

## New Jersey's Charitable Fund Raising Law

Charitable fund raising in New Jersey is governed by the "Charitable Registration and Investigation Act," N.J.S.A. 45:17A-18 et seq. The law is intended to protect against fund raising abuse by making information about charities and fund raisers readily available to the public, and by providing enforcement powers to the Attorney General to crack down on violations. This article summarizes the major provisions of the Act, including legislation enacted January 9, 2006 (P.L. 2005, C. 183) and regulations adopted December 18, 2006. For more information, see the contact information for the Division of Consumer Affairs and other Web links provided at the end of this article, or contact the Center. This article is not intended to constitute legal advice. Always consult a knowledgeable attorney for advice regarding your specific circumstances.

### Part I: Registration

The New Jersey Department of Law and Public Safety, Division of Consumer Affairs, Charities Registration Section, is responsible for administering the provisions of the Act. Under the Act, most organizations must file some sort of registration with the Division of Consumer Affairs. The law establishes a two-tiered, annual registration and reporting system for charities. (See next section for exemptions from registration.) Most organizations with contributions of less than \$25,000 and whose fund raising is conducted by unpaid persons file a "short form" containing information such as name, address, telephone number and charitable purpose. Larger organizations must file a "long form" registration statement with more detailed information and annual financial reports.

All registrations must be renewed annually. Renewal registrations and financial report are due six months after the close of the organization's fiscal year, although extensions are granted under certain circumstances.

Before operations or solicitation of funds may begin, covered charities must register with the Attorney General, who must notify a charity within 10 business days of receipt whether registration has been accepted. If notification is not sent within that time, the registration is deemed to have been accepted. If the Attorney General notifies a charity that registration requirements have not been met, the charity has 10 business days after receipt to satisfy the requirements or request a hearing.

### Exemptions from Registration

No organization is exempt from the entire "Charitable Registration and Investigation Act," although some are exempt from the registration requirements:

- Organizations which do not receive gross **contributions**\* in excess of \$10,000 if all their functions, including fund raising, are conducted by "volunteers, members, officers or persons

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\* "Contributions" does not include bona fide membership dues provided membership is not conferred solely as consideration for making a contribution, nor does it include monies received pursuant to a government grant or contract, or personal services rendered by a volunteer.

who are not compensated for soliciting contributions” (if gross contributions should exceed \$10,000 during the year, additional registration and reporting are required within 30 days);

- Religious corporations and charities or agencies operated, supervised or controlled by or in connection with such a religious corporation;
- Accredited educational institutions whose curriculums are registered with or approved by the State Department of Education or New Jersey Commission of Higher Education;
- Accredited educational institutions that confine their solicitations to their student body, alumni, faculty and trustees and their families; and
- Libraries registered by the State Department of Education, provided that annual financial reports are filed with the Department of Education and made available for public inspection.

## Short Form Registration

The following organizations are permitted to file a short form on an annual basis to satisfy their registration requirements under the “Charitable Registration and Investigation Act.” Organizations that do not meet these requirements must file a long form registration and annual financial reports.

- Organizations which do not receive public **contributions** in excess of \$25,000 if all their functions, including fund raising, are conducted by “volunteers, members, officers or persons who are not compensated for soliciting contributions,” and if none of their assets or income inures to the benefit of or is paid to any officer or member (if gross contributions should exceed \$25,000 during the year, additional registration and reporting are required within 30 days);
- Fraternal, patriotic, social or alumni organizations, historical societies and the like, when solicitation of contributions is confined to their membership and performed by members;
- Persons soliciting for the relief of a specific, named individual, provided that all contributions, without any deductions whatsoever, are turned over to the named beneficiary; and
- Any local post, camp, chapter, or county unit thereof, of a bona fide veterans’ organization which issues charters to the local elements throughout the State, or to any veterans’ organization chartered under federal law or to any service foundation recognized by such foundation in its by-laws.

On the short form, an organization must provide:

- Its name and address;
- The name of any professional fund raiser or commercial co-venturer it has engaged;
- Its organizational purposes, and purposes for which funds are raised;
- Its tax status;
- Type of organization;
- A copy of the organization’s most recent Form 990 and Schedule A, if the organization filed those forms;
- The name, street address and telephone number of each officer, director and trustee and each principal salaried executive staff employee and whether the person has been adjudged liable in an administrative or civil action, or convicted in a criminal action, involving theft, fraud or deceptive business practices;
- Any other state in which the organization is authorized to solicit contributions;
- Whether the organization’s registration has been denied, suspended or revoked in any jurisdiction;

- Whether the organization has entered into a voluntary assurance or discontinuance with any state or federal entity; and
- Other information as prescribed by regulation by the Attorney General.

