

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF JUSTICE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA CHARITABLE SOLICITATIONS ACT;
7 PROVIDING THE DEPARTMENT OF JUSTICE WITH RULEMAKING AUTHORITY; PROVIDING FOR THE
8 DISPOSITION OF CIVIL FINES, COSTS, AND FEES; AMENDING SECTION 30-14-102, MCA; AND
9 PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 30-14-102, MCA, is amended to read:

14 **"30-14-102. Definitions.** As used in this part, the following definitions apply:

15 (1) "Consumer" means a person who purchases or leases goods, services, real property, or information
16 primarily for personal, family, or household purposes.

17 (2) "Department" means the department of justice created in 2-15-2001.

18 (3) "Documentary material" means the original or a copy of any book, record, report, memorandum,
19 paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document
20 or recording.

21 (4) "Examination" of documentary material includes the inspection, study, or copying of documentary
22 material and the taking of testimony under oath or acknowledgment in respect to any documentary material or
23 copy of documentary material.

24 (5) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided for paid
25 consideration and that indicates a promise by the issuer or seller of the record that goods or services will be
26 provided to the possessor of the record for the value that is shown on the record or contained within the record
27 by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The
28 consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced
29 by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or
30 seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented

1 by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

2 (b) The term does not include:

3 (i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone
4 calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or
5 purchased by a consumer;

6 (ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any
7 money or consideration being given in exchange for the card; or

8 (iii) a gift certificate usable with multiple sellers of goods or services.

9 (6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated
10 associations, and any other legal entity.

11 (7) "Possessor" means a natural person who has physical control over a gift certificate.

12 (8) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services,
13 any property, tangible or intangible, real, personal, or mixed, any charitable solicitation, or any other article,
14 commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting
15 the people of this state."

16

17 **NEW SECTION. Section 2. Short title.** [Sections 2 through 9] may be cited as the "Montana Charitable
18 Solicitations Act".

19

20 **NEW SECTION. Section 3. Purpose -- rulemaking.** (1) The purpose of [sections 2 through 9] is to
21 prevent fraudulent, unfair, or deceptive charitable solicitations to the citizens of the state of Montana and to assist
22 citizens in making informed choices about whether to make charitable contributions. The provisions of [sections
23 2 through 9] are necessary to protect the public's interest in charities that provide public benefits within the state
24 of Montana.

25 (2) The department may adopt rules to implement the provisions of [sections 2 through 9], including but
26 not limited to rules regarding disclosures in solicitations, contract requirements, and enforcement.

27

28 **NEW SECTION. Section 4. Definitions.** As used in [sections 2 through 9], the following definitions
29 apply:

30 (1) "Charitable organization" means:

1 (a) any person actually or purporting to be established for any benevolent, educational, philanthropic,
2 humane, scientific, patriotic, social welfare or advocacy, public health, environmental, conservation, civic, or other
3 charitable purpose;

4 (b) any person who operates for the benefit of the objectives of law enforcement officers, firefighters,
5 other persons who protect public safety, or veterans; or

6 (c) any person who in any manner employs a charitable appeal or an appeal that suggests that there
7 is a charitable purpose as the basis of any solicitation.

8 (2) "Contribution" means a grant, promise, or pledge of money, credit, property, financial assistance, or
9 any other thing of value in response to a solicitation.

10 (3) "Department" means the department of justice created in 2-15-2001.

11 (4) (a) "Paid solicitor" means a person who is under contract, procured, or engaged, directly or indirectly,
12 to solicit charitable contributions for compensation.

13 (b) The term does not include:

14 (i) an attorney, an investment counselor, an employee of an insurance company, or an employee of a
15 financial institution who renders professional services to a charitable organization or advises a person to make
16 a charitable contribution during the course of rendering professional services or advice;

17 (ii) a director, officer, or compensated employee who is directly employed by a charitable organization
18 that at the time of the solicitation has received a determination letter from the internal revenue service granting
19 the organization tax-exempt status pursuant to sections 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19)
20 of the Internal Revenue Code, 26 U.S.C. 501(c)(3), (c)(4), (c)(8), (c)(10), or (c)(19);

21 (iii) a bona fide volunteer; or

22 (iv) a person whose sole responsibility is to print or mail fundraising literature.

23 (5) "Person" means an individual, corporation, association, partnership, trust, foundation, or any other
24 entity, however organized, or any group of individuals associated in fact that is not a legal entity.

