

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 940

Short Title: Charitable Solicitations.

(Public)

Sponsors: Senator Sands.

Referred to: Judiciary I.

April 21, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE CHARITABLE SOLICITATIONS ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 130C of the General Statutes is repealed.
5 Sec. 2. The General Statutes are amended by adding a new chapter to read:

6 **"CHAPTER 131F.**
7 **"SOLICITATION OF CONTRIBUTIONS ACT.**

8 **"§ 131F-1-1. Legislative intent.**

9 It is the intent of the General Assembly to recognize the right of persons or
10 organizations to conduct solicitation activities. It is also the intent of the General
11 Assembly to protect the public by requiring full public disclosure of the identity of
12 persons who solicit contributions from the public, and of the purposes for which the
13 contributions are solicited and the manner in which the contributions are actually used.
14 It is further the intent of the General Assembly to prohibit deception, fraud, and
15 misrepresentation in the solicitation and reporting of contributions.

16 **"§ 131F-1-2. Definitions.**

17 As used in this Chapter:

18 (1) 'Charitable organization' means any person who is or holds itself out to
19 be established for any charitable purpose, or any person who in any
20 manner employs a charitable appeal as the basis for any solicitation or
21 an appeal that suggests that there is a charitable purpose to any
22 solicitation. It includes a chapter, branch, area office, or similar
23 affiliate soliciting contributions within the State for a charitable
24 organization which has its principal place of business outside the State.

- 1 (2) 'Charitable purpose' means any benevolent, philanthropic, patriotic,
2 educational, humane, scientific, artistic, public health, social welfare or
3 advocacy, environmental conservation, civic, or other eleemosynary
4 objective.
- 5 (3) 'Charitable sales promotion' means an advertising or sales campaign
6 conducted by a commercial coventurer which represents that the
7 purchase or use of goods or services offered by the commercial
8 coventurer are to benefit a charitable organization. The provision of
9 advertising services to a charitable organization does not, in itself,
10 constitute a charitable sales promotion.
- 11 (4) 'Commercial coventurer' means any person who, for profit, regularly
12 and primarily is engaged in trade or commerce other than in
13 connection with solicitation of contributions and who conducts a
14 charitable sales promotion or a sponsor sales promotion.
- 15 (5) 'Contribution' means the promise, pledge, or grant of any money or
16 property, financial assistance, or any other thing of value in response
17 to a solicitation. Contribution includes, in the case of a charitable
18 organization or sponsor offering goods or services to the public, the
19 difference between the direct cost of the goods and services to the
20 charitable organization or sponsor and the price at which the charitable
21 organization or sponsor or any person acting on behalf of the
22 charitable organization or sponsor resells those goods or services to the
23 public. Contribution does not include bona fide fees, dues, or
24 assessments paid by members, provided that membership is not
25 conferred solely as consideration for making a contribution in response
26 to a solicitation. Contribution also does not include funds obtained by
27 a charitable organization or sponsor pursuant to government grants or
28 contracts.
- 29 (6) 'Department' means the Department of Human Resources.
- 30 (7) 'Emergency service employee' means any employee who is a
31 firefighter, ambulance driver, emergency medical technician, or
32 paramedic.
- 33 (8) 'Federated fund-raising organization' means a federation of
34 independent charitable organizations which have voluntarily joined
35 together including, but not limited to, a united way or community
36 chest, for purposes of raising and distributing contributions for and
37 among themselves and where membership does not confer operating
38 authority and control of the individual organization upon the federated
39 group organization.
- 40 (9) 'Fund-raising costs' means those costs incurred in inducing others to
41 make contributions to a charitable organization or sponsor for which
42 the contributors will receive no direct economic benefit. Fund-raising
43 costs include, but are not limited to, salaries, rent, acquiring and
44 obtaining mailing lists, printing, mailing, all direct and indirect costs of

- 1 soliciting, and the cost of unsolicited merchandise sent to encourage
2 contributions.
- 3 (10) 'Law enforcement officer' means any person who is elected, appointed,
4 or employed by any municipality or the State or any political
5 subdivision of the State and:
- 6 a. Who is vested with authority to bear arms and make arrests and
7 whose primary responsibility is the prevention and detection of
8 crime or the enforcement of the criminal, traffic, or highway
9 laws of the State; or
- 10 b. Whose responsibility includes supervision, protection, care,
11 custody, or control of inmates within a correctional institution.
- 12 (11) 'Membership' means the relationship of a person to an organization
13 that entitles him to the privileges, professional standing, honors, or
14 other direct benefit of the organization in addition to the right to vote,
15 elect officers, and hold office in the organization.
- 16 (12) 'Owner' means any person who has a direct or indirect interest in any
17 professional fund-raising consultant or professional solicitor.
- 18 (13) 'Parent organization' means that part of a charitable organization or
19 sponsor which coordinates, supervises, or exercises control over
20 policy, fund-raising, and expenditures or assists or advises one or more
21 chapters, branches, or affiliates of a charitable organization or sponsor
22 in this State.
- 23 (14) 'Person' means any individual, organization, trust, foundation,
24 association, group, entity, partnership, corporation, society, or any
25 combination of these acting as a unit.
- 26 (15) 'Professional fund-raising consultant' means any person who is
27 retained by a charitable organization or sponsor for a fixed fee or rate
28 under a written agreement to plan, manage, conduct, carry on, advise,
29 consult, or prepare material for a solicitation of contributions in this
30 State, but who does not solicit contributions or employ, procure, or
31 engage any compensated person to solicit contributions and who does
32 not at any time have custody or control of contributions. A bona fide
33 volunteer or bona fide employee or salaried officer of a charitable
34 organization or sponsor maintaining a permanent establishment in this
35 State is not a professional fund-raising consultant. An attorney,
36 investment counselor, or banker who advises an individual,
37 corporation, or association to make a charitable contribution is not a
38 professional fund-raising consultant as the result of this advice.
- 39 (16) 'Professional solicitor' means any person who, for compensation,
40 performs for a charitable organization or sponsor any service in
41 connection with which contributions are or will be solicited in this
42 State by the compensated person or by any person it employs,
43 procures, or otherwise engages, directly or indirectly, to solicit
44 contributions, or a person who plans, conducts, manages, carries on,

1 advises, consults, whether directly or indirectly, in connection with the
2 solicitation of contributions for or on behalf of a charitable
3 organization or sponsor, but who does not qualify as a professional
4 fund-raising consultant. A bona fide volunteer or bona fide employee
5 or salaried officer of a charitable organization or sponsor maintaining a
6 permanent establishment in this State is not a professional solicitor.
7 An attorney, investment counselor, or banker who advises an
8 individual, corporation, or association to make a charitable
9 contribution is not a professional solicitor as the result of this advice.

10 (17) 'Religious institution' means any church, ecclesiastical, or
11 denominational organization, or established physical place for worship
12 in this State at which nonprofit religious services and activities are
13 regularly conducted and carried on, as well as those bona fide religious
14 groups that do not maintain specific places of worship. 'Religious
15 institution' includes any separate group or corporation which forms an
16 integral part of a religious institution which is exempt from federal
17 income tax under the provisions of section 501(c)(3) of the Internal
18 Revenue Code, and which is not primarily supported by funds solicited
19 outside its own membership or congregation.