## **Long Form Registration**

In addition to basic information regarding charity name, office address(es) and organizational purposes, the long form requests the following:

- Names, addresses and phone numbers of trustees, officers and principal salaried executive staff employees, and whether any have had any convictions or judgments against them involving theft, fraud, or deceptive business practices;
- Copies of the most recent IRS Form 990 and Schedule A, if the organization filed those forms;
- Whether the organization or its officers, trustees or executive personnel are or have ever been enjoined from soliciting contributions or found to have violated laws with respect to solicitation or management of charitable assets;
- Programs for which contributions will be used and a statement whether such programs are planned or are in existence;
- Disclosure of any relationships by blood, marriage or adoption between an organization's board members, principal salaried staff, and/or principal representatives or directors of its vendors. In such cases, the names, business and home addresses and telephone number of each related party must be disclosed to the Attorney General, but these home addresses and telephone numbers are not a matter of public record.
- The amount of any grant or financial assistance from any agency of government during the preceding fiscal year;
- Date on which the organization's fiscal year ends;
- Whether the organization will solicit from the general public;
- Any other state in which the organization is authorized to solicit contributions;
- Whether the organization's registration has been denied, suspended or revoked in any jurisdiction;
- Whether the organization has entered into a voluntary assurance or discontinuance with any state or federal entity; and
- Other information as prescribed by regulation by the Attorney General.

For initial registration only, the organization must provide a copy of its certificate of incorporation, charter or similar document; constitution, by-laws or similar document; and statement setting forth its tax status and copies of any determination letter. If any changes are made to these documents, they must be reported, and copies of amended versions provided to, the Attorney General.

## **Voluntary Registration Option for Small Organizations**

Small organizations that would otherwise be exempt from mandatory registration may elect to register voluntarily for a fee of \$30. The filing deadline for voluntary registrations is the same as for mandatory filers – 6 months following the end of the organization's fiscal year. However, unlike mandatory filers, voluntary organizations will not be granted extensions of time to file, and a late fee of \$25 will be assessed against any organization that elects to file a registration statement but fails to submit the complete annual registration filing within 30 days of the annual filing deadline.

## Financial Reports

Every charity required to file the long form must file an annual financial report with the Attorney General including balance sheet; statement of support, revenue, expenses and changes in fund balance; statement of functional expenses “at least divided into program, management and general, and fund raising;” and other information as required by the Attorney General. Organizations with gross revenues exceeding \$250,000 in the preceding year must also include an audited financial statement conducted by an independent certified public accountant as well as any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization (although management letters must be filed, they are not considered public information and are not available for public inspection). Financial reports for organizations whose revenues are between \$25,000 and \$250,000 must be certified by the president or other authorized officer; they need not include an audit unless requested by the Attorney General.

## Fees

The Act provides for sliding scale annual registration fees for charities to be established by the Attorney General through regulation. The law provides that fees cannot exceed what is actually required to administer the Act, nor can they exceed specified ceilings based on contributions raised. The current fees represent the highest allowable under the law for each category, and are based upon gross **contributions** raised during the most recently filed fiscal year.

- \$30 for voluntary filers that would otherwise be exempt from filing because they had contributions of \$10,000 or less during the most recently filed fiscal year;
- No fee for organizations filing a *required* short form and with contributions of no more than \$10,000 during the most recently filed fiscal year;
- \$30 for organizations filing a short form and with contributions of under \$25,000;
- \$60 for organizations filing a long form and with contributions of under \$100,000;
- \$150 for organizations filing a long form and receiving contributions of between \$100,000 and 499,999;
- \$250 for organizations filing a long form and with contributions of \$500,000 or more; and
- \$30 for contract filing fees.

## Parent Organization/Local Unit Registration

The Act contains provisions to allow parent organizations to file registrations and reports on behalf of small local chapters. In order to be eligible for registration by the parent, a local unit must meet all of the following requirements:

- It must be a local unit of a parent organization that is registered pursuant to the Act;
- The parent organization must have provided all information regarding the local unit as required under the Act;
- All solicitations made by the local unit must be made by members of the local unit who are volunteers;
- The local unit cannot employ a fund raising counsel or independent paid fund raiser or use paid staff “in preparation of materials or records concerning or related to the solicitations;” and
- The local unit cannot receive gross contributions exceeding \$25,000 during the fiscal year.

Under this section, a parent organization would pay an annual fee for itself (based on gross contributions received during the previous fiscal year), as well as up to \$10 each for the chapter organizations it registers.

