

Reproduced with permission from Tax Management Weekly State Tax Report, Charitable Solicitation Laws, 07/25/2014. Copyright © 2014 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

**Procedure**

Charities once basked in the glow of public trust, but a stream of high-profile fraud cases changed the perception of nonprofits, leading legislatures to enact laws intended to protect citizens from unscrupulous intentions. Although consumer protection was the goal of the new laws and rules, the changes have left many charities wondering how to remain compliant, especially when operating in multiple states. Regulations require charities register with states, comply with a myriad of state laws and place organizations under higher levels of legal scrutiny. Bloomberg BNA Tax Law Editor Tonya Sloans walks readers through the changing charitable landscape and offers advice on complying with the meandering web of state laws.

## **No Longer Overlooked: States Tighten Requirements, Increase Enforcement of Charitable Solicitation Laws**

By TONYA SLOANS

**D**ecades ago, it was rare for states to regulate charitable solicitation. However, an onslaught of complaints from residents about fraudulent solicitation activity pushed state legislatures to create laws that require charities and other organizations to register in the state before asking its residents for donations. Regulation often includes a related excise tax or fee, giving charities one more administrative cost to absorb. With the burden of registration, annual reporting and related taxes, clearly an organization's status as a charity does not stop states from imposing excise taxes.

In the past, charities have not paid much attention to charitable solicitation registration requirements—in part—because of the lack of state enforcement. State regulation and enforcement have drastically increased.

“As recent as about 10 years ago, states did not aggressively pursue enforcement,” David P. Goch, a partner at Webster, Chamberlain & Bean LLP said. “In those days, states often seemed surprised, and generally happy that charities were reaching out to register.”

State regulators did not focus on punishing organizations for prior noncompliance. Instead, Goch said, state regulators seized the opportunity for “enlightenment of the organization” and nothing more. Rather than imposing punishment, states took the time to educate self-

identifying organizations about their responsibilities in complying with charitable solicitation standards in an effort to encourage future compliance. However, the tide has turned such that charities now need to invest resources in being compliant with state laws to retain the privilege of soliciting donations within a given state.

“Tax-exempt organizations must now be vigilant and keenly aware of state charitable solicitation laws,” Goch said. Organizations must be mindful of not just their own registration requirements, but also whether professional fundraisers and professional solicitors who work with the organizations are appropriately registered.

The more aggressive enforcement of charitable solicitation laws are attributable to the “high profile of fraud and abuse cases,” Goch said. “Continual disclosure of such cases can result in a fear and mistrust of charities. Through enforcement, state governments work to ensure the public's confidence in the nonprofit sector,” he said. Charitable solicitation laws are one of the tools that state regulators use to accomplish this goal.

Many states require organizations to register their organization in the state prior to beginning any solicitation. This allows state authorities to monitor the behavior of the organization within the state and track any recurring problems the organization causes in carrying

out its fundraising activity. In some cases, the state's awareness that an organization is conducting fundraising operations is enough to deter some inappropriate behavior. Goch credits more aggressive enforcement to recognition of the excise taxes related to charitable solicitation as a revenue stream. Although it is doubtful the states aim at charities as a primary source to cure state budget deficits, charities exacting funds from the state are being called upon to pay their fair share of administrative expenses required for state governments to function.

## Purpose of the Law

State regulators have turned to requiring charities to register with a state authority before engaging in solicitation activities in the state to protect both the public and charitable organizations themselves. In part, the laws are intended to regulate the myriad of charitable solicitations in person, by telephone, mail and online. What's more is the need to protect all parties from fraudulent activity. The laws are driven by consumer protection principles that preserve the integrity of the fundraising process that is so valuable to the nonprofit community.