20 (18) 'Solicitation' means a request, directly or indirectly, for money,
21 property, financial assistance, or any other thing of value on the plea or
22 representation that this money, property, financial assistance, or other
23 thing of value or a portion of it will be used for a charitable or sponsor
24 purpose or will benefit a charitable organization or sponsor.
25 Solicitation includes, but is not limited to, the following methods of
26 requesting or securing the promise, pledge, or grant of money,
27 property, financial assistance, or any other thing of value:

28 a. Any oral or written request;

29 b. Making any announcement to the press, radio, or television, by
30 telephone or telegraph, or by any other communication device
31 concerning an appeal or campaign by or for any charitable
32 organization or sponsor or for any charitable or sponsor
33 purpose;

34 c. Distributing, circulating, posting, or publishing any handbill,
35 written advertisement, or other publication that directly or by
36 implication seeks to obtain any contribution; or

37 d. Selling or offering or attempting to sell any advertisement,
38 advertising space, book, card, coupon, chance, device,
39 magazine, membership, merchandise, subscription, sponsorship,
40 flower, admission, ticket, food, or other service or tangible
41 good, item, or thing of value, or any right of any description in
42 connection with which any appeal is made for any charitable
43 organization or sponsor or charitable or sponsor purpose, or
44 when the name of any charitable organization or sponsor is used

1 or referred to in any appeal as an inducement or reason for
2 making the sale or when, in connection with the sale or offer or
3 attempt to sell, any statement is made that all or part of the
4 proceeds from the sale will be used for any charitable or
5 sponsor purpose or will benefit any charitable organization or
6 sponsor. The selling or offering or attempting to sell is a
7 solicitation whether or not the person making the solicitation
8 receives any contribution. It is not a solicitation when a person
9 applies for a grant or an award to the government or to an
10 organization that is exempt from federal income taxation under
11 section 501(a) of the Internal Revenue Code and described in
12 section 501(c) of the Internal Revenue Code.

13 (19) 'Sponsor' means a group or person which is or holds itself out to be
14 soliciting contributions by the use of any name which implies that the
15 group or person is in any way affiliated with or organized for the
16 benefit of emergency service employees or law enforcement officers
17 and which is not a charitable organization. The term includes a
18 chapter, branch, or affiliate which has its principal place of business
19 outside the State, if this chapter, branch, or affiliate solicits or holds
20 itself out to be soliciting contributions in this State.

21 (20) 'Sponsor purpose' means any program or endeavor performed to
22 benefit emergency service employees or law enforcement officers.

23 (21) 'Sponsor sales promotion' means an advertising or sales campaign
24 conducted by a commercial coventurer who represents that the
25 purchase or use of goods or services offered by the commercial
26 coventurer will be used for a sponsor purpose or donated to a sponsor.
27 The provision of advertising services to a sponsor does not, in itself,
28 constitute a sponsor sales promotion.

29 **§ 131F-1-3. License and registration statements by charitable organizations and**
30 **sponsors required.**

31 (a) A charitable organization or sponsor, unless exempted pursuant to G.S. 131F-
32 1-8, that intends to solicit contributions in this State by any means or have funds
33 solicited on its behalf by any other person, charitable organization, sponsor, commercial
34 coventurer, or professional solicitor, or that participates in a charitable sales promotion
35 or sponsor sales promotion, must, prior to engaging in any of these activities, obtain a
36 license and file a registration statement with the Department.

37 (b) The license shall be renewed and the registration statement shall be filed
38 annually on or before the fifteenth day of the fifth calendar month after the close of each
39 fiscal year in which the charitable organization or sponsor solicited in this State, or by
40 the date of any applicable extension of the federal filing date, whichever is later,
41 provided that extensions given under this section shall not exceed three months after the
42 initial renewal date or eight months after the conclusion of the year for which financial
43 information is due at the time of renewal. A charitable organization or sponsor whose

1 federal filing date has been extended shall, within seven days after receipt, forward a
2 copy of the document granting the extension to the Department.

3 (c) No charitable organization or sponsor that is required to be licensed and to
4 file a registration statement shall, prior to approval of its registration statement by the
5 Department in accordance with G.S. 131F-1-7, solicit contributions or have
6 contributions solicited on its behalf by any other person, charitable organization,
7 sponsor, commercial coventurer, or professional solicitor, or participate in a charitable
8 sales promotion or sponsor sales promotion.

9 (d) For good cause shown, the Department may extend the time for the license
10 renewal and annual filing of a registration statement or financial report for a period not
11 to exceed 60 days, during which time the previous license and registration statement
12 remains in effect.

13 (e) In no event shall the license of a charitable organization or sponsor continue
14 in effect after the date the organization should have renewed its license and filed its
15 financial report in accordance with this section and G.S. 131F-1-9. The organization
16 shall not file a new registration statement until it has filed the required financial report
17 with the Department.

18 **"§ 131F-1-4. Information required in registration statement.**

19 (a) The registration statement shall be submitted on a form prescribed by the
20 Department, signed under oath by the treasurer or chief fiscal officer of the charitable
21 organization or sponsor, and shall include the following information or material:

22 (1) A copy of the financial report or Internal Revenue Service Form 990
23 and Schedule A or Internal Revenue Service Form 990-EZ required
24 under G.S. 131F-1-9 for the immediately preceding fiscal year. A
25 newly organized charitable organization or sponsor with no financial
26 history shall file a budget for the current fiscal year.

27 (2) The name of the charitable organization or sponsor, the purpose for
28 which it is organized, the name under which it intends to solicit
29 contributions, and the purpose for which the contributions to be
30 solicited will be used.

31 (3) The name of the individuals or officers who are in charge of any
32 solicitation activities.

33 (4) A statement of whether:

34 a. The charitable organization or sponsor is authorized by any
35 other state to solicit contributions;

36 b. The charitable organization or sponsor or any of its officers,
37 directors, trustees, or principal salaried executive personnel
38 have been enjoined in any jurisdiction from soliciting
39 contributions or have been found to have engaged in unlawful
40 practices in the solicitation of contributions or administration of
41 charitable assets;

42 c. The charitable organization or sponsor has had its registration
43 or authority denied, suspended, or revoked by any

1 governmental agency, together with the reasons for such denial,
2 suspension, or revocation; and

3 d. The charitable organization or sponsor has voluntarily entered
4 into an assurance of voluntary compliance or agreement similar
5 to that set forth in G.S. 131F-1-21, together with a copy of that
6 agreement.

7 (b) The names, street addresses, and telephone numbers of any professional
8 solicitor, professional fund-raising consultant, and commercial coventurer who is acting
9 or has agreed to act on behalf of the charitable organization or sponsor, together with a
10 statement setting forth the specific terms of the arrangements for salaries, bonuses,
11 commissions, expenses, or other remunerations to be paid the fund-raising consultant
12 and professional solicitor.

13 (c) With initial licensing only, a statement showing when and where the
14 organization was established and the tax-exempt status of the organization together with
15 a copy of any federal tax exemption determination letter. If the charitable organization
16 or sponsor has not received a federal tax exemption determination letter at the time of
17 initial licensing, a copy of the determination must be filed with the Department within
18 30 days after receipt of the determination by the charitable organization or sponsor. If
19 the organization is subsequently notified by the Internal Revenue Service of any
20 challenge to its continued entitlement to federal tax exemption, the charitable
21 organization or sponsor shall notify the Department of this fact within 30 days after
22 receipt.