## Part 2: Solicitation

### Professional Fund Raisers

The statute incorporates separate definitions for different types of fund raisers. This distinction is important because the law imposes stricter requirements on fund raisers who will have custody or access to the solicited funds than on fund raisers who do not handle monies. The definitions (paraphrased) are as follows:

- **“Fund raising counsel”** means any person, including any assignee, subcontractors, independent contractor or successor in interest, who is retained for a fixed fee or rate to plan, manage, or advise a charitable organization with respect to solicitation of donations, but who does not solicit contributions or employ or engage any compensated person to solicit contributions. A charity’s bona fide employees, officers or volunteers are excluded from this definition, as are attorneys, accountants or bankers who render professional services to a charitable organization (for example, legal advice about the conduct of solicitations) or who, in the course of rendering professional services, advise a person to make a contribution.
- **“Independent paid fund raiser”** is a person, including any assignee, subcontractors, independent contractor or successor in interest, who for compensation performs for or on behalf of a charitable organization any service in connection with which contributions are or will be solicited by that person or any compensated person he employs or engages, directly or indirectly to solicit contributions. The same exclusions (bona fide employees, attorneys, etc.) apply here as described above for fund raising counsel.
- **“Solicitor”** is an individual who solicits or attempts to solicit contributions for compensation. The same exclusions (bona fide employees, attorneys, etc.) apply here as described above for fundraising counsel.

All fund raising counsel, independent paid fund raisers and solicitors must register on forms prescribed by the Attorney General. Registration is annual. Fund raisers who will have custody or access to a charity’s funds are subject to a \$20,000 initial bond requirement, with subsequent amounts to be determined by the Attorney General through regulation. The law clarifies that fund raisers who perform services for exempt organizations are themselves subject to the provisions of the Act. In general, records of fund raising campaigns must be retained for three years.

### Contracts

All agreements between charities and fund raising counsel or independent paid fund raisers must be set forth in a written contract. All agreements between a fundraising counsel or independent paid fundraiser and any other fundraising counsel or independent paid fund raiser must also be set forth in a written contract. All such contracts must be signed by two authorized officials of the charity (at least one of whom must be a member of the governing body) and the authorized contracting officer of the fund raising entity. At least 10 days before the performance of any service within the State, the fund raiser must file the contract(s) with the Attorney General, who must notify the fund raiser whether or not it has been accepted. If the Attorney General fails to respond within 10 days, performance of the contract may begin. If the contract is not accepted, the fund raiser and charity have 10 days to satisfy the requirements or request a hearing.

### Fund Raisers Who Handle Monies Raised

The Act contains a number of provisions designed to crack down on past abuses by certain fund raisers. Contracts between charities and independent paid fund raisers or fund raising counsel who will have access to funds raised must clearly set forth the following:

- The respective obligations of each party;

- The fees to be paid to the fund raiser;
- Start and termination dates of the campaign;
- Whether the fund raiser will have custody, control over or access to contributions;
- A guaranteed minimum percentage of gross receipts that the charity will receive (if any), or the percent of purchase price of tickets, goods, and the like, that the charity will receive (if any);
- An estimate of the percentage of the gross revenue from which the independent paid fund raiser will be compensated, and the fixed fee or rate that the fund raising counsel will be compensated, and a clear disclosure of the assumptions upon which this estimate is based; and
- The bank(s), branch(es) and account number(s) where all monies will be deposited.

Each contribution must be deposited within five days of receipt in a bank account in the charity's name, over which the charity has sole control. Financial reports must be filed with the Attorney General within 40 days after a campaign is completed, or if a campaign lasts more than 12 months, 40 days after the end of the charity's fiscal year. The report must be signed by an authorized official from the charity and the fund raiser, and must itemize gross receipts, expenses incurred, and the bank in which monies are deposited.

Upon request by the Attorney General, a fund raiser who handles monies raised must disclose information regarding locations and telephone numbers from which solicitations are conducted, charitable purpose of the campaign, and name, address and phone number of the person directing the conduct of the campaign and any prior judgments or convictions involving theft, fraud or deceptive business practices.

## **Commercial Co-Venturers**

New Jersey's fund raising statute contains provisions to address the practice of cause-related marketing. Under the law, persons or entities who advertise that the purchase or use of their goods or services will benefit a charity or charitable purpose are defined as "commercial co-venturers."

A charity must obtain a written contract from a commercial co-venturer and file it with the Attorney General at least 10 business days prior to beginning of a "charitable sales promotion," defined as an advertising campaign, conducted by a commercial co-venturer, that represents that the purchase or use of the goods or services offered by the commercial co-venturer will benefit a charity or charitable purpose. At the conclusion of the promotion, the charity must report to the Attorney General the gross amount of income received by the commercial co-venturer attributable to the charitable sales promotion, the amount of money or other contribution remitted to the organization, and a copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to solicit a contribution.

A commercial co-venturer must disclose in each advertisement or charitable sales promotion the dollar amount or percent per unit purchased or used that will benefit the charity, or a reasonable estimate thereof.

