



House of Representatives

General Assembly

File No. 72

January Session, 2009

House Bill No. 6433

House of Representatives, March 16, 2009

The Committee on General Law reported through REP. SHAPIRO of the 144th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE REGULATION OF CHARITABLE FUNDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-190a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2009*):

3 As used in sections 21a-190a to 21a-190l, inclusive, as amended by
4 this act:

5 (1) "Charitable organization" means any person who is or holds
6 himself out to be established for any benevolent, educational,
7 philanthropic, humane, scientific, patriotic, social welfare or advocacy,
8 public health, environmental conservation, civic or eleemosynary
9 purpose, or for the benefit of law enforcement officers, firefighters or
10 other persons who protect the public safety.

11 (2) "Person" means an individual, corporation, limited liability
12 company, association, partnership, trust, foundation or any other
13 entity however styled.

14 (3) "Solicit" and "solicitation" mean any request directly or indirectly
15 for money, credit, property, financial assistance or other thing of any
16 kind or value on the plea or representation that such money, credit,
17 property, financial assistance or other thing of any kind or value is to
18 be used for a charitable purpose or benefit a charitable organization.
19 "Solicit" and "solicitation" shall include, but shall not be limited to, the
20 following methods of requesting or securing such money, credit,
21 property, financial assistance or other thing of value: (A) Any oral or
22 written request; (B) any announcement to the press, over the radio or
23 television or by telephone or telegraph concerning an appeal or
24 campaign by or for any charitable organization or purpose; (C) the
25 distribution, circulation, posting or publishing of any handbill, written
26 advertisement or other publication; (D) the sale of, offer or attempt to
27 sell, any advertisement, advertising space, book, card, tag, coupon,
28 device, magazine, membership, merchandise, subscription, flower,
29 ticket, candy, cookies or other tangible item in connection with an
30 appeal made for any charitable organization or purpose, or where the
31 name of any charitable organization is used or referred to in any such
32 appeal as an inducement or reason for making any such sale, or when
33 or where in connection with any such sale, any statement is made that
34 the whole or any part of the proceeds from any such sale is to be used
35 for any charitable purpose or benefit any charitable organization. A
36 solicitation shall be deemed to have taken place whether or not the
37 person making the same receives any contribution.

38 (4) "Charitable purpose" means any benevolent, educational,
39 philanthropic, humane, scientific, patriotic, social welfare or advocacy,
40 public health, environmental conservation, civic or eleemosynary
41 objective.

42 (5) "Contribution" means the grant, promise or pledge of money,
43 credit, property, financial assistance or other thing of any kind or value
44 in response to a solicitation. "Contribution" shall not include bona fide
45 fees, dues or assessments paid by members, provided membership is
46 not conferred solely as consideration for making a contribution in
47 response to a solicitation.

48 (6) "Fund-raising counsel" means a person who for compensation
49 plans, manages, advises or consults with respect to the solicitation in
50 this state of contributions by a charitable organization, but who does
51 not solicit contributions and who does not directly or indirectly
52 employ, procure or engage any person compensated to solicit
53 contributions. A bona fide nontemporary salaried officer or employee
54 of a charitable organization shall not be deemed to be a fund-raising
55 counsel.

56 (7) "Paid solicitor" means a person who for [compensation] any
57 consideration, other than any nonmonetary gift of nominal value
58 awarded to a volunteer solicitor as an incentive or token of
59 appreciation, performs for a charitable organization any service in
60 connection with which contributions are solicited by such person or by
61 any person he directly or indirectly employs, procures or engages to
62 solicit for such compensation. A bona fide nontemporary salaried
63 officer or employee of a charitable organization shall not be deemed to
64 be a paid solicitor.

65 (8) "Commercial coventurer" means a person who for profit is
66 regularly and primarily engaged in trade or commerce in this state
67 other than in connection with the raising of funds for charitable
68 organizations or purposes and who conducts a charitable sales
69 promotion.

70 (9) "Charitable sales promotion" means an advertising or sales
71 campaign, conducted by a commercial coventurer, which represents
72 that the purchase or use of goods or services offered by the commercial
73 coventurer are to benefit a charitable organization or purpose.