23 (d) The following information, which must be included in the registration
24 statement only if it is not contained in the financial report or Internal Revenue Service
25 form filed pursuant to subdivision (a)(1) of this section:

26 (1) The principal street address and telephone number of the organization
27 and the street address and telephone numbers of any offices in this
28 State or, if the charitable organization or sponsor does not maintain an
29 office in this State, the name, street address, and telephone number of
30 the person who has custody of its financial records. The parent
31 organization that files a consolidated registration statement on behalf
32 of its chapters, branches, or affiliates must additionally provide the
33 street addresses and telephone numbers of all its locations in this State.

34 (2) The names and street addresses of the officers, directors, trustees, and
35 the principal salaried executive personnel.

36 (3) The date when the charitable organization's or sponsor's fiscal year
37 ends.

38 (4) A list or description of the major program activities.

39 (5) The names, street addresses, and telephone numbers of the individuals
40 or officers who have final responsibility for the custody of the
41 contributions and who will be responsible for the final distribution of
42 the contributions.

43 **"§ 131F-1-5. Consolidated registration statement.**

1 Each chapter, branch, or affiliate of a parent organization that is required to obtain a
2 license and submit a registration statement under G.S. 131F-1-3 must either file a
3 separate registration statement and financial report or must report the required
4 information to its parent organization, which shall then file, on a form prescribed by the
5 Department, a consolidated registration statement for the parent organization and its
6 chapters, branches, and affiliates located in this State. A consolidated registration
7 statement filed by a parent organization shall include or be accompanied by financial
8 reports as specified in G.S. 131F-1-9 for the parent organization and each of its
9 chapters, branches, and affiliates located in this State that solicited or received
10 contributions during the preceding fiscal year. However, if all contributions received by
11 chapters, branches, or affiliates are remitted directly into a depository account which
12 feeds directly into the parent organizations's centralized accounting system from which
13 all disbursements are made, the parent organization may submit one consolidated
14 financial report on a form prescribed by the Department.

15 **"§ 131F-1-6. License fees.**

16 (a) Except as provided in subsections (b) and (c) of this section, every charitable
17 organization or sponsor that is required to obtain a license under G.S. 131F-1-3 shall
18 pay the following fees with each license application:

- 19 (1) Fifty dollars (\$50.00), if the contributions received for the last fiscal
20 year were less than one hundred thousand dollars (\$100,000);
- 21 (2) One hundred dollars (\$100.00), if the contributions received for the
22 last fiscal year were one hundred thousand dollars (\$100,000) or more,
23 but less than two hundred thousand dollars (\$200,000); or
- 24 (3) Two hundred dollars (\$200.00), if the contributions received for the
25 last fiscal year were two hundred thousand dollars (\$200,000) or more.

26 (b) A licensed charitable organization or sponsor that received less than five
27 thousand dollars (\$5,000) in the last calendar or fiscal year shall not pay a fee.

28 (c) A parent organization filing on behalf of one or more chapters, branches, or
29 affiliates shall pay a single license fee for itself and its other chapters, branches, or
30 affiliates included in the registration statement. License fees shall be assessed as
31 follows:

- 32 (1) A parent organization and one to five chapters, branches, or affiliates –
33 one hundred dollars (\$100.00);
- 34 (2) A parent organization and six to 10 chapters, branches, or affiliates –
35 two hundred dollars (\$200.00);
- 36 (3) A parent organization and 11 to 15 chapters, branches, or affiliates –
37 two hundred fifty dollars (\$250.00);
- 38 (4) A parent organization and 16 or more chapters, branches, or affiliates –
39 four hundred dollars (\$400.00).

40 (d) A charitable organization or sponsor which fails to file a registration
41 statement by the due date may be assessed an additional fee for the late filing. The late
42 filing fee shall be established by rule of the Department and shall not exceed twenty-
43 five dollars (\$25.00) for each month or part of a month after the date on which the

1 registration statement and financial report were due to be filed or after the period of
2 extension granted for the filing.

3 (e) The Solicitation of Contributions Trust Fund is created. All license fees shall
4 be paid to the Department and deposited into this Fund, to be used to pay the costs
5 incurred in administering and enforcing this Chapter.

6 (f) Each chapter, branch, or area office of a charitable organization or sponsor
7 shall independently comply with the provisions of G.S. 131F-1-3 through G.S. 131F-1-6
8 unless the entity is exempt from licensure or has reported the required information to its
9 parent organization for filing of a consolidated registration statement.

10 (g) An independent member charity of a federated fund-raising organization shall
11 independently comply with G.S. 131F-1-3 through G.S. 131F-1-6 unless specifically
12 exempted.

13 **"§ 131F-1-7. Department review.**

14 The Department shall examine each registration statement and supporting
15 documents filed by a charitable organization or sponsor and shall determine whether the
16 licensing requirements are satisfied. If the Department determines that the registration
17 requirements are not satisfied, the Department shall notify the charitable organization or
18 sponsor within 10 working days after its receipt of the registration statement; otherwise,
19 the registration statement is deemed to be approved. Within seven working days after
20 receipt of a notification that the registration requirements are not satisfied, the charitable
21 organization or sponsor may request a hearing. The hearing shall be held within seven
22 working days after receipt of the request and any recommended order, if one is issued,
23 shall be rendered within three working days of the hearing. The final order shall then be
24 issued within two working days after the recommended order. If no recommended
25 order is issued, the final order shall be issued within five working days after the hearing.
26 The proceedings shall be conducted in accordance with Chapter 150B of the General
27 Statutes except that the time limits and provisions set forth in this section shall prevail
28 to the extent of any conflict.

29 **"§ 131F-1-8. Exemptions.**

30 (a) Any person who solicits charitable contributions for a religious purpose or on
31 behalf of a person established for a religious purpose shall not be required to apply for a
32 license.

33 (b) Solicitation of charitable contributions by the federal, State, or local
34 government, or any agency thereof, shall not be subject to this Chapter. For purposes of
35 this subsection any volunteer fire department or rescue squad which receives any funds
36 from federal, State, or local government shall be considered an agency thereof.

37 (c) Any person who receives less than ten thousand dollars (\$10,000) in
38 contributions in any calendar year and does not provide compensation to any officer,
39 trustee, organizer, incorporator, fund-raiser, or professional solicitor shall not be
40 required to apply for a license.

41 (d) Any educational institution, the curriculum of which in whole or in part, is
42 registered, approved, or accredited by the Southern Association of Colleges and Schools
43 or an equivalent regional accrediting body; any educational institution in compliance
44 with Article 39 of Chapter 115C of the General Statutes; and any foundation or

1 department having an established identity with any of the aforementioned educational
2 institutions shall not be required to apply for a license.

3 (e) Any hospital licensed pursuant to Article 5 of Chapter 131F of the General
4 Statutes and any foundation or department having an established identity with the
5 aforementioned hospital shall not be required to apply for a license; provided, however,
6 that the governing board of the hospital authorizes the solicitation and receives an
7 accounting of the funds collected and expended.