25 (6) (a) "Solicit" or "solicitation" means to request or the request for, directly or indirectly, money, property,
26 financial assistance, or any other thing of value with the representation that the money, credit, property, financial
27 assistance, or other thing of value or any portion thereof will be used for a charitable purpose or will benefit a
28 charitable organization. The term includes but is not limited to:

29 (i) any oral or written request;

30 (ii) a request made by an announcement to the news media or by radio, television, internet, telephone,

1 facsimile machine, or other transmission of images or information;
 2 (iii) a request made in a handbill or other written advertisement that is distributed or posted; or
 3 (iv) the sale of or attempted sale of a membership, an advertisement, advertising space, or a tangible item
 4 by making a request for financial support for a charitable organization or purpose by using or referring to the
 5 name of a charitable organization as a reason for making the request or by making a statement that all or part
 6 of the sale proceeds will be used for a charitable purpose or will benefit a charitable organization.

7 (b) A solicitation is considered to have taken place whether or not the person making the solicitation
 8 receives a contribution.

9 (7) "Volunteer" means a person who renders services to a charitable organization or for a charitable
 10 purpose and who does not receive or is not expressly or impliedly promised financial remuneration for services.

11
 12 **NEW SECTION. Section 5. Unlawful practices.** During a solicitation for a charitable organization, a
 13 person may not:

- 14 (1) use an unfair or deceptive act or practice;
 15 (2) without first being authorized in writing by the person, represent or imply that a contribution is for or
 16 on behalf of a person or use an emblem, device, or printed matter belonging to or associated with the person;
 17 (3) use a name, symbol, or statement so closely related or similar to a name, symbol, or statement used
 18 by another charitable organization in order to confuse or mislead a person solicited for a contribution;
 19 (4) represent directly or by implication that a charitable organization will receive from the contributions
 20 raised by a paid solicitor a greater percentage of a contribution than stated in any contract between the charitable
 21 organization and the paid solicitor; or
 22 (5) assume, directly or indirectly, a false or fictitious identity or capacity, except for a trade name or
 23 trademark lawfully used by the person or the person's employer.

24
 25 **NEW SECTION. Section 6. Contract required.** A paid solicitor may not solicit contributions on behalf
 26 of a charitable organization unless the paid solicitor executes a written contract with the charitable organization
 27 that clearly states the respective obligations of the paid solicitor and the charitable organization, including:

- 28 (1) a statement of the estimated compensation of the paid solicitor;
 29 (2) a statement of the method to be used to calculate the compensation of the paid solicitor, which must
 30 include a reasonable estimate of the expenses to be incurred, directly or indirectly, by the charitable organization

1 in connection with the solicitation;

2 (3) a statement of the charitable purpose to be described in the solicitation; and

3 (4) the percentage of the gross contributions that the charitable organization will receive.

4

5 **NEW SECTION. Section 7. Disclosures.** (1) Before soliciting a contribution, a paid solicitor shall state
6 the following information to the person being solicited:

7 (a) the name of the individual making the solicitation;

8 (b) the full legal name, address, and telephone number of the employer of the paid solicitor;

9 (c) the address and telephone number of the room or other location from which the solicitation is being
10 made if that information is different than the information required in subsection (1)(b);

11 (d) the name and physical address of the principal headquarters of the charitable organization for which
12 the solicitation is being made;

13 (e) that the individual making the solicitation is a paid solicitor;

14 (f) a description of how and where a charitable contribution will be used; and

15 (g) whether a contribution is tax deductible in whole or in part and the portion of the contribution that the
16 solicitor maintains is tax deductible.

17 (2) Except for the information required in subsection (1)(c), a written solicitation must contain the
18 information required in subsection (1).

19

20 **NEW SECTION. Section 8. Private enforcement.** (1) A charitable organization or person that suffers
21 damages as a result of a violation of [sections 2 through 9] by another person, charitable organization, or paid
22 solicitor or any person who makes a contribution to a charitable organization or to a paid solicitor that violates
23 the provisions of [sections 2 through 9] may bring a civil action against the violator.

24 (2) In an action under subsection (1), a court may:

25 (a) award actual damages or \$500, whichever is greater;

26 (b) enjoin future violations;

27 (c) provide any other equitable relief that the court considers necessary or proper; and

28 (d) award attorney fees and costs incurred by the charitable organization or person bringing the action.

29 A person who brings an action on the person's own behalf without an attorney may receive fees and costs at the
30 judge's discretion.