74 (10) "Department" means the Department of Consumer Protection.

75 (11) "Commissioner" means the Commissioner of Consumer
76 Protection.

77 (12) "Membership" means that which entitles a person to the
78 privileges, professional standing, honors or other direct benefit of the

79 organization and the rights to vote, elect officers and hold office in the
80 organization.

81 (13) "Parent organization" means that part of a charitable
82 organization which supervises and exercises control over the
83 solicitation and expenditure activities of one or more chapters,
84 branches or affiliates.

85 (14) "Gross revenue" means income of any kind from all sources,
86 including all amounts received as the result of any solicitation by a
87 paid solicitor.

88 Sec. 2. Section 21a-190b of the general statutes is repealed and the
89 following is substituted in lieu thereof (*Effective October 1, 2009*):

90 (a) Every charitable organization not exempted by section 21a-190d
91 shall annually register with the department prior to conducting any
92 solicitation or prior to having any solicitation conducted on its behalf
93 by others. Application for registration shall be made on forms
94 prescribed by the department and shall include payment of a fee of
95 fifty dollars. Such application shall include: (1) A registration
96 statement, (2) an annual financial report for such organization for the
97 preceding fiscal year that is prepared in accordance with the
98 provisions of subsection (a) of section 21a-190c, as amended by this act,
99 and (3) an audited financial statement as required by subsection (b) of
100 said section 21a-190c. Two authorized officers of the organization shall
101 sign the registration statement and shall certify that the statements
102 therein are true and correct to the best of their knowledge. A chapter,
103 branch or affiliate in this state of a registered parent organization shall
104 not be required to register provided the parent organization files a
105 consolidated annual registration for itself and its chapter, branch or
106 affiliate. Each charitable organization shall annually renew its
107 registration not later than five months after the end of such
108 organization's fiscal year.

109 (b) In the event the department determines that the application for
110 registration does not contain the documents required in subsection (a)

111 of this section or is not in accordance with the regulations adopted by
112 the commissioner pursuant to this chapter, the department shall notify
113 the charitable organization, in writing, of such noncompliance not later
114 than ten days after the department's receipt of such application for
115 registration. An application for registration shall be deemed to be
116 approved if the charitable organization is not notified of
117 noncompliance by the department not later than ten days after the
118 department's receipt of the application for registration. Any such
119 charitable organization may request a hearing on its noncompliant
120 status not later than seven days after receipt of such noncompliance
121 notice. Such hearing shall be held not later than seven days after the
122 department's receipt of such request and a determination as to the
123 organization's compliance status shall be rendered no later than three
124 days after such hearing.

125 (c) In addition to the application fee required pursuant to subsection
126 (a) of this section, a charitable organization shall pay a late fee of
127 twenty-five dollars for each month, or part thereof, that such
128 application for registration is late, except that such late fee shall not
129 include any month during which an extension of time was granted
130 pursuant to subsection (d) of this section. The commissioner may,
131 upon written request and for good cause shown, waive or reduce any
132 late fee under this section.

133 (d) The commissioner may, upon written request and for good
134 cause shown, grant an extension of time, not to exceed [one hundred
135 eighty days] six months from the date the report was due, for the filing
136 of a charitable organization's annual financial report. Any previous
137 registration shall remain in effect during any such extension period.

138 (e) In the event that a charitable organization fails to register in
139 accordance with the provisions of this section, such organization shall
140 include in its application for registration an annual financial report for
141 each of the previous years in which such organization was required to
142 file an application for registration or an annual financial report.

143 (f) Any charitable organization registered in accordance with this

144 section on September 30, 2005, shall be deemed to be registered
145 pursuant to this section until the last day of the fifth month after the
146 close of the fiscal year in effect on September 30, 2005.

