (iii) an entity regulated under Title 7, Financial Institutions Act;
- 258 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
259 request for payment for a product or service the person has not ordered or used, or
260 that implies that the mailing requests payment for an ongoing product or service the
261 person has not received or requested;
- 262 (v) issues a gift certificate, instrument, or other record in exchange for payment to
263 provide the bearer, upon presentation, goods or services in a specified amount
264 without printing in a readable manner on the gift certificate, instrument, packaging,
265 or record any expiration date or information concerning a fee to be charged and

- 266 deducted from the balance of the gift certificate, instrument, or other record;
- 267 (w) misrepresents the geographical origin or location of the supplier's business;
- 268 (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal
- 269 provisions;
- 270 (y) violates Section 13-59-201; [~~or~~]
- 271 (z) fails to comply with the restrictions of Subsection 13-54-202(2)[~~z~~] ; or
- 272 (aa) states or implies that a registration or application administered or enforced by the
- 273 division is an endorsement, sanction, or approval by the division or a governmental
- 274 agency or office.
- 275 (3) (a) The notice required by Subsection (2)(m) shall:
- 276 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
- 277 first page of the purchase documentation; and
- 278 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
- 279 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time
- 280 period reflecting the supplier's cancellation policy but not less than three business
- 281 days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
- 282 PRODUCT, WHICHEVER IS LATER."
- 283 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
- 284 cancellation policy:
- 285 (i) is communicated to the buyer; and
- 286 (ii) offers greater rights to the buyer than Subsection (2)(m).
- 287 (4) (a) A gift certificate, instrument, or other record that does not print an expiration date
- 288 in accordance with Subsection (2)(v) does not expire.
- 289 (b) A gift certificate, instrument, or other record that does not include printed
- 290 information concerning a fee to be charged and deducted from the balance of the gift
- 291 certificate, instrument, or other record is not subject to the charging and deduction of
- 292 the fee.
- 293 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
- 294 record useable at multiple, unaffiliated sellers of goods or services if an expiration
- 295 date is printed on the gift certificate, instrument, or other record.
- 296 Section 3. Section **13-22-2** is amended to read:
- 297 **13-22-2 . Definitions.**
- 298 As used in this chapter:
- 299 (1) "Chapter" means a chapter, branch, area, office, or similar affiliate of a charitable

- 300 organization.
- 301 (2) (a) "Charitable organization" or "organization" means any person, joint venture,
302 partnership, limited liability company, corporation, association, group, or other entity:
303 (i) who is or holds itself out to be:
304 (A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic,
305 religious or eleemosynary, social welfare or advocacy, public health,
306 environmental or conservation, or civic organization;
307 (B) for the benefit of a public safety, law enforcement, or firefighter fraternal
308 association; or
309 (C) established for any charitable purpose;
310 (ii) who solicits or obtains contributions solicited from the public for a charitable
311 purpose; or
312 (iii) in any manner employs a charitable appeal as the basis of any solicitation or
313 employs an appeal that reasonably suggests or implies that there is a charitable
314 purpose to any solicitation.
- 315 (b) "Charitable organization" includes a chapter or a person who solicits contributions
316 within the state for a charitable organization.
- 317 (c) "Charitable organization" does not include a political organization.
- 318 (3) "Charitable purpose" means any benevolent, educational, philanthropic, humane,
319 patriotic, religious, eleemosynary, social welfare or advocacy, public health,
320 environmental, conservation, civic, or other charitable objective or for the benefit of a
321 public safety, law enforcement, or firefighter fraternal association.
- 322 (4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a
323 commercial co-venturer, which represents that the purchase or use of goods or services
324 offered by the commercial co-venturer will benefit, in whole or in part, a charitable
325 organization or purpose.
- 326 (5) (a) "Charitable solicitation" or "solicitation" means any request, directly or
327 indirectly, for money, credit, property, financial assistance, or any other thing of
328 value on the plea or representation that it will be used for a charitable purpose.
- 329 (b) "Charitable solicitation" or "solicitation" includes:
330 (i) any of the following done, or purporting to be done, for a charitable purpose:
331 (A) any oral or written request, including any request by telephone, radio,
332 television, or other advertising or communications media;
333 (B) the distribution, circulation, or posting of any handbill, written advertisement,

- 334 or publication; or
- 335 (C) an application or other request for a a private grant or, if made by an
- 336 individual, a public grant; or
- 337 (ii) the sale of, offer or attempt to sell, or request of donations in exchange for any
- 338 advertisement, membership, subscription, or other article in connection with
- 339 which any appeal is made for any charitable purpose, or the use of the name of
- 340 any charitable organization or movement as an inducement or reason for making
- 341 any purchase donation, or, in connection with any sale or donation, stating or
- 342 implying that the whole or any part of the proceeds of any sale or donation will go
- 343 to or be donated to any charitable purpose.
- 344 (c) "Charitable solicitation" or "solicitation" does not include an entity's application or
- 345 other request for a public grant.
- 346 (6) "Commercial co-venturer" means a person who for profit is regularly and primarily
- 347 engaged in trade or commerce other than in connection with soliciting for a charitable
- 348 organization or purpose.
- 349 (7) (a) "Contribution" means the pledge or grant for a charitable purpose of any money
- 350 or property of any kind, including any of the following:
- 351 (i) a gift, subscription, loan, advance, or deposit of money or anything of value;
- 352 (ii) a contract, promise, or agreement, express or implied, whether or not legally
- 353 enforceable, to make a contribution for charitable purposes; or
- 354 (iii) fees, dues, or assessments paid by members, when membership is conferred
- 355 solely as consideration for making a contribution.
- 356 (b) "Contribution" does not include:
- 357 (i) money loaned to a charitable organization by a financial institution in the ordinary
- 358 course of business; or
- 359 (ii) fees, dues, or assessments paid by members when membership is not conferred
- 360 solely as consideration for making a contribution.
- 361 (8) "Contributor" means a donor, pledgor, purchaser, or other person who makes a
- 362 contribution.
- 363 (9) "Director" means the director of the Division of Consumer Protection.
- 364 (10) "Division" means the Division of Consumer Protection of the Department of
- 365 Commerce.
- 366 (11) (a) "Exempt function" means the function of influencing or attempting to influence
- 367 the selection, nomination, election, or appointment of an individual to a federal, state,

368 or local public office or an office in a political organization, or the election of
369 presidential or vice-presidential electors, regardless of whether the individual or the
370 electors are selected, nominated, elected, or appointed.

371 (b) "Exempt function" includes making an expenditure relating to an office described in
372 Subsection (11)(a) which, if incurred by the individual, would be allowable as a
373 deduction under section 162(a) of 26 I.R.C. Sec. 1.162-20.

374 (12) "Foreign nonprofit corporation" means the same as that term is defined in Section
375 16-6a-102.

376 ~~[(11)]~~ (13) "Material fact" means information that a person of ordinary intelligence and
377 prudence would consider relevant in deciding whether or not to make a contribution in
378 response to a charitable solicitation.

379 (14) "Nonprofit corporation" means the same as that term is defined in Section 16-6a-102.

380 (15) "Political organization" means an incorporated or unincorporated party, committee,
381 association, fund, or other organization organized and operated primarily for the purpose
382 of directly or indirectly accepting contributions or making expenditures for an exempt
383 function.

384 ~~[(12)]~~ (16) (a) "Professional fund raiser" means a person who:

385 (i) for compensation or any other consideration, for or on behalf of a charitable
386 organization that is a nonprofit corporation, or any other person that is not a
387 political organization:

388 (A) solicits contributions; or

389 (B) promotes or sponsors the solicitation of contributions;

390 (ii) (A) for compensation or any other consideration, plans, manages,~~[-counsels,]~~
391 consults, or prepares material for, or with respect to, the solicitation of
392 contributions for a charitable organization that is a nonprofit corporation, or any
393 other person that is not a political organization; and

394 (B) at any time has custody of a contribution for the charitable organization;

395 (iii) engages in, or represents being independently engaged in, the business of
396 soliciting contributions for a charitable organization that is a nonprofit corporation;

397 (iv) manages, supervises, or trains any solicitor whether as an employee or otherwise;
398 or

399 (v) uses a vending device or vending device decal for financial or other consideration
400 that implies a solicitation of contributions or donations for any charitable
401 organization or charitable purposes.