Oftentimes, nonprofits enlist the help of other professionals to lend their fundraising expertise to their solicitation efforts. In some instances, they train nonprofit employees to conduct fundraising activity more effectively for themselves. In other cases, professional fundraisers and professional solicitors are more directly involved in executing the fundraising activity on behalf of the nonprofit organization. For this reason, both types of professionals themselves are subject to state registration requirements. It is advisable that tax-exempt organizations verify that the professionals they work with are compliant with all state registration requirements. Working with unauthorized professionals could reflect poorly on the nonprofit and is illegal in some jurisdictions.

The consequences of failing to register could be monumental. A variety of consequences may be imposed depending on the state in which the violation occurs. Fines are commonly assessed against offenders. More cumbersome consequences could be at stake, too—such as the state authority auditing the organization's books or overseeing part of the organization's operations. If wrongdoing is found on the part of the nonprofit, the organization may be forced to return donated funds to the donors.

## Which Organizations Have to Register?

The key to determining whether an organization is required to register in a given state hinges on how a state statute defines "solicitation." As may be assumed, many state statutes include a direct request for financial contributions or other value as solicitation. However, there are other activities that may be included in the definition. Pennsylvania, for example, defines any sale, offer or attempt to sell items of value as a form of solicitation.<sup>1</sup> Those who are selling items tied to a charitable appeal, such as T-shirts or raffle tickets, may be engaged in charitable solicitation under certain state statutes. Further, whether an organization is engaged in so-

licitation does not always require the organization to have actually received value. The laws generally focus on where funds are solicited, rather than the jurisdiction from which donations are received. The recipient of the solicitation, whether an individual or an organization, is not always relevant.

In addition to Pennsylvania's unique definition of solicitation, the state has also adopted a special way of shaming noncompliant organizations. Pennsylvania's Department of State website lists the names of all organizations against whom the Bureau of Charitable Organizations has taken disciplinary, enforcement or corrective measures. The offense is publicized for a number of years. Some current listings include offenses that date back to the late 1990s. Pennsylvania's practices are motivation for organizations to be vigilant in determining their state registration requirements and maintaining good standing.

## Impacted Parties

Obviously, nonprofit organizations that are themselves subject to state charitable solicitation laws need to be conscious of these laws. This includes charitable organizations exempt from taxation pursuant to I.R.C. §501(c)(3), as well as trade associations, social welfare organizations and fraternal organizations, among others. Members of the boards of directors of such organizations should pay particular attention to the state charitable solicitation laws as a guidepost for carrying out their fiduciary responsibilities.

For-profit organizations that work in partnership with nonprofit organizations need to be just as concerned about these laws and whether their partners are compliant. Having business dealings with an organization that fails to comply with regulatory standards may reflect poorly on the for-profit organizations and its products. In addition, for-profit organizations are subject to the same legal consequences charities face under state law.

Those organizations subject to state registration are often required to disclose whether they are working with professional fundraisers, the identity of the fundraiser and the nature of the arrangement with the professional. States often cross-check whether fundraising professionals who are working with a charitable organization have complied with their own state registration requirements.

## Registration and Reporting Exemptions

Although states have become more aggressive in enforcing charitable solicitation laws, they also provide exemptions to the registration and reporting requirements for certain types of organizations and in certain circumstances. Some state exemptions are a function of the amount of funds received on an annual basis. Many states exempt organizations from registration if less than \$25,000 is raised annually. Other states are more generous—such as Connecticut's exemption from registering with the Connecticut Department of Consumer Protection for organizations that normally receive less than \$50,000 in annual contributions and do not compensate someone for the primary function of soliciting donations.<sup>2</sup>

<sup>1</sup> 10 Pa. Cons. Stat. §162.3.

<sup>2</sup> Conn. Gen. Stat. §21a-190d(6).

## Common Registration Requirements

Compliance with state charitable solicitation laws often occurs in three parts. First, there is an initial registration requirement. Second, there is a related excise tax to be paid as a registration fee and a bond that the charity must file with the state. Arkansas, Kentucky, Michigan, New Mexico and Oregon are the exceptions in that they require registration but do not impose a related registration fee.<sup>3</sup> Third, there are ongoing reporting responsibilities to which the organization is subject, and these are often accompanied by an administrative fee or excise tax.