147 Sec. 3. Section 21a-190c of the general statutes is repealed and the
148 following is substituted in lieu thereof (*Effective October 1, 2009*):

149 (a) Every charitable organization required to register pursuant to
150 section 21a-190b, as amended by this act, shall annually file with the
151 department, as part of such organization's application for registration,
152 a financial report for its most recently completed fiscal year, which
153 report shall include a financial statement and such other information
154 as the commissioner may require and shall be signed by two
155 authorized officers of the organization, one of whom shall be the chief
156 fiscal officer of the organization. The information contained in such
157 report shall be available to the public. Such officers shall certify that
158 such report is true and correct to the best of their knowledge. The
159 commissioner shall prescribe the form of the report and may prescribe
160 standards for its completion. The commissioner may accept, under
161 such conditions as said commissioner may prescribe, a copy or
162 duplicate original of financial statements, reports or returns filed by
163 the charitable organization with the Internal Revenue Service or
164 another state having requirements similar to the provisions of sections
165 21a-190a to 21a-190l, inclusive, as amended by this act.

166 (b) A charitable organization with gross revenue in excess of [two]
167 five hundred thousand dollars in the year covered by the report shall
168 include with its financial statement an audit report of a certified public
169 accountant. For purposes of this section, gross revenue shall not
170 include grants or fees from government agencies or the revenue
171 derived from funds held in trust for the benefit of the organization.
172 The commissioner may, upon written request and for good cause
173 shown, waive the audit report requirement under this subsection.

174 (c) Every charitable organization required to file an annual report
175 and every charitable organization subject to the provisions of
176 subdivision (6) of section 21a-190d shall keep true fiscal records which

177 shall be available to the department for inspection upon request. Such
178 organization shall retain such records for no less than three years after
179 the end of the fiscal year to which they relate.

180 Sec. 4. Section 21a-190e of the general statutes is repealed and the
181 following is substituted in lieu thereof (*Effective October 1, 2009*):

182 (a) Each contract between a charitable organization and a fund-
183 raising counsel shall be in writing and shall be filed by the fund-raising
184 counsel with the department at least fifteen days prior to the
185 performance by the fund-raising counsel of any material services
186 pursuant to such contract. The contract shall contain such information
187 as will enable the department to identify the services the fund-raising
188 counsel is to provide and the manner of his compensation.

189 (b) A fund-raising counsel who at any time has custody or control of
190 contributions from a solicitation shall register with the department.
191 Applications for registration or renewal of a registration as a fund-
192 raising counsel shall be in writing, under oath, in the form prescribed
193 by the department and shall be accompanied by a fee in the amount of
194 [one] five hundred [twenty] dollars. Each application shall contain
195 such information as the department shall require. Each registration
196 shall be valid for one year and may be renewed for additional one-year
197 periods. An applicant for registration or for a renewal of registration as
198 a fund-raising counsel shall, at the time of making such application,
199 file with and have approved by the department a bond, in which the
200 applicant shall be the principal obligor in the sum of twenty thousand
201 dollars, with one or more responsible sureties whose liability in the
202 aggregate as such sureties shall be no less than such sum. The fund-
203 raising counsel shall maintain the bond in effect as long as the
204 registration is in effect. The bond shall run to the state and to any
205 person who may have a cause of action against the principal obligor of
206 the bond for any liabilities resulting from the obligor's conduct of any
207 activities subject to sections 21a-190a to 21a-190l, inclusive, as amended
208 by this act, or arising out of a violation of said sections or any
209 regulation adopted pursuant to said sections. Any such fund-raising

210 counsel shall account to the charitable organization with which he has
 211 contracted for all income received and expenses paid no later than
 212 ninety days after a solicitation campaign has been completed, and in
 213 the case of a solicitation campaign lasting more than one year, on the
 214 anniversary of the commencement of such campaign. Such accounting
 215 shall be in writing, shall be retained by the charitable organization for
 216 three years and shall be available to the department upon request.