- 402 (b) "Professional fund raiser" does not include:
- 403 (i) an individual acting in the individual's capacity as a bona fide officer, director,
- 404 volunteer, or full-time employee of a charitable organization;
- 405 (ii) an attorney, investment counselor, or banker who, in the conduct of that person's
- 406 profession, advises a client regarding legal, investment, or financial advice; ~~[or]~~
- 407 (iii) a person who tangentially prepares materials, including a person who:
- 408 (A) makes copies;
- 409 (B) cuts or folds flyers; or
- 410 (C) creates a graphic design or other artwork without providing strategic or
- 411 campaign-related input~~[-]~~ ; or
- 412 (iv) a political organization.
- 413 ~~[(13)]~~ (17) (a) "Professional fund raising ~~[counsel or]~~consultant" means a person who:
- 414 (i) for compensation or any other consideration, plans, manages, ~~[counsels,]~~consults,
- 415 or prepares material for, or with respect to, the solicitation of contributions for a
- 416 charitable organization that is a nonprofit corporation or any other person that is
- 417 not a political organization;
- 418 (ii) does not solicit contributions;
- 419 (iii) does not at any time have custody of a contribution from solicitation; and
- 420 (iv) does not employ, procure, or engage any compensated person to solicit or receive
- 421 contributions.
- 422 (b) "Professional fund raising counsel or consultant" does not include:
- 423 (i) an individual acting in the individual's capacity as a bona fide officer, director,
- 424 volunteer, or full-time employee of a charitable organization;
- 425 (ii) an attorney, investment counselor, or banker who, in the conduct of that person's
- 426 profession, advises a client regarding legal, investment, or financial advice; or
- 427 (iii) a person who tangentially prepares materials, including a person who:
- 428 (A) makes copies;
- 429 (B) cuts or folds flyers; or
- 430 (C) creates a graphic design or other artwork without providing strategic or
- 431 campaign-related input.
- 432 ~~[(14)]~~ (18) "Public grant" means the same as the term "grant" is defined in Section
- 433 63G-6a-103.
- 434 ~~[(15)]~~ (19) (a) "Vending device" means a container used by a charitable organization or
- 435 professional fund raiser, for the purpose of collecting a charitable solicitation,

436 contribution, or donation whether or not the device offers a product or item in return
 437 for the contribution or donation.

438 (b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other
 439 container.

440 ~~[(16)]~~ (20) "Vending device decal" means any decal, tag, or similar designation material that
 441 is attached to a vending device, whether or not used or placed by a charitable
 442 organization or professional fund raiser, that would indicate that all or a portion of the
 443 proceeds from the purchase of items from the vending device will go to a specific
 444 charitable organization.

445 Section 4. Section 13-22-3 is amended to read:

446 **13-22-3 . Investigative and enforcement powers -- Education.**

447 (1) The division shall administer and enforce the provisions of this chapter in accordance
 448 with Chapter 2, Division of Consumer Protection.

449 (2) Upon request, the attorney general shall give legal advice to, and act as counsel for, the
 450 division in the exercise of the division's responsibilities under this chapter.

451 (3) The division may ~~[make any investigation it considers]~~ audit or investigate as necessary
 452 to determine whether [any] a person is violating, has violated, or is about to violate [any] a
 453 provision of this chapter or [any] a rule made or order issued under this chapter. As part
 454 of the investigation, the division may:

455 (a) require a person to file a statement in writing;

456 (b) administer oaths, subpoena witnesses and compel ~~[their attendance]~~ a witness to
 457 attend, compel sworn responses to written questions, take evidence, and examine
 458 under oath [any] a person in connection with an investigation; and

459 (c) require the production of ~~[any]~~ books, papers, documents, merchandise, or other
 460 material relevant to the investigation.

461 ~~[(2) Whenever it appears to the director that substantial evidence exists that any person has~~
 462 ~~engaged in, is engaging in, or is about to engage in any act or practice prohibited in this~~
 463 ~~chapter or constituting a violation of this chapter or any rule made or order issued under~~
 464 ~~this chapter, the director may do any of the following in addition to other specific duties~~
 465 ~~under this chapter:]~~

466 ~~[(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the director~~
 467 ~~may issue an order to cease and desist from engaging in the act or practice or from doing~~
 468 ~~any act in furtherance of the activity; or]~~

469 ~~[(b) the director may bring an action in the appropriate district court of this state to enjoin~~

470 the acts or practices constituting the violation or to enforce compliance with this chapter
471 or any rule made or order issued under this chapter.]

472 [(3) Whenever it appears to the director by a preponderance of the evidence that a person
473 has engaged in or is engaging in any act or practice prohibited in this chapter or
474 constituting a violation of this chapter or any rule made or order issued under this
475 chapter, the director may assess an administrative fine of up to \$500 per violation up to
476 \$10,000 for any series of violations arising out of the same operative facts.]

477 (4) In addition to the division's enforcement powers under Chapter 2, Division of Consumer
478 Protection:

479 (a) the director may impose an administrative fine of up to \$2,500 for each violation of
480 this chapter; or

481 (b) the division may bring an action in a court with jurisdiction to enjoin the acts or
482 practices constituting the violation or to enforce compliance with this chapter or a
483 rule made or order issued under this chapter.

484 (5) Upon a proper showing, the court hearing an action brought under Subsection [(2)(b)]
485 (4)(b) may:

486 (a) issue an injunction;

487 (b) enter a declaratory judgment;

488 (c) appoint a receiver for the defendant or the defendant's assets and order the defendant
489 to pay the expenses of the receiver;

490 (d) order disgorgement of any money received in violation of this chapter;

491 (e) order rescission of agreements violating this chapter;

492 (f) impose [~~a fine of not more than \$2,000~~] fines for each violation of this chapter; and

493 (g) impose a civil penalty[;] or any other relief the court [~~considers just~~] determines
494 reasonable and necessary.

495 (6) If a court with jurisdiction grants judgment or injunctive relief to the division, the court
496 shall award the division:

497 (a) reasonable attorney fees;

498 (b) court costs; and

499 (c) investigative fees.

500 [(5)] (7) [(a)] In assessing the amount of a fine or penalty under [Subsection] [(3), (4)(f),
501 ~~or (4)(g)~~] Subsection (4)(a), (5)(f), or (5)(g), the director or court imposing the fine or
502 penalty [shall] may consider the gravity of the violation [~~and the intent of the violator~~].

503 [(b) If it does not appear by a preponderance of the evidence that the violator acted in

504 ~~bad faith or with intent to harm the public, the director or court shall excuse payment~~
 505 ~~of the fine or penalty.]~~

506 (8) (a) A person who violates an administrative or court order issued for a violation of
 507 this chapter is subject to a civil penalty of up to \$5,000 for each violation.

508 (b) A court may impose a civil penalty authorized under this section in a civil action
 509 brought by the attorney general on behalf of the division.

510 ~~[(6)]~~ (9) The division may provide or contract to provide public education and voluntary
 511 education for applicants and registrants under this chapter. The education may be in the
 512 form of publications, advertisements, seminars, courses, or other appropriate means.
 513 The scope of the education may include:

514 (a) the requirements, prohibitions, and regulated practices under this chapter;

515 (b) suggestions for effective financial and organizational practices for charitable
 516 organizations;

517 (c) charitable giving and solicitation;

518 (d) potential problems with solicitations and fraudulent or deceptive practices; and

519 (e) any other matter relevant to the subject of this chapter.

520 (10) Nothing in this chapter limits other available rights or remedies authorized under the
 521 laws of this state or the United States.

522 Section 5. Section **13-22-4** is amended to read:

523 **13-22-4 . Action for damages.**

524 ~~[(1) A person who willfully violates any provision of this chapter, either by failing to~~
 525 ~~comply with any requirement or by doing any act prohibited in the chapter, is guilty of a~~
 526 ~~class B misdemeanor. Each day the violation is committed or permitted to continue~~
 527 ~~constitutes a separate punishable offense. (2)]~~ Nothing in this [section] chapter precludes
 528 any person damaged as a result of a charitable solicitation from maintaining a civil
 529 action for damages or injunctive relief.