Non-profits should be aware that in addition to the fund raising law and regulations, commercial co-venturing may also fall under the scope of the New Jersey Consumer Fraud Act (N.J.S.A. 56:8.1 et seq.), which provides protection against unconscionable business practices, fraud and misrepresentations in the sale of goods and services.

## **Attorney General Telephone Line**

Pursuant to the Charitable Registration and Investigation Act, the Attorney General's office has established a telephone line (currently 973/504-6215) to provide information regarding registered charities, fund raisers and solicitors. Information made available includes all public information provided via registration statements, financial reports, contracts and agreements, etc., but not contributor lists.

## Point-of-Solicitation Disclosures

**Written** solicitations, tickets, receipts or reminders must include the following message, "conspicuously printed":

"INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION AND THE PERCENTAGE OF CONTRIBUTIONS RECEIVED BY THE CHARITY DURING THE LAST REPORTING PERIOD THAT WERE DEDICATED TO THE CHARITABLE PURPOSE MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 973-504-6215 AND IS AVAILABLE ON THE INTERNET AT <http://www.state.nj.us/lps/ca/charfrm.htm>. REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT."

Any other written disclosure requirements will be established by the Attorney General through regulation.

Any **oral** solicitation, including telephone or otherwise, **except for in-person solicitations**, must be followed by a reminder or receipt upon the request of the contributor, which must include the same disclosure statement laid out above.

Any **oral or written** solicitation, **except for in-person solicitations**, must clearly and conspicuously disclose the following:

1. The name of the individual making the solicitation;
2. Whether or not the individual making the solicitation is paid or is a volunteer;
3. The name of any fund raising counsel, independent paid fund raiser, or commercial co-venturer employing the individual making the solicitation; and
4. The name of the charitable organization which will receive the contribution.

## Charitable Control over Fund Raisers

The law states that "a charitable organization shall establish and exercise control over fund raising activities conducted for its benefit, including approval of all written contracts and agreements and must assure that fund raising activities are conducted without coercion."

## Other Provisions

The Act sets forth a variety of provisions to combat fraud. These include a prohibition against using a name that is too similar to an existing organization's name (provided that name is registered with the U.S. Patent or Trademark office or registered pursuant to New Jersey's trademark statute), and specific controls over the sale of tickets or events to be donated to a third party, among others. The law also prohibits charities from utilizing information, statements or communications that, although literally true, are presented in a manner that has the "capacity to mislead" the average consumer. The law also grants stronger enforcement powers to the Attorney General than existed under the

previous statute, and provides opportunity for hearings and other procedures before actions, such as cease-and-desist orders or revocation of registration, are taken.

In addition to other relief available under law, the Act sets out the following civil penalties:

- Up to \$10,000 for the first violation;
- Up to \$20,000 for the second violation or two violations in a single occurrence;
- Up to \$20,000 for the third and each additional violation.

Under the law, an aggrieved charity may file a civil action or counterclaim against violators of the Act, and would recover treble its damages or treble the violator's profits, whichever is greater.

## Contact/Registration Information

### New Jersey Division of Consumer Affairs

New Jersey Division of Consumer Affairs

Charities Registration Section

P.O. Box 45021

Newark, NJ 07101

973/504-6215

*Web:*

[www.state.nj.us/lps/ca/ocp/charities.htm](http://www.state.nj.us/lps/ca/ocp/charities.htm) -- Charities Registration Section main page

[www.state.nj.us/lps/ca/charity/charfrm.htm](http://www.state.nj.us/lps/ca/charity/charfrm.htm) – downloadable registration forms

[www.state.nj.us/lps/ca/charity/chardir.htm](http://www.state.nj.us/lps/ca/charity/chardir.htm) – searchable database of registered charities (check to see if your organization is listed; check for typos or standard abbreviations if first search comes up empty, and always call the Charities Registration office to be sure)

<http://www.state.nj.us/lps/ca/laws/charitylaws.pdf> -- Text of New Jersey Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq.

<http://www.state.nj.us/lps/ca/laws/charityregs.pdf> -- Text of Charitable Registration and Investigation Section Regulations, N.J.A.C. 13:48-1.1 et seq.

## Related Information

### Unified Registration Statement (URS)

[www.multistatefiling.org](http://www.multistatefiling.org) – Developed by the National Association of State Charity Officials (NASCO) and the National Association of Attorneys General (NAAG), in partnership with non-profit leaders and others, have developed a Unified Registration Statement (URS), a standardized registration form now accepted by 34 states including New Jersey. The URS is one part of the Standardized Reporting Project, a larger NAAG/NASCO effort to streamline and standardize compliance under the various state solicitation laws. The URS is useful for organizations that solicit funds in multiple states, whether online or via other means (such as direct mail).

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