8 (f) Any noncommercial radio or television station shall not be required to apply
9 for a license.

10 (g) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10)
11 through (e)(14) is not required to apply for a license.

12 **"§ 131F-1-9. Financial report.**

13 (a) A charitable organization or sponsor that is required to obtain a license shall
14 file an annual financial report for the immediately preceding fiscal year upon a form
15 prescribed by the Department. The report shall include the following:

16 (1) A balance sheet.

17 (2) A statement of support, revenue, and expenses, and any change in the
18 fund balance.

19 (3) The names and addresses of the charitable organizations or sponsors,
20 professional fund-raising consultant, professional solicitors, and
21 commercial coventurers used, if any, and the amounts received from
22 each of them, if any.

23 (4) A statement of functional expenses that shall include, but not be
24 limited to, expenses in the following categories:

25 a. Program.

26 b. Management and general.

27 c. Fund-raising.

28 (b) In lieu of the financial report described in subsection (a) of this section, a
29 charitable organization or sponsor may submit a copy of its Internal Revenue Service
30 Form 990 and Schedule A filed for the preceding fiscal year, or a copy of its Form 990-
31 EZ filed for the preceding fiscal year.

32 (c) A charitable organization or sponsor may elect to also include a financial
33 report which has been audited by an independent certified public accountant or an audit
34 with opinion by an independent certified public accountant. In the event that a
35 charitable organization or sponsor elects to file an audited financial report, this optional
36 filing shall be noted in the Department's annual report submitted pursuant to G.S. 131F-
37 1-22.

38 **"§ 131F-1-10. License and registration by professional fund-raising consultant**
39 **required.**

40 (a) A person shall not act as a professional fund-raising consultant unless that
41 person has first complied with the requirements of this Chapter and has obtained
42 approval of the Department of a registration statement in accordance with subsection (f)
43 of this section. A person shall not act as a professional fund-raising consultant after the
44 expiration, suspension, or cancellation of its license.

1 **(b)** Applications for a license or renewal of a license shall be submitted on a form
2 prescribed by the Department signed under oath, and shall include the following
3 information:

4 **(1)** The street address and telephone number of the principal place of
5 business of the applicant and any street addresses in this State if the
6 principal place of business is located outside this State.

7 **(2)** The form of the applicant's business.

8 **(3)** The names and residence addresses of all principals of the applicant,
9 including all officers, directors, and owners.

10 **(4)** Whether any of the owners, directors, officers, or employees of the
11 applicant are related as parent, child, spouse, or sibling to any other
12 directors, officers, owners, or employees of the applicant; to any
13 officer, director, trustee, or employee of any charitable organization or
14 sponsor under contract to the applicant; or to any supplier or vendor
15 providing goods or services to any charitable organization or sponsor
16 under contract to the applicant.

17 **(5)** Whether the applicant or any of its officers, directors, or principal
18 salaried employees have, within the last five years, been convicted of
19 any felony, or of any misdemeanor arising from the conduct of a
20 solicitation for a charitable organization or sponsor or charitable or
21 sponsor purpose, or been enjoined from violating a charitable
22 solicitation law in this or any other state.

23 **(c)** The application for a license shall be accompanied by a license fee of two
24 hundred dollars (\$200.00). A professional fund-raising consultant that is a partnership
25 or corporation may obtain a license for and pay a single fee on behalf of all of its
26 partners, members, officers, directors, agents, and employees. In that case, the names
27 and street addresses of all the officers, employees, and agents of the fund-raising
28 consultant and all other persons with whom the fund-raising consultant has contracted to
29 work under its direction shall be listed in the license application. Each license and
30 registration statement is valid for one year or a part of one year and expires on March 31
31 of each year. The license and registration statement may be renewed on or before
32 March 31 of each year for additional one-year periods upon application to the
33 Department and payment of the license fee.

34 **(d)** Every contract or agreement between a professional fund-raising consultant
35 and a charitable organization or sponsor shall be in writing, signed by two authorized
36 officials of the charitable organization or sponsor, and filed by the professional fund-
37 raising consultant with the Department at least five days prior to the performance of any
38 material service by the professional fund-raising consultant. Solicitation under the
39 contract or agreement may not begin before the filing of the contract or agreement.

40 **(e)** The contract shall contain all of the following provisions:

41 **(1)** A statement of the charitable or sponsor purpose for which the
42 solicitation campaign is being conducted.

43 **(2)** A statement of the respective obligations of the professional fund-
44 raising consultant and the charitable organization or sponsor.

1 (3) A clear statement of the fee that will be paid to the professional fund-
2 raising consultant.

3 (4) The effective and termination dates.

4 (5) A statement that the professional fund-raising consultant will not, at
5 any time, have control or custody of contributions.

6 (f) The Department shall examine each registration statement and supporting
7 documents filed by a professional fund-raising consultant and determine whether the
8 license requirements are satisfied. If the Department determines that the registration
9 requirements are not satisfied, the Department shall notify the professional fund-raising
10 consultant within 10 working days after its receipt of the registration statement;
11 otherwise the registration statement is approved. Within seven working days after
12 receipt of a notification that the license requirements are not satisfied, the applicant may
13 request a hearing. The hearing shall be held within seven working days after receipt of
14 the request and any recommended order, if one is issued, shall be rendered within three
15 working days after the hearing. The final order shall then be issued within two working
16 days after the recommended order. If there is no recommended order, the final order
17 shall be issued within five working days after the hearing. The proceedings shall be
18 conducted in accordance with Chapter 150B of the General Statutes, except that the
19 time limits and provisions set forth in this section shall prevail to the extent of any
20 conflict.

21 (g) All license fees shall be paid to the Department and deposited into the
22 Solicitation of Contributions Trust Fund to be used to pay the costs incurred in
23 administering and enforcing this Chapter. Money deposited in this Fund shall be
24 disbursed by the Department for the funding of activities conducted by the Department
25 pursuant to this Chapter.

26 (h) Unless otherwise provided, any material change in information filed with the
27 Department pursuant to this section shall be reported in writing to the Department
28 within seven working days after the change occurred.

29 **"§ 131F-1-11. License and registration statements by professional solicitors**
30 **required.**

31 (a) No person may act as a professional solicitor unless that person has first
32 complied with the requirements of this Chapter and has obtained approval of the
33 Department of a registration statement in accordance with subsection (e) of this section.
34 A person shall not act as a professional solicitor after the expiration, suspension, or
35 cancellation of its license.

36 (b) Applications for a license or renewal of a license shall be submitted on a form
37 prescribed by rule of the Department, signed under oath, and shall include the following
38 information:

39 (1) The street address and telephone number of the principal place of
40 business of the applicant and any North Carolina street addresses if the
41 principal place of business is located outside this State.

42 (2) The form of the applicant's business.

43 (3) The place and date when the applicant, if other than an individual, was
44 legally established.