530 ~~[(3) The division may maintain an action for damages or injunctive relief on behalf of~~
 531 ~~itself or any other person to enforce compliance with this chapter.]~~

532 Section 6. Section **13-22-5** is amended to read:

533 **13-22-5 . Registration required.**

534 ~~[(1) (a) An organization may not engage in an activity described in Subsection (1)(b)~~
 535 ~~unless the organization is:]~~

536 ~~[(i) exempt under Section 13-22-8; or]~~

537 ~~[(ii) registered with the division in accordance with this chapter.]~~

538 ~~[(b) Unless an organization meets the requirements of Subsection (1)(a), the organization~~
 539 ~~may not knowingly solicit, promote, or sponsor a charitable solicitation if the charitable~~
 540 ~~solicitation:]~~

541 ~~[(i) originates in Utah;]~~

542 ~~[(ii) is received in Utah; or]~~

543 ~~[(iii) is caused to be made through business operations in Utah.]~~

544 ~~[(2) Subsection (1) does not prohibit an organization from receiving an unsolicited~~
 545 ~~contribution.]~~

546 ~~[(3)] (1) [(a)] Unless a person acting as a professional fund raiser [obtains a permit] is~~
 547 ~~registered with the division in accordance with Section 13-22-9, the person may not:~~

548 ~~[(+)] (a) make or facilitate a solicitation either directed toward the state or originating~~
 549 ~~from the state; or~~

550 ~~[(+)] (b) maintain a place of business in the state or employ an individual located in the~~
 551 ~~state.~~

552 ~~[(b) Subsection (3)(a) applies regardless of whether a charitable organization receiving~~
 553 ~~the services of a professional fund raiser is required to register under this chapter.]~~

554 ~~[(4)] (2) [(a)] Unless a person acting as a professional fund raising [counsel or]~~
 555 ~~consultant [obtains a permit] is registered with the division in accordance with Section~~
 556 ~~13-22-9, the person may not:~~

557 ~~[(+)] (a) maintain a place of business in the state or employ an individual located in the~~
 558 ~~state; or~~

559 ~~[(+)] (b) provide any service of a professional fund raising [counsel or] consultant to or~~
 560 ~~for a charitable organization, or any other person, over which the state has general~~
 561 ~~jurisdiction.~~

562 ~~[(b) Subsection (4)(a) applies regardless of whether a charitable organization receiving~~
 563 ~~the services of a professional fund raising counsel or consultant is required to register~~
 564 ~~under this chapter.]~~

565 ~~[(5) A person required to obtain a permit under Subsection (3) or (4) may not provide any~~
 566 ~~service to or on behalf of an organization required to register under Subsection (1) if the~~
 567 ~~organization is not registered in accordance with Section 13-22-6.]~~

568 Section 7. Section 13-22-9 is amended to read:

569 **13-22-9 . Professional fund raiser's or fund raising consultant's registration.**

570 (1) A person applying for or renewing a [permit] registration as a professional fund raiser or
 571 a professional fund raising [counsel or] consultant shall:

- 572 (a) pay an application fee as determined under Section 63J-1-504; and
- 573 (b) submit a written application, verified under oath, on a form approved by the division
- 574 that includes:
- 575 (i) the applicant's name, address, telephone number, facsimile number, if any;
- 576 (ii) the name and address of ~~[any]~~ each organization or person controlled by,
- 577 controlling, or affiliated with the applicant;
- 578 (iii) the applicant's business, occupation, or employment for the three-year period
- 579 immediately preceding the date of the application;
- 580 (iv) whether it is an individual, joint venture, partnership, limited liability company,
- 581 corporation, association, or other entity;
- 582 (v) the names and residence addresses of ~~[any officer or director of the applicant]~~ the
- 583 applicant's officers and directors;
- 584 (vi) the name and address of the applicant's registered agent for service of process
- 585 and a consent to service of process;
- 586 (vii) if a professional fund raiser:
- 587 (A) the purpose of the solicitation and use of the contributions to be solicited;
- 588 (B) the method by which the solicitation will be conducted and the projected
- 589 length of time it is to be conducted;
- 590 (C) the anticipated expenses of the solicitation, including all commissions, costs
- 591 of collection, salaries, and ~~[any other items]~~ other expenses;
- 592 (D) a statement of what percentage of the contributions collected as a result of the
- 593 solicitation are projected to remain available to the charitable organization
- 594 declared in the application, including a satisfactory statement of the factual
- 595 basis for the projected percentage and projected anticipated revenues provided
- 596 to the charitable organization, and if a flat fee is charged, documentation to
- 597 support the reasonableness of the flat fee; and
- 598 (E) a statement of total contributions collected or received by the professional
- 599 fund raiser within the calendar year immediately preceding the date of the
- 600 application, including a description of the expenditures made from or the use
- 601 made of the contributions;
- 602 (viii) if a professional fund raising ~~[counsel or]~~ consultant:
- 603 (A) the purpose of the plan, management, advice, ~~[counsel]~~ or preparation of
- 604 materials for, or with respect to, the solicitation and use of the contributions
- 605 solicited;

- 606 (B) the method by which the plan, management, advice, [~~counsel,~~] or preparation
607 of materials for, or with respect to, the solicitation will be organized or
608 coordinated and the projected length of time of the solicitation;
- 609 (C) the anticipated expenses of the plan, management, advice, [~~counsel,~~] or
610 preparation of materials for, or with respect to, the solicitation, including all
611 commissions, costs of collection, salaries, and [~~any other items~~] other expenses;
- 612 (D) a statement of total fees to be earned or received from the charitable
613 organization declared in the application, and what percentage of the
614 contributions collected as a result of the plan, management, advice, [~~counsel,~~]
615 or preparation of materials for, or with respect to, the solicitation are projected
616 after deducting the total fees to be earned or received remain available to the
617 charitable organization declared in the application, including a satisfactory
618 statement of the factual basis for the projected percentage and projected
619 anticipated revenues provided to the charitable organization, and if a flat fee is
620 charged, documentation to support the reasonableness of such flat fee; and
- 621 (E) a statement of total net fees earned or received within the calendar year
622 immediately preceding the date of the application, including a description of
623 the expenditures made from or the use of the net earned or received fees in the
624 planning, management, advising, [~~counseling,~~] or preparation of materials for,
625 or with respect to, the solicitation and use of the contributions solicited for the
626 charitable organization;
- 627 (ix) disclosure of any injunction, judgment, or administrative order against the
628 applicant or the applicant's conviction of [~~any crime involving moral turpitude~~] a
629 crime involving a charitable solicitation or a felony involving fraud, dishonesty, a
630 false statement, forgery, or theft;
- 631 [~~(x) a copy of any written agreements with any charitable organization;~~]
- 632 (x) each written agreement the applicant has with a charitable organization;
- 633 (xi) [~~the~~] disclosure of any injunction, judgment, or administrative order or
634 conviction of [~~any crime involving moral turpitude~~] a crime involving a charitable
635 solicitation or a felony involving fraud, dishonesty, a false statement, forgery, or
636 theft with respect to any officer, director, manager, operator, or principal of the
637 applicant;
- 638 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party
639 regarding the use of proceeds;

640 (xiii) an acknowledgment that fund raising in the state will not commence until both
 641 the professional fund raiser or professional fund raising [counsel or] consultant
 642 and the charity, and its parent foundation, if any, are registered and in compliance
 643 with this chapter; and

644 (xiv) [any] additional information the division may require by rule.

645 (2) If [any] information contained in the application for [a permit] registration becomes
 646 incorrect or incomplete, the applicant or registrant shall, within 30 days after the
 647 information becomes incorrect or incomplete, correct the application or file the complete
 648 information required by the division.

649 (3) In addition to the [permit] registration fee, an applicant failing to file [a permit
 650 application] an application for registration or renewal by the due date or filing an
 651 incomplete [permit application] application for registration or renewal shall pay an
 652 additional fee of \$25 for each month or part of a month after the date on which the [
 653 permit application] application for registration or renewal [were] was due to be filed.