217 Sec. 5. Subsection (d) of section 45a-535e of the general statutes is
 218 repealed and the following is substituted in lieu thereof (*Effective from*
 219 *passage*):

220 (d) Nothing in this section shall be construed as amending or
 221 altering existing standards in the [general statutes] law for
 222 approximation, cy pres or equitable deviation actions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	21a-190a
Sec. 2	<i>October 1, 2009</i>	21a-190b
Sec. 3	<i>October 1, 2009</i>	21a-190c
Sec. 4	<i>October 1, 2009</i>	21a-190e
Sec. 5	<i>from passage</i>	45a-535e(d)

GL *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a minimal revenue gain to the state due to an increase in the license fee for fundraising counsel from \$120 annually to \$500.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 6433*****AN ACT CONCERNING THE REGULATION OF CHARITABLE FUNDS.*****SUMMARY:**

This bill increases, from \$200,000 to \$500,000, the minimum gross revenue threshold for the requirement that a charity's annual report be audited. By law, all charitable organizations that solicit funds must register and file annual financial reports with the Department of Consumer Protection (DCP). Organizations above the gross revenue threshold must also file an audit report prepared by a certified public accountant.

The bill allows the DCP commissioner to waive audit requirements and waive or reduce late fees. The bill also increases extends the deadline the commissioner may grant for filing reports.

The bill changes the definition of "paid solicitor" to include a person who for consideration, rather than compensation, solicits or arranges the solicitation of contributions. It also increases the license fee for fundraising counsel from \$120 annually to \$500.

The bill also specifies that nothing in the statute regarding the release or modification of restrictions contained in a gift instrument on the management, investment or purpose of institutional funds in the Uniform Prudent Management of Institutional Funds Act can be construed to amend or alter the existing standards in the law (which apparently includes the common law i.e., judge made), rather than the general statutes, for approximation, cy pres, or equitable deviation actions (see BACKGROUND).

EFFECTIVE DATE: October 1, 2009, except for the provision relating

to the Uniform Prudent Management of Institutional Funds Act, which is effective upon passage.

WAIVERS, EXTENSIONS, AND LATE FEES

The bill authorizes the commissioner to (1) waive the audit requirement and (2) waive or reduce late fees by written request showing good cause. Under current law, he may grant a 180-day extension to late filers; the bill allows him to grant up to six months. By law, the \$25 late fee per month is not due in extension months.

ORGANIZATION EMPLOYEES

The bill changes the definition of “paid solicitor” to include a person who for consideration, rather than compensation, solicits or arranges for solicitation of contributions, excluding salaried non-temporary officers or employees. This does not include nonmonetary, nominal gifts given to volunteers as an incentive or token of appreciation.

BACKGROUND

Release or Modification of Restrictions Contained in a Gift Instrument

Under this statute, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund with the donor’s consent on record. The fund still must be used for a charitable purpose of the institution.

A court, upon application of the institution may modify a restriction that becomes impracticable or wasteful, impairs the management or investment of the fund, or because of unanticipated circumstances, could be modified to further the purposes of the fund. In such cases, the institution must notify the attorney general, who must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intent.

If the particular charitable purpose or a restriction becomes unlawful, impracticable, impossible to achieve, or wasteful, a court, upon application of an institution, may modify the fund’s purpose or

the restriction in a manner consistent with the charitable purposes expressed in the gift instrument. The institution must notify the attorney general, who must be given an opportunity to be heard.

Uniform Prudent Management of Institutional Funds Act

The act applies to institutions, which are defined as entities organized and operated exclusively for charitable purposes; government or government subdivisions, agencies, or instrumentalities, to the extent that they hold funds exclusively for a charitable purpose; and trusts that had both charitable and noncharitable interests, after all noncharitable interests have terminated. The term "charitable purpose" includes purposes related to relieving poverty, advancing education or religion, promoting health, and other purposes that are communally beneficial (CGS § 45a-535, et seq.).

Cy Pres

The cy pres doctrine allows the court to amend the terms of a charitable trust as closely as possible to the original intention of the deceased when the original objective becomes impossible, impracticable, or illegal to perform.

Related Bill

The General Law Committee favorably reported SB 780, which also increases, from \$200,000 to \$500,000, the minimum gross receipt threshold for charitable organizations required to include an audit report with their annual financial statements. That bill has an effective date of July 1, 2009.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 18 Nay 0 (02/26/2009)