- 1 (4) The names and residence addresses of all principals of the applicant,
2 including all officers, directors, and owners.
- 3 (5) A statement as to whether any of the owners, directors, officers, or
4 employees of the applicant are related as parent, spouse, child, or
5 sibling to any other directors, officers, owners, or employees of the
6 applicant; to any officer, director, trustee, or employee of any
7 charitable organization or sponsor under contract to the applicant; or to
8 any supplier or vendor providing goods or services to any charitable
9 organization or sponsor under contract to the applicant.
- 10 (6) A statement as to whether the applicant or any of its directors, officers,
11 persons with a controlling interest in the applicant, or employees or
12 agents involved in solicitation have been convicted, within the last five
13 years, of any felony, or of a misdemeanor arising from the conduct of a
14 solicitation for any charitable organization or sponsor or charitable or
15 sponsor purpose, or been enjoined from violating a charitable
16 solicitation law in this or any other state.
- 17 (7) The names of all persons in charge of any solicitation activity.

18 (c) The application for registration shall be accompanied by a license fee of two
19 hundred dollars (\$200.00). A professional solicitor, which is a partnership or
20 corporation, may register for and pay a single fee on behalf of all of its partners,
21 members, officers, directors, agents, and employees. In that case, the names and street
22 addresses of all the officers, employees, and agents of the professional solicitor and all
23 other persons with whom the professional solicitor has contracted to work under its
24 direction, including solicitors, shall be listed in the license application or furnished to
25 the Department within five days after the date of employment or contractual
26 arrangement. Each license is valid for one year or a part of one year and expires on
27 March 31 of each year. The license may be renewed on or before March 31 of each
28 year for an additional one-year period upon application to the Department and payment
29 of the license fee.

30 (d) A professional solicitor shall, at the time of application or renewal of its
31 license, file with and have approved by the Department a bond, to which the
32 professional solicitor is the principal obligor, in the sum of:

- 33 (1) Twenty thousand dollars (\$20,000), if the contributions received for
34 the last fiscal year were less than one hundred thousand dollars
35 (\$100,000);
- 36 (2) Thirty thousand dollars (\$30,000), if the contributions received for the
37 last fiscal year were one hundred thousand dollars (\$100,000) or more,
38 but less than two hundred thousand dollars (\$200,000);
- 39 (3) Fifty thousand dollars (\$50,000), if the contributions received for the
40 last fiscal year were two hundred thousand dollars (\$200,000) or more;
41 with one or more sureties authorized to do business in this State. The professional
42 solicitor shall maintain the bond in effect as long as the license is in effect; however, the
43 liability of the surety under the bond shall not exceed an all-time aggregate liability of
44 fifty thousand dollars (\$50,000). The bond, which may be in the form of a rider to a

1 larger blanket liability bond, shall be payable to the State and to any person who may
2 have a cause of action against the principal obligor of the bond for any liability arising
3 out of a violation by the obligor of any provision of this Chapter, or any rule adopted
4 pursuant to this Chapter.

5 (e) The Department shall examine each registration statement and supporting
6 documents filed by a professional solicitor. If the Department determines that the
7 registration requirements are not satisfied, the Department shall notify the professional
8 solicitor within 10 working days after its receipt of the registration statement; otherwise
9 the registration statement is approved. Within seven working days after receipt of a
10 notification that the registration requirements are not satisfied, the applicant may request
11 a hearing. The hearing shall be held within seven working days after receipt of the
12 request and any recommended order, if one is issued, shall be rendered within three
13 working days after the hearing. The final order shall then be issued within two working
14 days after the recommended order. If there is no recommended order, the final order
15 shall be issued within five working days after the hearing. The proceedings shall be
16 conducted in accordance with Chapter 150B of the General Statutes, except that the
17 time limits and provision set forth in this subsection prevail to the extent of any conflict.

18 (f) No less than five days before commencing any solicitation campaign or
19 event, the professional solicitor shall file, with the Department, a solicitation notice on a
20 form prescribed by the Department. The notice shall be signed and sworn to by the
21 contracting officer of the professional solicitor and shall include:

- 22 (1) A description of the solicitation event or campaign.
- 23 (2) Each location and telephone number from which the solicitation is to
24 be conducted.
- 25 (3) The legal name and residence address of each person responsible for
26 directing and supervising the conduct of the campaign.
- 27 (4) A statement as to whether the professional solicitor will, at any time,
28 have custody of contributions.
- 29 (5) The account number and location of each bank account where receipts
30 from the campaign are to be deposited.
- 31 (6) A full and fair description of the charitable or sponsor program for
32 which the solicitation campaign is being carried out as provided in the
33 contract between the professional solicitor and the charitable
34 organization or sponsor.
- 35 (7) The fund-raising methods to be used.
- 36 (8) A copy of the contract executed in accordance with subsection (g) of
37 this section.

38 (g) Each contract or agreement between a professional solicitor and a charitable
39 organization or sponsor for each solicitation campaign shall be in writing, signed by two
40 authorized officials of the charitable organization or sponsor, one of whom shall be a
41 member of the organization's governing body, and one of whom shall be the authorized
42 contracting officer for the professional solicitor. The contract shall contain all of the
43 following provisions:

- 1 (1) A statement of the charitable or sponsor purpose and program for
2 which the solicitation campaign is being conducted.
- 3 (2) A statement of the respective obligations of the professional solicitor
4 and the charitable organization or sponsor.
- 5 (3) A statement of the guaranteed minimum percentage of the gross
6 receipts from contributions which will be remitted to the charitable
7 organization or sponsor, if any, or, if the solicitation involves the sale
8 of goods, services, or tickets to a fund-raising event, the percentage of
9 the purchase price which will be remitted to the charitable organization
10 or sponsor, if any. Any stated percentage shall exclude any amount
11 which the charitable organization or sponsor is to pay as fund-raising
12 costs.
- 13 (4) A statement of the percentage of the gross revenue which the
14 professional solicitor will be compensated. If the compensation of the
15 professional solicitor is not contingent upon the number of
16 contributions or the amount of revenue received, his compensation
17 shall be expressed as a reasonable estimate of the percentage of the
18 gross revenue, and the contract must clearly disclose the assumptions
19 upon which the estimate is based. The stated assumptions shall be
20 based upon all of the relevant facts known to the professional solicitor
21 regarding the solicitation to be conducted by the professional solicitor.
- 22 (5) The effective and termination dates of the contract.
- 23 (h) Within 90 days after a solicitation campaign has been completed and on the
24 anniversary of the commencement of a solicitation campaign lasting more than one
25 year, the professional solicitor shall provide to the charitable organization or sponsor
26 and file with the Department a financial report of the campaign, including the gross
27 revenue received and an itemization of all expenses incurred. The report shall be
28 completed on a form prescribed by the Department and signed by an authorized official
29 of the professional solicitor who shall certify under oath that the report is true and
30 correct.
- 31 (i) Each contribution collected by or in the custody of the professional solicitor
32 shall be solely in the name of the charitable organization or sponsor on whose behalf the
33 contribution was solicited. Not later than two days after receipt of each contribution,
34 the professional solicitor shall deposit the entire amount of the contribution in an
35 account at a bank or other federally insured financial institution, which account shall be
36 in the name of that charitable organization or sponsor. The charitable organization or
37 sponsor shall have sole control of all withdrawals from the account and the professional
38 solicitor shall not be given the authority to withdraw any deposited funds from the
39 account.
- 40 (j) During each solicitation campaign, and for not less than three years after its
41 completion, the professional solicitor shall maintain the following records:
- 42 (1) The date and amount of each contribution received and the name,
43 address, and telephone number of each contributor.