654 Section 8. Section **13-22-11** is amended to read:

655 **13-22-11 . Expiration of registration.**

656 [~~(1)~~] ~~Each charitable organization registration issued under this chapter expires annually on~~
 657 ~~the earlier of January 1, April 1, July 1, or October 1 following the completion of 12~~
 658 ~~months after the date of initial issuance.]~~

659 [~~(2)~~] (1) Each professional fund raiser's [permit] registration issued under this chapter
 660 expires annually on the date of issuance.

661 [~~(3)~~] (2) Each professional fund raising [counsel's or] consultant's [permit] registration
 662 issued under this chapter expires annually on the date of issuance.

663 [~~(4)~~] (3) A registration [~~or permit~~] may be renewed only by complying with the
 664 requirements for obtaining the original registration [~~or permit~~].

665 Section 9. Section **13-22-12** is amended to read:

666 **13-22-12 . Grounds for denial, suspension, or revocation.**

667 [~~(1)~~] The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures
 668 Act, issue an order to deny, suspend, or revoke an application [~~, registration, permit, or~~
 669 ~~information card~~] or registration, upon a finding that the order is in the public interest
 670 and that:

671 [~~(a)~~] (1) the application for registration or renewal is incomplete or misleading in any
 672 material respect;

673 [~~(b)~~] (2) the applicant or registrant or [any] an officer, director, agent, or employee of the

674 applicant or registrant has:

675 [(i)] (a) violated this chapter or committed [~~any of the prohibited acts and practices~~] a

676 prohibited act or practice described in this chapter;

677 [(ii)] (b) been enjoined by [~~any~~] a court, or is the subject of an administrative order issued

678 in this or another state, if the injunction or order includes a finding or admission of

679 fraud, breach of fiduciary duty, material misrepresentation, or if the injunction or

680 order was based on a finding of lack of integrity, truthfulness, or mental competence

681 of the applicant;

682 [(iii)] (c) been convicted of a crime involving [~~moral turpitude~~] fraud, dishonesty, a false

683 statement, forgery, or theft;

684 [(iv)] (d) obtained or attempted to obtain a registration [~~or a permit~~] by misrepresentation;

685 [(v)] (e) materially misrepresented or caused to be misrepresented the purpose and

686 manner in which contributed funds and property will be used in connection with [~~any~~]

687 a solicitation;

688 [(vi)] (f) caused or allowed [~~any~~] a paid solicitor to violate [~~any~~] a rule made or order

689 issued under this chapter by the division;

690 [(vii)] (g) failed to take corrective action with [~~its solicitors who have~~] a solicitor that has

691 violated this chapter or committed [~~any of the prohibited acts and practices of~~] an act

692 or practice prohibited by this chapter;

693 [(viii)] (h) used, or attempted to use a name that [~~either is deceptively similar to a name~~

694 ~~used by an existing registered or exempt charitable organization, or appears~~] is

695 deceptive or is reasonably likely to cause confusion [~~of names~~];

696 [(ix)] (i) failed to timely file with the division [~~any~~] a report or information required in

697 this chapter or by rules made under this chapter; or

698 [(x)] (j) failed to pay a fine imposed by the division in accordance with Section 13-22-3[~~;~~

699 ~~or~~].

700 [~~(e) the applicant for registration or renewal has no charitable purpose.~~]

701 [(2) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures

702 Act, issue an order to revoke or suspend a claim of exemption filed under Subsection

703 13-22-8(4), upon a finding that the order is in the public interest and that:]

704 [(a) the notice of claim of exemption is incomplete or false or misleading in any material

705 respect; or]

706 [(b) any provision of this chapter, or any rule made or order issued by the division under

707 this chapter has been violated in connection with a charitable solicitation by any exempt

708 organization.]

709 Section 10. Section 13-22-13 is amended to read:

710 **13-22-13 . Prohibited practices.**

711 In connection with [any] a solicitation, each of the following acts and practices is
712 prohibited:

- 713 (1) stating or implying that registration constitutes endorsement or approval by the division
714 or [any] a governmental entity;
- 715 (2) violating [any of the requirements] a requirement of this chapter or [any rule] a rule made
716 under this chapter;
- 717 (3) making [any untrue] a false statement of a material fact or failing to state a material fact
718 necessary to make statements made, in the context of the circumstances under which
719 they are made, not misleading, whether in connection with a charitable solicitation or a
720 filing with the division; and
- 721 (4) violating an order issued by the division under [~~Subsection 13-22-3(2) or (3)~~] Section
722 13-22-3.

723 Section 11. Section 13-22-14 is amended to read:

724 **13-22-14 . Accuracy not guaranteed.**

- 725 (1) By issuing a [permit] registration, the state does not guarantee the accuracy of any
726 representation contained in the [permit] registration, nor does it warrant that any
727 statement made by the holder of the [permit] registration is truthful. The state makes no
728 certification as to the charitable worthiness of any organization on whose behalf a
729 solicitation is made nor as to the moral character of the holder of the [permit] registration.
- 730 (2) The following statement shall appear on each [permit] registration: "THE STATE OF
731 UTAH MAKES NO CERTIFICATION AS TO THE CHARITABLE WORTHINESS
732 OF ANY ORGANIZATION ON WHOSE BEHALF A SOLICITATION IS MADE
733 NOR AS TO THE MORAL CHARACTER OF THE HOLDER OF THE [PERMIT]
734 REGISTRATION."
- 735 [~~(3) No solicitation for charitable purposes shall use the fact or requirement of registration
736 or of the filing of any report with the division pursuant to this chapter with the intent to
737 cause or in a manner tending to cause any person to believe that the solicitation, the
738 manner in which it is conducted, its purposes, any use to which the proceeds will be
739 applied or the person or organization conducting it has been or will be in any way
740 endorsed, sanctioned, or approved by the division or any governmental agency or office.]~~

741 Section 12. Section 13-22-15 is repealed and reenacted to read:

742 **13-22-15 . Financial reports required -- Rulemaking.**

- 743 (1) (a) Beginning January 1, 2025, and subject to Subsection (2), a charitable
744 organization that is a nonprofit corporation, or that is a foreign nonprofit corporation,
745 shall file an unredacted copy of the charitable organization's most recent IRS Form
746 990, 990-EZ, 990-N, or 990-PF.
- 747 (b) Subsection (1)(a) does not apply to a nonprofit corporation or a foreign nonprofit
748 corporation that is not required to file a Form 990, 990-EZ, 990-N, or 990-PF with
749 the IRS.

750 (2) (a) (i) The division may not require a charitable organization to file Schedule B of
751 a form described in Subsection (1).

752 (ii) An IRS Form 990-T is not required to be filed under this section.

753 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
754 Administrative Rulemaking Act, to establish:

755 (i) the manner in which a charitable organization is required to file the forms
756 described in Subsection (1); and

757 (ii) the process by which a charitable organization is required to file the forms
758 described in Subsection (1).

759 Section 13. Section **13-22-16** is amended to read:

760 **13-22-16 . Separate accounts and receipts required.**

- 761 (1) (a) Each professional fund raiser shall segregate and maintain all contributed funds
762 in an account held separately from the professional fund raiser's operating account.
- 763 (b) Each contribution in the control or custody of the professional fund raiser shall, no
764 later than 10 days after the day on which the contribution is received, be deposited
765 into an account at a bank or other federally insured financial institution that is in the
766 name of the charitable organization.
- 767 (c) The charitable organization shall maintain and administer the account and shall have
768 sole control of all withdrawals.
- 769 (2) Each [~~organization required to be registered under this chapter and each~~] professional
770 fund raiser shall:
- 771 (a) maintain a record of each contribution of money, securities, or cash equivalent
772 sufficient to allow the organization or professional fund raiser to provide a receipt to
773 the contributor upon request or as required by law; and
- 774 (b) provide a contributor a receipt for each contribution upon request or as required by
775 law.

776 (3) ~~[An organization required to be registered under this chapter and each]~~ A professional
 777 fund raiser shall develop and maintain adequate internal controls for receipt,
 778 management, and disbursement of money that are reasonable in light of the
 779 organization's or professional fund raiser's assets and organizational complexity.