Concerted effort to standardize and centralize the registration process across states has resulted in a uniform reporting system known as the Unified Registration Statement (URS).<sup>4</sup> Organized by the National Association of State Charity Officials and the National Association of Attorneys General, the URS is an alternative to filing specific registration forms generated by a specific state. Many states will accept the URS or their state-specific forms. However, even in instances where the URS is accepted by a state, charities still need to consult each state's charitable solicitation law to determine how the state uses the statement. In addition, several states that accept the URS also require supplemental filings.<sup>5</sup> Other states, such as Colorado, Florida, and Oklahoma, opt out of the URS but still require registration.<sup>6</sup>

<sup>3</sup> Ark. Code Ann. §4-28-402; Ky. Rev. Stat. Ann. §367.650; Mich. Comp. Laws §400.273; N.M. Stat. Ann. §57-22-1; Or. Rev. Stat. §128.610.

<sup>4</sup> See <http://www.multistatefiling.org>.

<sup>5</sup> States requiring supplemental filings include Arkansas, California, Georgia, Maine, Minnesota, Mississippi, North Carolina, North Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin and the District of Columbia. See <http://www.multistatefiling.org/>.

<sup>6</sup> See Colo. Rev. Stat. §6-16-104; Fla. Stat. §496.405(2); Okla. Stat. Ann. tit. 18, §552.3.

## Electronic Solicitation: When Does It Trigger Registration Requirements

The ease of transacting business on the Internet has created concerns of whether the use of the Internet in charitable solicitation activity was sufficient to trigger registration requirements in any state, or every state having access to the website. The answer to the question often is determined by whether a particular state statute is construed strictly. To address such concerns, the National Association of State Charity Officials developed nonbinding guidance regarding the applicability of charitable solicitation laws to organizations involved with solicitation online. Known as the Charleston Principles, the principles generally conclude that Internet presence, by itself, is insufficient to require an organization to register for solicitation in a particular state, even if unsolicited funds are received.<sup>7</sup> However, online activity that specifically targets residents of a particular state would trigger registration requirements. Although the Charleston Principles do not have the force of law, they are noteworthy because they were drafted by the same state regulators who enforce the charitable solicitation laws.

### Conclusion

Despite the past absence of enforcement of charitable solicitation laws, it is advisable that charities factor the cost of state solicitation compliance into the cost of raising funds across state borders. State enforcement is on the rise, and given an increase in abuse and fraud in the area, enforcement activities are likely to increase. Whether one is a charity conducting fundraising activities, or a for-profit organization working in partnership with a charity, there is a potential need to register with state authorities and pay related excises taxes, or face punishment of varying degrees. Thus, organizations would be wise to operate with a consciousness of charitable solicitation standards going forward.

<sup>7</sup> See [www.nasconet.org](http://www.nasconet.org).

