

**CHAPTER 48
CHARITABLE FUND RAISING**

Authority

N.J.S.A. 45:17A-18 et seq., specifically 45:17A-21b

Source and Effective Date

R.2005 d.70, effective January 21, 2005.
See: 36 N.J.R. 4370(a), 37 N.J.R. 618(a).

Chapter Expiration Date

Chapter 48, Charitable Fund Raising, expires on January 21, 2010.

Chapter Historical Note

Chapter 48, Charitable Fund Raising, was adopted as R.1979 d.311, effective August 13, 1979. See: 11 N.J.R. 257(a), 11 N.J.R. 466(a). Pursuant to Executive Order No. 66(1978), Chapter 48 expired on August 13, 1984. New fund raising rules were adopted as R.1985 d.698, effective January 21, 1986. See: 17 N.J.R. 1244(a), 18 N.J.R. 205(b).

Pursuant to Executive Order No. 66(1978), Chapter 48 was readopted as R.1991 d.64, effective January 17, 1991. See: 22 N.J.R. 3108(b), 23 N.J.R. 608(b).

Chapter 48 was repealed and new Chapter 48, Charitable Fund Raising was adopted as R.1994 d.494, effective September 19, 1994. See: 26 N.J.R. 2746(a), 26 N.J.R. 3882(a).

Pursuant to Executive Order No. 66(1978), Chapter 48, Charitable Fund Raising, was readopted as R.1999 d.339, effective September 9, 1999. See: 31 N.J.R. 1899(a), 31 N.J.R. 2892(a).

Subchapters 4 through 15 were adopted as new rules by R.1999, effective November 15, 1999. See: 30 N.J.R. 4115(a), 31 N.J.R. 3751(b).

Chapter 48, Charitable Fund Raising, was readopted as R.2005 d.70, effective January 21, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

13:48-1.1 Director

(a) The Director of the Division of Consumer Affairs shall be the person charged with the administration and enforcement of the Charitable Registration and Investigation Act, P.L. 1994, c.16.

Case Notes

The Charities Registration and Investigation Section of the Division of Consumer Affairs is entrusted with the administration and enforcement of the Charitable Fund Raising Act of 1971. *Degnan v. Nordmark & Hood Presentations, Inc.*, 177 N.J.Super. 186, 425 A.2d 1091 (App.Div.1981) appeal dismissed 87 N.J. 427, 434 A.2d 1098.

13:48-1.2 Applicability

(a) These rules shall govern the registration and charitable fund raising activities of charitable organizations, federated fund raising organizations, professional fund raisers, solicitors, and commercial co-venturers, pursuant to the Charitable Registration and Investigation Act of 1994.

(b) These rules shall apply to any person engaging within this State in any of the activities regulated by the Act, including persons whose principal place of business is located outside this State.

(c) Upon initial request by a potential registrant, or as the result of independent information received by the Attorney General, a determination form, to determine the applicability of the Act, will be supplied. There is no fee for this form, which may be requested by telephone, facsimile, or letter sent to the address set forth in N.J.A.C. 13:48-1.4.

Case Notes

Contract whereby defendants agreed to put on a circus for a registered charity for costs plus 50 percent of profits fell within the statutory proscription in that it involved use of an unrequested professional fundraiser and provided for compensation beyond amount permitted by statute; Appellate Division of Superior Court has exclusive review of administrative decisions. *Degnan v. Nordmark & Hood Presentations, Inc.*, 177 N.J.Super. 186, 425 A.2d 1091 (App.Div.1981) appeal dismissed 87 N.J. 427, 434 A.2d 1098.

13:48-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

“Act” means the Charitable Registration and Investigation Act of 1994, P.L. 1994, c.16.

“Address” means the principal street address where a person or organization is most reasonably likely to receive actual notice of a mailing.

“Attorney General” means the Attorney General of the State of New Jersey or, as applicable, the Attorney General’s designee, the Director of the Division of Consumer Affairs.

“Caging agent” means the person, firm or company responsible for retrieving responses to solicitations from a return post office box, depositing any monies received and reporting the amount of contributions and non-contributions from the responses.

“Campaign” means an operation or plan organized to solicit a contribution to further a charitable organization’s stated or implied purpose.

“Certified public accountant” includes an individual licensed by the New Jersey Board of Accountancy to practice as a certified public accountant or its equivalent in another jurisdiction; an individual licensed as a public accountant by the New Jersey Board of Accountancy to practice as a public accountant or its equivalent in another jurisdiction; or an individual licensed to practice as a registered municipal accountant by the New Jersey Board of Accountancy.