780 Section 14. Section 13-22-17 is amended to read:

781 **13-22-17 . Written agreement required.**

- 782 (1) A professional fund raiser may only engage in activities on behalf of a charitable
 783 organization through written agreement with the organization.
- 784 (2) A professional fund raising ~~[counsel or]~~ consultant may only engage in activities on
 785 behalf of a charitable organization through written agreement with the organization.
- 786 (3) A charitable organization may only engage the services of a professional fund raiser or
 787 professional fund raising ~~[counsel or]~~ consultant through written agreement.
- 788 (4) A professional fund raiser or professional fund raising consultant shall file each
 789 agreement described in this section with its application for registration.
 790 ~~[(4) Copies of the agreement required by this section shall be attached to all applications~~
 791 ~~for registration and or a permit.]~~

792 Section 15. Section 13-22-22 is amended to read:

793 **13-22-22 . Charitable sales promotions.**

- 794 ~~[(1) Every charitable organization which agrees to permit a charitable sales promotion to~~
 795 ~~be conducted by a commercial co-venturer on its behalf shall file with the division a~~
 796 ~~notice of the promotion prior to its commencement within this state. The notice shall~~
 797 ~~state:]~~
- 798 ~~[(a) the names of the charitable organization and commercial co-venturer;]~~
 799 ~~[(b) that the charitable organization and the commercial co-venturer will conduct a~~
 800 ~~charitable sales promotion; and]~~
- 801 ~~[(c) the date the charitable sales promotion is expected to commence.]~~
- 802 ~~[(2) Prior to the commencement of a charitable sales promotion within this state, every~~
 803 ~~charitable organization which agrees to permit a charitable sales promotion to be~~
 804 ~~conducted in its behalf, shall obtain a written agreement, containing such terms as may~~
 805 ~~be required by rule of the division, from the commercial co-venturer which shall be~~
 806 ~~available to the division upon request.]~~
- 807 ~~[(3) A commercial co-venturer shall keep the final accounting for each charitable sales~~
 808 ~~promotion conducted in this state for three years after the final accounting date and~~
 809 ~~make the accounting available to the division upon request. (4) The]~~ A commercial

810 co-venturer shall disclose in each advertisement for a charitable sales promotion the
811 dollar amount or percent per unit of goods or services purchased or used that will benefit
812 the charitable organization or purpose.

813 Section 16. Section **13-22-24** is enacted to read:

814 **13-22-24 . Fund raising campaign registration required.**

815 (1) As used in this section, "fund raising campaign" means charitable solicitation activity
816 that a professional fund raiser engages in on behalf of a charitable organization where
817 the professional fund raiser receives a portion of the funds raised or other compensation
818 in exchange for services.

819 (2) Before commencing a fund raising campaign, a professional fund raiser shall submit to
820 the division:

821 (a) projected expenses and revenue for the campaign;

822 (b) bank account information for the bank account where the professional fund raiser
823 will hold contributions collected in connection with the fund raising campaign;

824 (c) the solicitation scripts that will be used for the fund raising campaign;

825 (d) an affirmation from the professional fund raiser that the charity has approved the
826 solicitation materials to be used in the fund raising campaign; and

827 (e) names and contact information for the individuals overseeing the fund raising
828 campaign.

829 (3) No later than 90 days after the day on which the fund raising campaign ends, the
830 professional fund raiser shall submit a report to the division detailing:

831 (a) all contributions collected during the fund raising campaign;

832 (b) all contributions paid to the charitable organization as a result of the fund raising
833 campaign; and

834 (c) expenses paid by the charitable organization to the professional fund raiser for the
835 fund raising campaign.

836 (4) A professional fund raiser shall keep records related to the information described in
837 Subsection (2) for five years after the day on which the fund raising campaign ends.

838 Section 17. Section **13-25a-102** is amended to read:

839 **13-25a-102 . Definitions.**

840 As used in this chapter:

841 (1) "Advertisement" means material offering for sale, or advertising the availability or
842 quality of, any property, good, or service.

843 (2) (a) "Automated telephone dialing system" means equipment used to:

- 844 (i) store or produce telephone numbers;
- 845 (ii) call a stored or produced number; and
- 846 (iii) connect the number called with a recorded message or artificial voice.
- 847 (b) "Automated telephone dialing system" does not include a system used in an
- 848 emergency involving the immediate health or safety of a person, including a burglar
- 849 alarm system, voice messaging system, fire alarm system, or other similar system.
- 850 (3) "Division" means the Division of Consumer Protection.
- 851 (4) (a) "Established business relationship" means a relationship that:
- 852 (i) is based on inquiry, application, purchase, or transaction regarding products or
- 853 services offered;
- 854 (ii) is formed by a voluntary two-way communication between a person making a
- 855 telephone solicitation and a person to whom a telephone solicitation is made; and
- 856 (iii) has not been terminated by:
- 857 (A) an act by either person; or
- 858 (B) the passage of 18 months since the most recent inquiry, application, purchase,
- 859 transaction, or voluntary two-way communication.
- 860 (b) "Established business relationship" includes a relationship with an affiliate as defined
- 861 in Section 16-10a-102.
- 862 (5) "Facsimile machine" means equipment used for:
- 863 (a) scanning or encoding text or images for conversion into electronic signals for
- 864 transmission; or
- 865 (b) receiving electronic signals and reproducing them as a duplicate of the original text
- 866 or image.
- 867 (6) "Negative response" means a statement from a person stating the person does not wish
- 868 to listen to the sales presentation or participate in the solicitation presented in the
- 869 telephone call.
- 870 (7) "On-call emergency provider" means an individual who is required by an employer to
- 871 be on call to respond to a medical emergency.
- 872 (8) "Telephone solicitation" means the initiation of a telephone call or message for a
- 873 commercial purpose or to seek a financial donation, including calls:
- 874 (a) encouraging the purchase or rental of, or investment in, property, goods, or services,
- 875 regardless of whether the transaction involves a nonprofit organization;
- 876 (b) soliciting a sale of or extension of credit for property or services to the person called;
- 877 (c) soliciting information that will be used for:

- 878 (i) the direct solicitation of a sale of property or services to the person called; or
 879 (ii) an extension of credit to the person called for a sale of property or services;
 880 (d) soliciting a charitable [~~donation involving the exchange of any premium, prize, gift,~~
 881 ~~ticket, subscription, or other benefit in connection with any appeal made for a~~
 882 ~~charitable purpose]~~ contribution; or
 883 (e) encouraging the person called to sell real or personal property.
- 884 (9) "Telephone solicitor" means [~~any~~] an individual, firm, organization, partnership,
 885 association, or corporation who makes or causes to be made an unsolicited telephone
 886 call, including calls made by use of an automated telephone dialing system.
- 887 (10) "Unsolicited telephone call" means a telephone call for a commercial purpose or to
 888 seek a financial donation other than a call made:
 889 (a) in response to an express request of the person called;
 890 (b) primarily in connection with an existing debt or contract, payment or performance of
 891 which has not been completed at the time of the call;
 892 (c) to a person with whom the telephone solicitor has an established business
 893 relationship; or
 894 (d) as required by law for a medical purpose.

895 Section 18. Section **13-25a-111** is amended to read:

896 **13-25a-111 . Exemptions.**

897 Notwithstanding any other provision of this chapter, Sections 13-25a-103 and
 898 13-25a-108 do not apply to[~~;~~]

899 [~~(1) a telephone call made for a charitable purpose as defined in Section 13-22-2;~~]

900 [~~(2) a charitable solicitation as defined in Section 13-22-2; or]~~

901 [~~(3)] a person who holds and acts within the scope of a license or registration:~~

902 [~~(a)] (1) under Title 31A, Insurance Code;~~

903 [~~(b)] (2) issued by the Division of Real Estate established in Section 61-2-201; or~~

904 [~~(c)] (3) issued by the National Association of Securities Dealers.~~

905 Section 19. Section **16-6a-102** is amended to read:

906 **16-6a-102 . Definitions.**

907 As used in this chapter:

908 (1) (a) "Address" means a location where mail can be delivered by the United States
 909 Postal Service.