### Survey of State Charitable Solicitation Regulation

State	Charitable Solicitation Statute	Excise Tax Imposed for Charitable Solicitation Registration?	Accept Unified Registration Statement (URS)?	Require Supplement to URS?	Allow Certain Exemptions From Registration?
<b>AL</b>	Ala. Code §13A-9-71	Yes	Yes	No	Yes
<b>AK</b>	Alaska Stat. §45.68.010	Yes	Yes	Yes	Yes
<b>AZ</b>	Ariz. Rev. Stat. Ann. §44-6551 (Repealed 2014)	N/A	N/A	N/A	N/A
<b>AR</b>	Ark. Code Ann. §4-28-402	No	Yes	No	Yes
<b>CA</b>	Cal. Gov't Code §12585	Yes	Yes	Yes	Yes
<b>CO</b>	Colo. Rev. Stat. §6-16-104	Yes	No	N/A	Yes
<b>CT</b>	Conn. Gen. Stat. §21a-190b	Yes	Yes	No	Yes
<b>DE</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>DC</b>	D.C. Code Ann. §44-1703	Yes	Yes	Yes	Yes
<b>FL</b>	Fla. Stat. §496.405	Yes	No	N/A	Yes
<b>GA</b>	Ga. Code Ann. §43-17-5	Yes	Yes	Yes	Yes
<b>HI</b>	Haw. Rev. Stat. §467B-2.1	Yes	Yes	No	Yes
<b>ID</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>IL</b>	225 ILCS 460/2	Yes	Yes	No	Yes
<b>IN</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>IA</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>KS</b>	Kan. Stat. Ann. §17-1761	Yes	Yes	No	Yes
<b>KY</b>	Ky. Rev. Stat. Ann. §367.650	No	Yes	No	Yes
<b>LA</b>	La. Rev. Stat. Ann. §51:1901	Yes	Yes	No	Yes
<b>ME</b>	Me. Rev. Stat. Ann. tit. 9, §5001	Yes	Yes	Yes	Yes
<b>MD</b>	Md. Code Ann. Bus. Reg. §6-101	Yes	Yes	No	Yes
<b>MA</b>	Mass. Gen. L. ch. 68, §19	Yes	Yes	No	Yes
<b>MI</b>	Mich. Comp. Laws §400.273	No	Yes	No	Yes
<b>MN</b>	Minn. Stat. §309.52	Yes	Yes	Yes	Yes
<b>MS</b>	Miss. Code Ann. §79-11-503	Yes	Yes	Yes	Yes

**Survey of State Charitable Solicitation Regulation – Continued**

<b>MO</b>	Mo. Rev. Stat. §407.456	Yes	Yes	No	Yes
<b>MT</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>NE</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>NV</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>NH</b>	N.H. Rev. Stat. Ann. §7:19	Yes	Yes	No	Yes
<b>NJ</b>	N.J. Rev. Stat. §45:17A-18	Yes	Yes	No	Yes
<b>NM</b>	N.M. Stat. Ann. §57-22-1	No	Yes	No	Yes
<b>NY</b>	N.Y. Exec. Laws 7-A §172	Yes	Yes	No	Yes
<b>NC</b>	N.C. Gen. Stat. §131F-5	Yes	Yes	Yes	Yes
<b>ND</b>	N.D. Cent. Code §50-22-02	Yes	Yes	Yes	Yes
<b>OH</b>	Ohio Rev. Code Ann. §1716.02	Yes	Yes	No	Yes
<b>OK</b>	Okla. Stat. Ann. tit. 18, §552.3	Yes	No	N/A	Yes
<b>OR</b>	Or. Rev. Stat. §128.610	No	Yes	No	Yes
<b>PA</b>	10 Pa. Cons. Stat. §162.1	Yes	Yes	No	Yes
<b>RI</b>	R.I. Gen. Laws §5-53.1-2	Yes	Yes	No	Yes
<b>SC</b>	S.C. Code Ann. §33-56-30	Yes	Yes	No	Yes
<b>SD</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>TN</b>	Tenn. Code Ann. §48-101-504	Yes	Yes	Yes	Yes
<b>TX</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>UT</b>	Utah Code Ann. §13-22-5	Yes	Yes	Yes	Yes
<b>VT</b>	No Registration Requirement	N/A	N/A	N/A	N/A
<b>VA</b>	Va. Code Ann. §57-49	Yes	Yes	No	Yes
<b>WA</b>	Wash. Rev. Code §19.09.065	Yes	Yes	Yes	Yes
<b>WV</b>	W. Va. Code §29-19-5	Yes	Yes	Yes	Yes
<b>WI</b>	Wis. Stat. §202.12	Yes	Yes	Yes	Yes
<b>WY</b>	No Registration Requirement	N/A	N/A	N/A	N/A

\*This information applies to charitable organizations. It does not necessarily apply to fundraising professionals.