- 1 (2) The name and residence street address of each employee, agent, and
2 any other person, however designated, who is involved in the
3 solicitation, the amount of compensation paid to each, and the dates on
4 which the payments were made.
- 5 (3) A record of all contributions that at any time are in the custody of the
6 professional solicitor.
- 7 (4) A record of all expenses incurred by the professional solicitor for the
8 payment of which the professional solicitor is liable.
- 9 (5) A record of all expenses incurred by the professional solicitor for the
10 payment of which the charitable organization or sponsor is liable.
- 11 (6) The location of each bank or financial institution in which the
12 professional solicitor has deposited revenue from the solicitation
13 campaign and the account number of each account in which the
14 deposits were made.
- 15 (7) A copy of each pitch sheet or solicitation script used during the
16 completed solicitation campaign.
- 17 (8) If a refund of a contribution has been requested, the name and address
18 of each person requesting the refund, and, if a refund was made, its
19 amount and the date it was made.
- 20 (k) If the professional solicitor sells tickets to any event and represents that the
21 tickets will be donated for use by another person, the professional solicitor also shall
22 maintain for the same period as specified in subsection (j) of this section the following
23 records:
- 24 (1) The name and address of each contributor who purchases or donates
25 tickets and the number of tickets purchased or donated by the
26 contributor.
- 27 (2) The name and address of each organization that receives the donated
28 tickets for the use of others, and the number of tickets received by the
29 organization.
- 30 (l) Any of the records described in this section shall be made available to the
31 Department upon request and shall be furnished within 10 days after the request.
- 32 (m) Unless otherwise provided in this Chapter, any material change in any
33 information filed with the Department pursuant to this section shall be reported in
34 writing to the Department within seven days after the change occurs.
- 35 (n) Any person licensed as a professional solicitor shall permanently lose its
36 license if it is determined that that person, any officer or director thereof, any person
37 with a ten percent (10%) or greater interest therein, or any person the professional
38 solicitor employs, engages, or procures to solicit for compensation, has been convicted
39 in the last five years by a court in any state of the United States of a crime arising from
40 the conduct of a solicitation for a charitable organization or sponsor or a charitable
41 purpose or sponsor purpose.
- 42 (o) All license fees shall be paid to the Department and deposited into the
43 Solicitation of Contributions Trust Fund to be used to pay the costs incurred in
44 administering and enforcing this Chapter. Money deposited therein must be disbursed

1 by the Department for the funding of activities conducted by the Department pursuant to
2 this Chapter.

3 **"§ 131F-1-12. Disclosure requirements and duties of charitable organizations and**
4 **sponsors.**

5 (a) A charitable organization or sponsor shall solicit contributions only for the
6 purpose expressed in the collection for contributions or the registration statement of the
7 charitable organization or sponsor and may apply contributions only in a manner
8 substantially consistent with that purpose.

9 (b) A charitable organization or sponsor soliciting in this State shall include all of
10 the following disclosures at the point of solicitation:

11 (1) The name of the charitable organization and state of the principal place
12 of business of the charitable organization or sponsor;

13 (2) A description of the purpose for which the solicitation is being made;

14 (3) Upon request, the name and either the address or telephone number of
15 a representative to whom inquiries could be addressed;

16 (4) Upon request, the amount of the contribution which may be deducted
17 as a charitable contribution under federal income tax laws;

18 (5) Upon request, the source from which a written financial statement may
19 be obtained. Such financial statement shall be for the immediate past
20 fiscal year and shall be consistent with the annual financial report filed
21 under G.S. 131F-1-9. The written financial statement shall be
22 provided within 14 days after the request and shall state the purpose
23 for which funds are raised, the total amount of all contributions raised,
24 the total costs and expenses incurred in raising contributions, the total
25 amount of contributions dedicated to the stated purpose or disbursed
26 for the stated purpose, and whether the services of another person or
27 organization have been contracted to conduct solicitation activities.

28 (c) Every charitable organization or sponsor that is required to obtain a license
29 under G.S. 131F-1-3 shall conspicuously display in capital letters the following
30 statement on every printed solicitation, written confirmation, receipt, or reminder of a
31 contribution:

32 'A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS
33 A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL
34 INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN
35 RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-
36 4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR
37 RECOMMENDATION BY THE STATE.

38 When the solicitation consists of more than one piece, the statement shall be displayed
39 prominently in the solicitation materials.

40 (d) A charitable organization or sponsor shall establish and exercise control over
41 its fund-raising activities.

42 (e) A charitable organization or sponsor shall not enter into any contract or
43 agreement with or employ a professional fund-raising consultant or professional

1 solicitor unless that professional fund-raising consultant or professional solicitor is
2 licensed by the Department.

3 **"§ 131F-1-13. Disclosure requirements and duties of professional solicitors.**

4 (a) A professional solicitor shall comply with and be responsible for complying
5 or causing compliance with the following disclosures:

6 (1) Prior to orally requesting a contribution or contemporaneously with a
7 written request for a contribution, a professional solicitor shall clearly
8 disclose:

9 a. The name of the professional solicitor as on file with the
10 Department.

11 b. If the individual acting on behalf of the professional solicitor
12 identifies himself by name, the individual's legal name.

13 (2) In the case of a solicitation campaign conducted orally, whether by
14 telephone or otherwise, any written confirmation, receipt, or reminder
15 sent to any person who has contributed or has pledged to contribute,
16 shall include a clear disclosure of the information required under
17 subdivision (1) of this subsection.

18 (3) In addition to the information required by subdivision (1) of this
19 subsection, any written confirmation, receipt, or reminder of
20 contribution made pursuant to an oral solicitation and any written
21 solicitation shall conspicuously state in capital letters:

22 'A COPY OF THE LICENSE AND FINANCIAL INFORMATION
23 OF THE PROFESSIONAL SOLICITOR MAY BE OBTAINED
24 FROM THE DEPARTMENT OF HUMAN RESOURCES,
25 SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-
26 4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT,
27 APPROVAL, OR RECOMMENDATION BY THE STATE.'

28 When the solicitation consists of more than one piece, the statement
29 shall be displayed prominently in the solicitation materials.

30 (4) If requested by the person being solicited, the professional solicitor
31 shall inform that person in writing, within 14 days of the request, of
32 the fixed percentage of the gross revenue or the reasonable estimate of
33 the percentage of the gross revenue that the charitable organization or
34 sponsor will receive as a benefit from the solicitation campaign.

35 (5) If requested by the person being solicited, the professional solicitor
36 shall inform that person, in writing, within 14 days of the request, of
37 the percentage of the contribution which may be deducted as a
38 charitable contribution under federal income tax laws.

39 (b) A professional solicitor shall not represent that tickets to any event will be
40 donated for use by another person, unless:

41 (1) The professional solicitor has the written commitments from persons
42 stating that they will accept donated tickets and specifying the number
43 of tickets they are willing to accept.

1 (2) The written commitments are filed with the Department prior to any
2 solicitation.

3 (c) The contributions solicited for donated tickets shall not be more than the
4 amount representing the number of ticket commitments received from persons and filed
5 with the Department.

6 (d) At least seven calendar days before the date of the event, the professional
7 solicitor shall give all donated tickets to each person that made the written commitment
8 to accept them.