910 (b) "Address" includes:

911 (i) a post office box number;

- 912 (ii) a rural free delivery route number; and
913 (iii) a street name and number.
- 914 (2) "Affiliate" means a person that directly or indirectly through one or more intermediaries
915 controls, or is controlled by, or is under common control with, the person specified.
- 916 (3) "Articles of incorporation" include:
917 (a) amended articles of incorporation;
918 (b) restated articles of incorporation;
919 (c) articles of merger; and
920 (d) a document of a similar import to the documents described in Subsections (3)(a)
921 through (c).
- 922 (4) "Assumed corporate name" means a name assumed for use in this state:
923 (a) by a:
924 (i) foreign corporation [~~pursuant to~~] as described in Section 16-10a-1506; or
925 (ii) a foreign nonprofit corporation [~~pursuant to~~] as described in Section 16-6a-1506;
926 and
927 (b) because the corporate name of the foreign corporation described in Subsection (4)(a)
928 is not available for use in this state.
- 929 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body
930 authorized to manage the affairs of a domestic or foreign nonprofit corporation.
931 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the
932 board of directors because of a power delegated to that person [~~pursuant to~~] under
933 Subsection 16-6a-801(2).
- 934 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of
935 incorporation, adopted [~~pursuant to~~] under this chapter for the regulation or
936 management of the affairs of a domestic or foreign nonprofit corporation irrespective
937 of the one or more names by which the codes of rules are designated.
938 (b) "Bylaws" includes:
939 (i) amended bylaws; and
940 (ii) restated bylaws.
- 941 (7) (a) "Cash" or "money" means:
942 (i) legal tender;
943 (ii) a negotiable instrument; or
944 (iii) other cash equivalent readily convertible into legal tender.
945 (b) "Cash" and "money" are used interchangeably in this chapter.

- 946 (8) "Charitable organization" means the same as that term is defined in Section 13-22-2.
- 947 ~~[(8)]~~ (9) (a) "Class" means a group of memberships that has the same right with respect
- 948 to voting, dissolution, redemption, transfer, or other characteristics.
- 949 (b) For purposes of Subsection ~~[(8)(a)]~~ (9)(a), a right is considered the same if it is
- 950 determined by a formula applied uniformly to a group of memberships.
- 951 ~~[(9)]~~ (10) (a) "Conspicuous" means so written that a reasonable person against whom the
- 952 writing is to operate should have noticed the writing.
- 953 (b) "Conspicuous" includes printing or typing in:
- 954 (i) italics;
- 955 (ii) boldface;
- 956 (iii) contrasting color;
- 957 (iv) capitals; or
- 958 (v) underlining.
- 959 ~~[(10)]~~ (11) "Control" or a "controlling interest" means the direct or indirect possession of the
- 960 power to direct or cause the direction of the management and policies of an entity by:
- 961 (a) the ownership of voting shares;
- 962 (b) contract; or
- 963 (c) a means other than those specified in Subsection ~~[(10)(a) or (b)]~~ (11)(a) or (b).
- 964 ~~[(11)]~~ (12) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or
- 965 "cooperative" means a nonprofit corporation organized or existing under this chapter.
- 966 ~~[(12)]~~ (13) "Corporate name" means:
- 967 (a) the name of a domestic corporation as stated in the domestic corporation's articles of
- 968 incorporation;
- 969 (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit
- 970 corporation's articles of incorporation;
- 971 (c) the name of a foreign corporation as stated in the foreign corporation's:
- 972 (i) articles of incorporation; or
- 973 (ii) document of similar import to articles of incorporation; or
- 974 (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit
- 975 corporation's:
- 976 (i) articles of incorporation; or
- 977 (ii) document of similar import to articles of incorporation.
- 978 ~~[(13)]~~ (14) (a) "Corporate records" means the records described in Section 16-6a-1601.
- 979 (b) "Corporate records" does not include correspondence, communications, notes, or

- 980 other similar information, regardless of format or method of storage, that are not an
981 official decision, published document, or record of the corporation.
- 982 ~~[(14)]~~ (15) "Corporation" or "domestic corporation" means a corporation for profit that:
983 (a) is not a foreign corporation; and
984 (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation
985 Act.
- 986 ~~[(15)]~~ (16) "Delegate" means a person elected or appointed to vote in a representative
987 assembly:
988 (a) for the election of a director; or
989 (b) on matters other than the election of a director.
- 990 ~~[(16)]~~ (17) "Deliver" includes delivery by mail or another means of transmission authorized
991 by Section 16-6a-103, except that delivery to the division means actual receipt by the
992 division.
- 993 ~~[(17)]~~ (18) "Director" means a member of the board of directors.
- 994 ~~[(18)]~~ (19) (a) "Distribution" means the payment of a dividend or any part of the income
995 or profit of a nonprofit corporation to the nonprofit corporation's:
996 (i) members;
997 (ii) directors; or
998 (iii) officers.
999 (b) "Distribution" does not include a fair-value payment for:
1000 (i) a good sold; or
1001 (ii) a service received.
- 1002 ~~[(19)]~~ (20) "Division" means the Division of Corporations and Commercial Code.
- 1003 ~~[(20)]~~ (21) "Effective date," when referring to a document filed by the division, means the
1004 time and date determined in accordance with Section 16-6a-108.
- 1005 ~~[(21)]~~ (22) "Effective date of notice" means the date notice is effective as provided in
1006 Section 16-6a-103.
- 1007 ~~[(22)]~~ (23) "Electronic transmission" or "electronically transmitted" means a process of
1008 communication not directly involving the physical transfer of paper that is suitable for
1009 the receipt, retention, retrieval, and reproduction of information by the recipient,
1010 whether by email, texting, facsimile, or otherwise.
- 1011 ~~[(23)]~~ (24) (a) "Employee" includes an officer of a nonprofit corporation.
1012 (b) (i) Except as provided in Subsection ~~[(23)(b)(ii)]~~ (24)(b)(i), "employee" does not
1013 include a director of a nonprofit corporation.

1014 (ii) Notwithstanding Subsection [~~(23)(b)(i)~~] (24)(b)(i), a director may accept one or
1015 more duties that make that director an employee of a nonprofit corporation.

1016 [~~(24)~~] (25) "Entity" includes:

- 1017 (a) a domestic or foreign corporation;
- 1018 (b) a domestic or foreign nonprofit corporation;
- 1019 (c) a limited liability company;
- 1020 (d) a profit or nonprofit unincorporated association;
- 1021 (e) a business trust;
- 1022 (f) an estate;
- 1023 (g) a partnership;
- 1024 (h) a trust;
- 1025 (i) two or more persons having a joint or common economic interest;
- 1026 (j) a state;
- 1027 (k) the United States; or
- 1028 (l) a foreign government.

1029 [~~(25)~~] (26) "Executive director" means the executive director of the Department of
1030 Commerce.

1031 [~~(26)~~] (27) "Foreign corporation" means a corporation for profit incorporated under a law
1032 other than the laws of this state.

1033 [~~(27)~~] (28) "Foreign nonprofit corporation" means an entity:

- 1034 (a) incorporated under a law other than the laws of this state; and
- 1035 (b) that would be a nonprofit corporation if formed under the laws of this state.

