

1 **CHARITABLE SOLICITATIONS AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rebecca P. Edwards**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Charitable Solicitations Act relating to
10 enforcement.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies the Division of Consumer Protection's authority to investigate and
14 adjudicate violations of the Charitable Solicitations Act; and
15 ▶ provides that a settlement agreement between the division and a person who is
16 under investigation, or between the division and a party to an adjudication under the
17 Charitable Solicitations Act, is not valid if the person who executes the settlement
18 agreement also submitted a written or oral complaint to the division that initiated or
19 substantially relates to the investigation or adjudication that is the subject of the
20 settlement agreement.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **13-22-3**, as last amended by Laws of Utah 2008, Chapter 382



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

Section 1. Section 13-22-3 is amended to read:

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

(1) (a) The division may ~~[make any investigation it considers necessary]~~ investigate a person to determine whether ~~[any]~~ the person is violating~~;~~ or has violated~~;~~ or is about to violate any a provision of this chapter or ~~[any]~~ a rule made or order issued under this chapter.

(b) As part of ~~[the]~~ an investigation, the division may:

~~[(a)]~~ (i) require a person to file a statement in writing;

~~[(b)]~~ (ii) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and

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

(2) ~~[Whenever it appears to the director that substantial evidence exists that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited in this chapter or constituting a violation]~~ When, based upon the results of an investigation, the director determines that there is substantial evidence that a person has violated a provision of this chapter or any rule made or order issued under this chapter, the director may ~~[do any of the following in addition to other specific duties under this chapter]:~~

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

(b) ~~[the director may]~~ bring an action in ~~[the appropriate]~~ district court ~~[of this state]~~ to enjoin the ~~[acts or practices constituting]~~ person from committing the violation or to enforce compliance with the provisions of this chapter or any rule made or order issued under this chapter.

(3) ~~[Whenever it appears to the director]~~ In an adjudication under Subsection (2)(a), if the director finds by a preponderance of the evidence that ~~[a]~~ the person ~~[has engaged in or is engaging in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter]~~ acted in bad faith or with intent to harm the public, the director may assess ~~[an administrative]~~ a fine of ~~[up to]~~ no more than:

59 (a) \$500 per violation [~~up to~~]; and
 60 (b) \$10,000 for [~~any~~] a series of violations [~~arising~~] that arise out of the same operative
 61 facts.

62 (4) [~~Upon a proper showing, the court hearing an action brought~~] In an action under
 63 Subsection (2)(b), the court may:

64 (a) issue an injunction;
 65 (b) enter a declaratory judgment;
 66 (c) appoint a receiver for the defendant or the defendant's assets;
 67 (d) order disgorgement of any money received in violation of this chapter;
 68 (e) order rescission of [~~agreements violating~~] any agreement that violates this chapter;
 69 (f) if, by a preponderance of the evidence, the court finds that the person acted in bad
 70 faith or with intent to harm the public:

71 ~~[(f)]~~ (i) impose a fine of not more than \$2,000 for each violation of this chapter; and
 72 (ii) impose a civil penalty; and

73 (g) [~~impose a civil penalty, or~~] grant any other relief the court considers just.

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

77 ~~[(b) If it does not appear by a preponderance of the evidence that the violator acted in~~
 78 ~~bad faith or with intent to harm the public, the director or court shall excuse payment of the~~
 79 ~~fine or penalty.]~~

80 (6) A settlement agreement between the division and a person that is under
 81 investigation, or between the division and a party to an adjudication under this chapter, is not
 82 valid if the individual who executes the settlement agreement on behalf of the person or party
 83 also submitted a written or oral complaint to the division that initiated or substantially relates to
 84 the investigation or adjudication that is the subject of the settlement agreement.

85 ~~[(6)]~~ (7) (a) The division may provide or contract to provide public education and
 86 voluntary education for applicants and registrants under this chapter[~~. The education may be in~~
 87 ~~the form of~~], including publications, advertisements, seminars, courses, [~~or~~] and other
 88 appropriate means.

89 (b) The [~~scope of the~~] education described in Subsection (7)(a) may include:

- 90 [~~(a)~~] (i) the requirements, prohibitions, and regulated practices under this chapter;
91 [~~(b)~~] (ii) suggestions for effective financial and organizational practices for charitable
92 organizations;
93 [~~(c)~~] (iii) charitable giving and solicitation;
94 [~~(d)~~] (iv) potential problems with solicitations and fraudulent or deceptive practices;
95 and
96 [~~(e)~~] (v) any other matter relevant to the subject of this chapter.
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Legislative Review Note
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Office of Legislative Research and General Counsel