9 **"§ 131F-1-14. Contributions solicited for or accepted on behalf of a named**
10 **individual.**

11 (a) Contributions solicited for, or accepted by or on behalf of, a named individual
12 shall be deposited in a trust account opened by a trustee named in a properly established
13 trust document. District court has jurisdiction over the contributed funds placed in any
14 depository account.

15 (b) Disbursements of contributions may be properly made from a trust account
16 only upon written verification from the trustee that the disbursement is in furtherance of
17 the purpose for which the funds were solicited, with documentation reflecting the
18 identity of the proposed payee and the justification for the proposed payment.
19 Disbursements of contributed funds from a depository account may be made only as
20 allowed by the court.

21 (c) Any person or organization that violates the provisions of subsection (a) or
22 subsection (b) of this section is guilty of a Class J felony.

23 **"§ 131F-1-15. Duties of commercial coventures.**

24 (a) Prior to the commencement of any charitable or sponsor sales promotion in
25 this State conducted by a commercial coventurer on behalf of a charitable organization
26 or sponsor, the commercial coventurer shall obtain the written consent of the charitable
27 organization or sponsor whose name will be used during the charitable or sponsor sales
28 promotion.

29 (b) If determined to be essential to protect the public from fraudulent or
30 deceptive advertising, the Department may adopt rules requiring disclosure in
31 advertising for a charitable or sponsor sales promotion of information relating to the
32 portion or amount that will benefit the charitable organization or sponsor or the
33 charitable purpose or sponsor purpose.

34 (c) A final accounting for each charitable or sponsor sales promotion shall be
35 prepared by the commercial coventurer following the completion of the sales
36 promotion. The final accounting shall be provided to the charitable organization or
37 sponsor on whose behalf the sales promotion was conducted within 10 days after a
38 request by the charitable organization or sponsor. The final accounting shall be kept by
39 the commercial coventurer for a period of three years, unless the commercial coventurer
40 and the charitable organization or sponsor mutually agree that the accounting should be
41 kept by the charitable organization or sponsor instead of the commercial coventurer. A
42 copy of the final accounting shall be provided to the Department no later than 10
43 working days after the Department requests it.

44 **"§ 131F-1-16. Prohibited acts.**

1 It is unlawful for any person in connection with the planning, conduct, or execution
2 of any solicitation or charitable or sponsor sales promotion to:

- 3 (1) Operate in violation of, or fail to comply with, the requirements of this
4 Chapter.
- 5 (2) Knowingly file false or misleading information in any document
6 required to be filed with the Department or in response to any request
7 or investigation by the Department or the Attorney General.
- 8 (3) Make misrepresentations or misleading statements to the effect that
9 any other person or organization sponsors or endorses the solicitation,
10 approves of its purpose, or is connected therewith, when that person or
11 organization has not given written consent to the use of its name.
- 12 (4) Represent that the contribution is for or on behalf of a charitable
13 organization or sponsor or to use any emblem, device, or printed
14 matter belonging to or associated with a charitable organization or
15 sponsor, without first being authorized in writing to do so by the
16 charitable organization or sponsor.
- 17 (5) Use a name, symbol, emblem, device, service mark, or statement so
18 closely related or similar to that used by another charitable
19 organization or sponsor that the use thereof would mislead the public.
- 20 (6) Falsely state that the person is a member of or a representative of a
21 charitable organization or sponsor or falsely state or represent that the
22 person is a member of or represents a law enforcement or emergency
23 service organization.
- 24 (7) Misrepresent or mislead anyone by any manner, means, practice, or
25 device whatsoever, to believe that the person or organization on whose
26 behalf the solicitation or sale is being conducted is a charitable
27 organization or sponsor, or that any of the proceeds of the solicitation
28 or sale will be used for charitable or sponsor purposes, if that is not the
29 fact.
- 30 (8) Represent that a charitable organization or sponsor will receive a fixed
31 or estimated percentage of the gross revenue from a solicitation
32 campaign greater than that identified in filings with the Department
33 pursuant to this Chapter, or that a charitable organization or sponsor
34 will receive an actual or estimated dollar amount or percentage per unit
35 of goods or services purchased or used in the charitable or sponsor
36 sales promotion that is greater than that agreed to by the commercial
37 coventurer and the charitable organization or sponsor.
- 38 (9) Use or exploit the fact of registration or the filing of any report with
39 any governmental agency so as to lead any person to believe that the
40 registration in any manner constitutes an endorsement or approval by
41 the State. However, use of the statement required in G.S. 131F-1-
42 12(c) or G.S. 131F-1-13(a)(3) is not a prohibited use or exploitation.
- 43 (10) Make misrepresentations or misleading statements to the effect that the
44 donation of a contribution or the display of any sticker, emblem, or

1 insignia offered to contributors will entitle such other person to any
2 special treatment by emergency service employees or law enforcement
3 officers in the performance of their official duties.

4 (11) Solicit contributions from another person or organization while
5 wearing the uniform of an emergency service employee or law
6 enforcement officer, or while on duty as an emergency service
7 employee or law enforcement officer, except where the solicitation is
8 for an organization exempt from federal income tax under section
9 501(c)(3) of the Internal Revenue Code or except when soliciting
10 contributions to benefit an emergency service employee or law
11 enforcement officer who has been injured in the line of duty or to
12 benefit the family or dependents of an emergency service employee or
13 law enforcement officer who has been killed in the line of duty.

14 (12) Solicit contributions on behalf of another person or organization using
15 any statement that the failure to make a contribution shall result in a
16 reduced level of law enforcement services being provided to the public
17 or the person solicited.

18 (13) Employ in any solicitation any device, scheme, or artifice to defraud or
19 to obtain a contribution by means of any deception, false pretense,
20 misrepresentation, or false promise.

21 (14) Notify any other person by any means, as part of an advertising
22 scheme or plan, that the other person has won a prize, received an
23 award, or has been selected or is eligible to receive anything of value if
24 the other person is required to purchase goods or services, pay any
25 money to participate in, or submit to a promotion effort.

26 (15) Fail to provide complete and timely payment to a charitable
27 organization or sponsor of the proceeds from a solicitation campaign
28 or a charitable or sponsor sales promotion.

29 (16) Fail to apply contributions in a manner substantially consistent with
30 the solicitation.

31 (17) Fail to identify the professional relationship to the person for whom
32 the solicitation is being made.

33 **"§ 131F-1-17. Violation as deceptive or unfair trade practice.**

34 Any person who commits an act or practice that violates any provision of this
35 Chapter engages in an unfair practice in violation of G.S. 75-1.1.

36 **"§ 131F-1-18. Criminal penalties.**

37 Except as otherwise provided in this Chapter and in addition to any administrative or
38 civil penalties, any person who willfully and knowingly violates a provision of this
39 Chapter commits a Class J felony. For a second or subsequent conviction, such
40 violation constitutes a Class J felony.

41 **"§ 131F-1-19. Records.**

42 Each charitable organization, sponsor, professional fund-raising consultant, and
43 professional solicitor shall keep, for a period of at least three years, true and accurate
44 records as to its activities in this State, which records are required by this Chapter. The

1 records shall be made available upon request, to the Department for inspection and shall
2 be furnished no later than 10 working days after the request was made.