1036 [~~(28)~~] (29) "Governmental entity" means:

- 1037 (a) (i) the executive branch of the state;
- 1038 (ii) the judicial branch of the state;
- 1039 (iii) the legislative branch of the state;
- 1040 (iv) an independent entity, as defined in Section 63E-1-102;
- 1041 (v) a political subdivision of the state;
- 1042 (vi) a state institution of higher education, as defined in Section 53B-3-102;
- 1043 (vii) an entity within the state system of public education; or
- 1044 (viii) the National Guard; or
- 1045 (b) any of the following that is established or controlled by a governmental entity listed
1046 in Subsection [~~(28)(a)~~] (29)(a) to carry out the public's business:
 - 1047 (i) an office;

- 1048 (ii) a division;
- 1049 (iii) an agency;
- 1050 (iv) a board;
- 1051 (v) a bureau;
- 1052 (vi) a committee;
- 1053 (vii) a department;
- 1054 (viii) an advisory board;
- 1055 (ix) an administrative unit; or
- 1056 (x) a commission.
- 1057 [~~(29)~~] (30) "Governmental subdivision" means:
- 1058 (a) a county;
- 1059 (b) a city;
- 1060 (c) a town; or
- 1061 (d) another type of governmental subdivision authorized by the laws of this state.
- 1062 [~~(30)~~] (31) "Individual" means:
- 1063 (a) a natural person;
- 1064 (b) the estate of an incompetent individual; or
- 1065 (c) the estate of a deceased individual.
- 1066 [~~(31)~~] (32) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
- 1067 amended from time to time, or to corresponding provisions of subsequent internal
- 1068 revenue laws of the United States of America.
- 1069 [~~(32)~~] (33) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in
- 1070 the United States mail, properly addressed, first-class postage prepaid.
- 1071 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
- 1072 proper fee is paid.
- 1073 [~~(33)~~] (34) (a) "Member" means one or more persons identified or otherwise appointed as
- 1074 a member of a domestic or foreign nonprofit corporation as provided:
- 1075 (i) in the articles of incorporation;
- 1076 (ii) in the bylaws;
- 1077 (iii) by a resolution of the board of directors; or
- 1078 (iv) by a resolution of the members of the nonprofit corporation.
- 1079 (b) "Member" includes:
- 1080 (i) "voting member"; and
- 1081 (ii) a shareholder in a water company.

- 1082 ~~[(34)]~~ (35) "Membership" refers to the rights and obligations of a member or members.
- 1083 ~~[(35)]~~ (36) "Mutual benefit corporation" means a nonprofit corporation:
- 1084 (a) that issues shares of stock to its members evidencing a right to receive distribution of
- 1085 water or otherwise representing property rights; or
- 1086 (b) all of whose assets are contributed or acquired by or for the members of the nonprofit
- 1087 corporation or ~~[their]~~ the members' predecessors in interest to serve the mutual
- 1088 purposes of the members.
- 1089 ~~[(36)]~~ (37) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:
- 1090 (a) is not a foreign nonprofit corporation; and
- 1091 (b) is incorporated under or subject to this chapter.
- 1092 ~~[(37)]~~ (38) "Notice" means the same as that term is defined in Section 16-6a-103.
- 1093 ~~[(38)]~~ (39) "Party related to a director" means:
- 1094 (a) the spouse of the director;
- 1095 (b) a child of the director;
- 1096 (c) a grandchild of the director;
- 1097 (d) a sibling of the director;
- 1098 (e) a parent of the director;
- 1099 (f) the spouse of an individual described in Subsections ~~[(38)(b) through (e)]~~ (39)(b)
- 1100 through (e);
- 1101 (g) an individual having the same home as the director;
- 1102 (h) a trust or estate of which the director or another individual specified in this
- 1103 Subsection ~~[(38)]~~ (39) is a substantial beneficiary; or
- 1104 (i) any of the following of which the director is a fiduciary:
- 1105 (i) a trust;
- 1106 (ii) an estate;
- 1107 (iii) an incompetent;
- 1108 (iv) a conservatee; or
- 1109 (v) a minor.
- 1110 ~~[(39)]~~ (40) "Person" means an:
- 1111 (a) individual; or
- 1112 (b) entity.
- 1113 ~~[(40)]~~ (41) "Principal office" means:
- 1114 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit
- 1115 corporation as its principal office in the most recent document on file with the

- 1116 division providing that information, including:
- 1117 (i) an annual report;
- 1118 (ii) an application for a certificate of authority; or
- 1119 (iii) a notice of change of principal office; or
- 1120 (b) if no principal office can be determined, a domestic or foreign nonprofit
- 1121 corporation's registered office.
- 1122 ~~[(41)]~~ (42) "Proceeding" includes:
- 1123 (a) a civil suit;
- 1124 (b) arbitration;
- 1125 (c) mediation;
- 1126 (d) a criminal action;
- 1127 (e) an administrative action; or
- 1128 (f) an investigatory action.
- 1129 ~~[(42)]~~ (43) "Receive," when used in reference to receipt of a writing or other document by a
- 1130 domestic or foreign nonprofit corporation, means the writing or other document is
- 1131 actually received:
- 1132 (a) by the domestic or foreign nonprofit corporation at:
- 1133 (i) its registered office in this state; or
- 1134 (ii) its principal office;
- 1135 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the
- 1136 secretary is found; or
- 1137 (c) by another person authorized by the bylaws or the board of directors to receive the
- 1138 writing or other document, wherever that person is found.
- 1139 ~~[(43)]~~ (44) (a) "Record date" means the date established under Part 6, Members, or Part
- 1140 7, Member Meetings and Voting, on which a nonprofit corporation determines the
- 1141 identity of the nonprofit corporation's members.
- 1142 (b) The determination described in Subsection ~~[(43)(a)]~~ (44)(a) shall be made as of the
- 1143 close of business on the record date unless another time for doing so is specified
- 1144 when the record date is fixed.
- 1145 ~~[(44)]~~ (45) "Registered agent" means the registered agent of:
- 1146 (a) a domestic nonprofit corporation; or
- 1147 (b) a foreign nonprofit corporation.
- 1148 ~~[(45)]~~ (46) "Registered office" means the office within this state designated by a domestic or
- 1149 foreign nonprofit corporation as its registered office in the most recent document on file

- 1150 with the division providing that information, including:
- 1151 (a) articles of incorporation;
- 1152 (b) an application for a certificate of authority; or
- 1153 (c) a notice of change of registered office.
- 1154 ~~[(46)]~~ (47) "Secretary" means the corporate officer to whom the bylaws or the board of
- 1155 directors delegates responsibility under Subsection 16-6a-818(3) for:
- 1156 (a) the preparation and maintenance of:
- 1157 (i) minutes of the meetings of:
- 1158 (A) the board of directors; or
- 1159 (B) the members; and
- 1160 (ii) the other records and information required to be kept by the nonprofit corporation [
- 1161 ~~pursuant to~~] as described in Section 16-6a-1601; and
- 1162 (b) authenticating records of the nonprofit corporation.
- 1163 ~~[(47)]~~ (48) "Share" means a unit of interest in a nonprofit corporation.
- 1164 ~~[(48)]~~ (49) "Shareholder" means a person in whose name a share is registered in the records
- 1165 of a nonprofit corporation.
- 1166 ~~[(49)]~~ (50) "State," when referring to a part of the United States, includes:
- 1167 (a) a state;
- 1168 (b) a commonwealth;
- 1169 (c) the District of Columbia;
- 1170 (d) an agency or governmental and political subdivision of a state, commonwealth, or
- 1171 District of Columbia;
- 1172 (e) territory or insular possession of the United States; or
- 1173 (f) an agency or governmental and political subdivision of a territory or insular
- 1174 possession of the United States.
- 1175 ~~[(50)]~~ (51) "Street address" means:
- 1176 (a) (i) street name and number;
- 1177 (ii) city or town; and
- 1178 (iii) United States post office zip code designation; or
- 1179 (b) if, by reason of rural location or otherwise, a street name, number, city, or town does
- 1180 not exist, an appropriate description other than that described in Subsection ~~[(50)(a)]~~
- 1181 (51)(a) fixing as nearly as possible the actual physical location, but only if the
- 1182 information includes:
- 1183 (i) the rural free delivery route;

- 1184 (ii) the county; and
- 1185 (iii) the United States post office zip code designation.
- 1186 [~~(51)~~] (52) "Tribal nonprofit corporation" means a nonprofit corporation:
- 1187 (a) incorporated under the law of a tribe; and
- 1188 (b) that is at least 51% owned or controlled by the tribe.
- 1189 [~~(52)~~] (53) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
- 1190 community of Indians, including an Alaska Native village, that is legally recognized as
- 1191 eligible for and is consistent with a special program, service, or entitlement provided by
- 1192 the United States to Indians because of ~~[their]~~ the tribe's status as Indians.
- 1193 [~~(53)~~] (54) "United States" includes a district, authority, office, bureau, commission,
- 1194 department, and another agency of the United States of America.
- 1195 [~~(54)~~] (55) "Vote" includes authorization by:
- 1196 (a) written ballot; and
- 1197 (b) written consent.
- 1198 [~~(55)~~] (56) (a) "Voting group" means all the members of one or more classes of members
- 1199 or directors that, under this chapter, the articles of incorporation, or the bylaws, are
- 1200 entitled to vote and be counted together collectively on a matter.
- 1201 (b) All members or directors entitled by this chapter, the articles of incorporation, or the
- 1202 bylaws to vote generally on a matter are for that purpose a single voting group.
- 1203 [~~(56)~~] (57) (a) "Voting member" means a person entitled to vote for all matters required
- 1204 or permitted under this chapter to be submitted to a vote of the members, except as
- 1205 otherwise provided in the articles of incorporation or bylaws.
- 1206 (b) A person is not a voting member solely because of:
- 1207 (i) a right the person has as a delegate;
- 1208 (ii) a right the person has to designate a director; or
- 1209 (iii) a right the person has as a director.
- 1210 (c) Except as the bylaws may otherwise provide, "voting member" includes a
- 1211 "shareholder" if the nonprofit corporation has shareholders.
- 1212 [~~(57)~~] (58) "Water company" means:
- 1213 (a) the same as that term is defined in Subsection 16-4-102(5); or
- 1214 (b) a mutual benefit corporation, when the stock in the mutual benefit corporation
- 1215 represents a right to receive a distribution of water for beneficial use.
- 1216 Section 20. Section **16-6a-203** is amended to read:
- 1217 **16-6a-203 . Incorporation -- Required filings.**

- 1218 (1) A nonprofit corporation is incorporated, and its corporate existence begins:
1219 (a) when the articles of incorporation are filed by the division; or
1220 (b) if a delayed effective date is specified [~~pursuant to~~] as described in Subsection
1221 16-6a-108(2), on the delayed effective date, unless a certificate of withdrawal is filed
1222 prior to the delayed effective date.
- 1223 (2) Notwithstanding Subsection 16-6a-110(4), the filing of the articles of incorporation by
1224 the division is conclusive proof that all conditions precedent to incorporation have been
1225 satisfied, except in a proceeding by the state to:
1226 (a) cancel or revoke the incorporation; or
1227 (b) involuntarily dissolve the nonprofit corporation.
- 1228 (3) Beginning January 1, 2025, a nonprofit corporation that is a charitable organization,
1229 unless exempted by Section 13-22-15, shall file with the division the information
1230 described by Section 13-22-15 in the form described in Section 13-22-15.
- 1231 Section 21. Section **16-6a-1503** is amended to read:
1232 **16-6a-1503 . Application for authority to conduct affairs.**
- 1233 (1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state
1234 by delivering to the division for filing an application for authority to conduct affairs
1235 setting forth:
1236 (a) its corporate name and its assumed corporate name, if any;
1237 (b) the name of the state or country under whose law it is incorporated;
1238 (c) its date of incorporation;
1239 (d) its period of duration;
1240 (e) the street address of its principal office;
1241 (f) the information required by Subsection 16-17-203(1);
1242 (g) the names and usual business addresses of its current directors and officers;
1243 (h) the date it commenced or expects to commence conducting affairs in this state; and
1244 (i) the additional information the division determines is necessary or appropriate to
1245 determine whether the application for authority to conduct affairs should be filed.
- 1246 (2) With the completed application required by Subsection (1) the foreign nonprofit
1247 corporation shall deliver to the division for a certificate of existence, or a document of
1248 similar import that is:
1249 (a) authenticated by the division or other official having custody of corporate records in
1250 the state or country under whose law it is incorporated; and
1251 (b) dated within 90 days before the day on which the application for authority to conduct

1252 affairs is filed.

1253 (3) The foreign nonprofit corporation shall include in the application for authority to
 1254 conduct affairs, or in an accompanying document, written consent to appointment by its
 1255 designated registered agent.

1256 (4) Beginning January 1, 2025, a foreign nonprofit corporation that is a charitable
 1257 organization, unless exempted by Section 13-22-15, shall file the information described
 1258 in Section 13-22-15 in the form described in Section 13-22-15.

1259 [(4)] (5) (a) The division may permit a tribal nonprofit corporation to apply for authority
 1260 to conduct affairs in this state in the same manner as a nonprofit corporation
 1261 incorporated in another state.

1262 (b) If a tribal nonprofit corporation elects to apply for authority to conduct affairs in this
 1263 state, for purposes of this chapter, the tribal nonprofit corporation shall be treated in
 1264 the same manner as a foreign nonprofit corporation incorporated under the laws of
 1265 another state.

1266 Section 22. Section **42-2-6.6** is amended to read:

1267 **42-2-6.6 . Assumed name.**

1268 (1) The assumed name:

1269 (a) may not contain:

1270 (i) [~~any~~] a word or phrase that indicates or implies that the business is organized for [
 1271 ~~any~~] a purpose other than a purpose contained in the business's application; or
 1272 (ii) for an assumed name that is changed or approved on or after May 4, 2022, the
 1273 number sequence "911";

1274 (b) shall be distinguishable from any registered name or trademark of record in the
 1275 offices of the Division of Corporations and Commercial Code, as defined in
 1276 Subsection 16-10a-401(5), except as authorized by the Division of Corporations and
 1277 Commercial Code [~~pursuant to~~] under Subsection (2);

1278 (c) without the written consent of the United States Olympic Committee, may not
 1279 contain the words:

1280 (i) "Olympic";

1281 (ii) "Olympiad"; or

1282 (iii) "Citius Altius Fortius"; and

1283 (d) an assumed name authorized for use in this state on or after May 1, 2000, may not
 1284 contain the words:

1285 (i) "incorporated";

- 1286 (ii) "inc."; or
- 1287 (iii) a variation of "incorporated" or "inc."
- 1288 (2) Notwithstanding Subsection [~~(1)(e)~~] (1)(d), an assumed name may contain a word listed
- 1289 in Subsection [~~(1)(e)~~] (1)(d) if the Division of Corporations and Commercial Code
- 1290 authorizes the use of the name by a corporation as defined in:
- 1291 (a) Subsection [~~16-6a-102(26)~~] 16-6a-102(27);
- 1292 (b) Subsection [~~16-6a-102(35)~~] 16-6a-102(36);
- 1293 (c) Subsection 16-10a-102(11); or
- 1294 (d) Subsection 16-10a-102(20).
- 1295 (3) The Division of Corporations and Commercial Code shall authorize the use of the name
- 1296 applied for if:
- 1297 (a) the name is distinguishable from one or more of the names and trademarks that are
- 1298 on the division's records; or
- 1299 (b) the applicant delivers to the division a certified copy of the final judgment of a court
- 1300 of competent jurisdiction establishing the applicant's right to use the name applied for
- 1301 in this state.
- 1302 (4) The assumed name, for purposes of recordation, shall be either translated into English
- 1303 or transliterated into letters of the English alphabet if the assumed name is not in English.
- 1304 (5) The Division of Corporations and Commercial Code may not approve an application for
- 1305 an assumed name to [~~any~~] a person violating this section.
- 1306 (6) The director of the Division of Corporations and Commercial Code shall have the
- 1307 power and authority reasonably necessary to interpret and efficiently administer this
- 1308 section and to perform the duties imposed on the division by this section.
- 1309 (7) A name that implies by [~~any~~] a word in the name that the business is an agency of the
- 1310 state or [~~of any of the state's political subdivisions~~] a political subdivision of the state, if
- 1311 the business is not actually such a legally established agency, may not be approved for
- 1312 filing by the Division of Corporations and Commercial Code.
- 1313 (8) Section 16-10a-403 applies to this chapter.
- 1314 (9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a
- 1315 certificate of assumed and of true name with the Division of Corporations and
- 1316 Commercial Code on or before May 4, 1998, until December 31, 1998.
- 1317 (b) On or after January 1, 1999, [~~any~~] a person who carries on, conducts, or transacts
- 1318 business in this state under an assumed name shall comply with the requirements of
- 1319 Subsection (1)(d).

- 1320 Section 23. **Repealer.**
- 1321 This bill repeals:
- 1322 Section **13-22-6, Application for registration.**
- 1323 Section **13-22-8, Exemptions.**
- 1324 Section **13-22-21, Appeal on behalf of individual.**
- 1325 Section 24. **Effective date.**
- 1326 This bill takes effect on May 1, 2024.