3 **"§ 131F-1-20. Powers of the Department.**

4 (a) The Department may conduct an investigation of any person or organization
5 whenever there is an appearance, either upon complaint or otherwise, that a violation of
6 this Chapter or of any rule adopted or of any order issued pursuant to this Chapter has
7 occurred or is about to occur.

8 (b) The Department may issue and serve subpoenas and subpoenas **duces tecum**
9 to compel the attendance of witnesses and the production of all books, accounts,
10 records, and other documents and materials relevant to an examination or investigation.
11 The Department, or its duly authorized representative, may administer oaths and
12 affirmations to any person.

13 (c) In the event of substantial noncompliance with a subpoena or subpoena **duces**
14 **tecum** issued or caused to be issued by the Department, the Department may petition
15 the superior court of the county in which the person subpoenaed resides or has its
16 principal place of business for an order requiring the subpoenaed person to appear and
17 testify and to produce any books, accounts, records, and other documents as are
18 specified in the subpoena **duces tecum**. The court may grant injunctive relief
19 restraining the person or organization from collecting contributions and any other relief,
20 including, but not limited to, the restraint by injunction or appointment of a receiver, or
21 any transfer, pledge, assignment, or other disposition of the person's or organization's
22 assets, or any concealment, alteration, destruction, or other disposition of subpoenaed
23 books, accounts, records, or other documents and materials as the court deems
24 appropriate, until the person or organization has fully complied with the subpoena or
25 subpoena **duces tecum** and the Department has completed its investigation or
26 examination. The court may also order the person or organization to produce a financial
27 statement that has been audited by an independent certified public accountant. Costs
28 incurred by the Department to obtain an order granting, in whole or in part, a petition
29 for enforcement of a subpoena or subpoena **duces tecum** shall be taxed against the
30 subpoenaed person or organization, and failure to comply with the order shall be
31 contempt of court.

32 (d) The Department may enter an order imposing one or more of the penalties set
33 forth in subsection (e) of this section if the Department finds that a charitable
34 organization, sponsor, professional fund-raising consultant, or professional solicitor, or
35 an agent, servant, or employee thereof has:

- 36 (1) Violated or is operating in violation of any of the provisions of this
37 Chapter or of the rules adopted or orders issued pursuant to this
38 Chapter;
39 (2) Made a material false statement in an application, statement, or report
40 required to be filed under this Chapter;
41 (3) Refused or failed, or any of its principal officers refused or failed, after
42 notice, to produce any records of the organization or to disclose any
43 information required to be disclosed under this Chapter or the rules
44 adopted by the Department; or

1 (4) Made a material false statement in response to any request or
2 investigation by the Department or the Attorney General.

3 (e) Upon a finding as set forth in subsection (d) of this section, the Department
4 may enter an order doing one or more of the following:

5 (1) Imposing an administrative fine not to exceed one thousand dollars
6 (\$1,000) for each act or omission which constitutes a violation of this
7 Chapter or a rule or an order;

8 (2) Issuing a cease and desist order that directs that the person cease and
9 desist specified fund-raising activities;

10 (3) Refusing to register or cancelling or suspending a registration;

11 (4) Placing the registrant on probation for a period of time, subject to such
12 conditions as the Department may specify;

13 (5) Issuing of a letter of concern; and

14 (6) Cancelling an exemption granted under G.S. 131F-1-8.

15 (f) Except as otherwise provided in this section, the administrative proceedings
16 which could result in the entry of an order imposing any of the penalties specified in
17 subsection (e) of this section are governed by Chapter 150B of the General Statutes.

18 (g) All fines collected by the Department under subsection (e) of this section
19 must be paid into the Solicitation of Contributions Trust Fund to be used to pay the
20 costs incurred in administering and enforcing this Chapter. Money deposited therein
21 must be disbursed by the Department for the funding of activities conducted by the
22 Department pursuant to this Chapter.

23 (h) The Department may adopt rules to implement this Chapter.

24 **"§ 131F-1-21. Civil remedies and enforcement.**

25 (a) In addition to other remedies authorized by law, the Attorney General may
26 bring a civil action in superior court to enforce this Chapter. Upon a finding that any
27 person has violated this Chapter, a court may make any necessary order or enter a
28 judgment including, but not limited to, a temporary or permanent injunction, a
29 declaratory judgment, the appointment of a master or receiver, the sequestration of
30 assets, the reimbursement of persons from whom contributions have been unlawfully
31 solicited, the distribution of contributions in accordance with the charitable or sponsor
32 purpose expressed in the registration statement or in accordance with the representations
33 made to the person solicited, the reimbursement of the Department for attorneys' fees
34 and costs, including investigative costs, and any other equitable relief the court finds
35 appropriate. Upon a finding that any person has violated any provision of this Chapter
36 with actual knowledge or knowledge fairly implied on the basis of objective
37 circumstances, a court may enter an order imposing a civil penalty in an amount not to
38 exceed ten thousand dollars (\$10,000) per violation.

39 (b) The Attorney General may conduct any investigation necessary to bring a
40 civil action under this section including, but not limited to, administering oaths and
41 affirmations, subpoenaing witnesses or material, and collecting evidence.

42 (c) The Attorney General may terminate an investigation or an action upon
43 acceptance of a person's written assurance of voluntary compliance with this Chapter.
44 Acceptance of an assurance may be conditioned on commitment to reimburse donors or

1 to take other appropriate corrective action. An assurance is not evidence of a prior
2 violation of any of this Chapter. However, unless an assurance has been rescinded by
3 agreement of the parties or voided by a court for good cause, subsequent failure to
4 comply with the terms of an assurance is **prima facie** evidence of a violation of this
5 Chapter.

6 "**§ 131F-1-22. Public information; annual report.**

7 (a) The Department shall develop a public information program to further the
8 purposes of this Chapter. The purpose of the program is to help the public recognize
9 unlawful, misleading, deceptive, or fraudulent solicitations and make knowledgeable,
10 informed decisions concerning contributions.

11 (b) The program shall include information concerning:

- 12 (1) The laws governing solicitations, including licensing and disclosure
13 requirements, prohibited acts, and penalties;
14 (2) The means by which the public can report suspected violations or file a
15 complaint; and
16 (3) Any other information the Department believes will assist the public in
17 making knowledgeable and informed decisions concerning
18 contributions.

19 (c) The Department shall prepare an annual public report to be submitted to the
20 Governor, the President of the Senate, and the Speaker of the House of Representatives
21 summarizing the information filed under this Chapter which the Department determines
22 will assist the public in making informed and knowledgeable decisions concerning
23 contributions. The report shall include the following:

- 24 (1) A list of complaints filed for which violations were found to have
25 occurred in each of the following categories: charitable organizations,
26 sponsors, professional solicitors, and professional fund-raising
27 consultants.
28 (2) A list of the number of investigations by the Department, enforcement
29 actions commenced under this Chapter, and the disposition of those
30 actions.
31 (3) A list of those charitable organizations and sponsors that have
32 voluntarily submitted an audited financial statement pursuant to G.S.
33 131F-1-9 or an audit with an opinion prepared by an independent
34 certified public accountant."

35 Sec. 3. This act becomes effective October 1, 1993.