“Charitable organization” means:

1. Any person determined by the Federal Internal Revenue Service to be a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3); or

2. Any person who is, or holds himself or herself out to be, established for any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation, or an appeal which has a tendency to suggest there is a charitable purpose to any such solicitation.

“Charitable purpose” means:

1. Any purpose described in section 501(c)(3), of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3); or

2. Any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary objective, or an objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

“Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit a charitable organization or purpose.

“Commercial co-venturer” means any person, who for profit or other consideration, is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization, and who advertises that the purchase or use of his goods, services, entertainment or any other thing of value will benefit a charitable organization.

“Commission on Higher Education” means the agency created by N.J.S.A. 18A:3B-13.

(g) The Attorney General will accept a copy of a current audit performed for a State agency such as the New Jersey Department of Community Affairs or the New Jersey Department of Education, an A-133 audit performed for the United States government, or an audit performed for another state agency or officer in compliance with the laws of that state, provided that the audit is substantially similar in content and scope to the audit required by this section.

**SUBCHAPTER 6. REGISTRATION OF
CHARITABLE ORGANIZATIONS—
REGISTRATION OF LOCAL UNITS BY
PARENT ORGANIZATIONS**

13:48-6.1 Registration of local units by parent organizations

(a) A parent organization may, but is not required to, register any or all of its local units. If a parent organization elects to register one or more of its local units, it shall follow the procedures set out in this subchapter.

(b) A local unit shall register if it has not been registered by its parent organization pursuant to this subchapter or if it does not meet the requirements of (c) below. Each local unit shall be responsible to determine if it has been registered by the parent organization.

(c) A local unit of a parent organization which meets all of the following requirements shall be considered registered:

1. The parent organization is registered pursuant to the Act;
2. All solicitations on behalf of the local unit are performed by members of the local unit or volunteers;
3. The local unit does not employ a fund raising counsel or independent paid fund raiser or utilize paid staff in the preparation of materials or records concerning or related to the solicitations; and
4. The local unit:
 - i. Does not receive gross contributions in excess of \$25,000 during the fiscal year; or
 - ii. Is an organization that limits membership to persons who are, or formerly were, employed as officers statutorily authorized to enforce the criminal laws of this State.

(d) The parent organization also shall provide all of the following information:

1. Upon initial registration, a copy of the parent organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and by-laws.
2. Upon initial registration and annual renewal, a separate statement that provides the following:
 - i. The name, address, and phone number of all local units within this State that it is registering;
 - ii. The amount of gross contributions received by each such unit and the purpose or purposes for which these funds were raised in the preceding fiscal year; and
 - iii. A statement asserting that each such local unit has provided the parent organization with a written statement reporting the information included on its behalf and asserting that the local unit meets all of the requirements set forth in this subchapter.

**SUBCHAPTER 7. REGISTRATION OF FUND
RAISING COUNSEL AND INDEPENDENT
PAID FUND RAISER**

13:48-7.1 General requirements

(a) A fund raising counsel, independent paid fund raiser or any assignee, subcontractor or other successor in interest shall, before commencing performance of any service or any solicitations within this State:

1. Register annually with the Attorney General; and
2. File contracts or service agreements pursuant to N.J.A.C. 13:48-9.1.

(b) The registration statement shall be on a form prescribed by the Attorney General, which shall contain the following information:

1. The business name, address, Federal tax identification number, and telephone number of the fund raising counsel or independent paid fund raiser;
2. The name, address, and home telephone number of the principal executive officer and the principal financial officer, if any, of the fund raising counsel or independent paid fund raiser;

3. A statement whether the fund raising counsel or independent paid fund raiser has or intends to have custody, control, or access to any charitable organization's money;

4. A statement whether:

i. The fund raising counsel or independent paid fund raiser is authorized or permitted by any other state to solicit contributions, and if so, a listing of the states in which authorization has been obtained.

ii. The fund raising counsel or independent paid fund raiser or any of its present officers, directors, executive personnel or trustees have been convicted of any criminal offense committed in any jurisdiction in connection with the performance of activities regulated under the Act or these regulations, or any criminal offense involving untruthfulness or dishonesty, or any criminal offense relating adversely to the registrant's fitness to perform activities regulated by the Act or these regulations and a listing of the jurisdictions. For the purpose of this subparagraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction.

iii. The fund raising counsel or independent paid fund raiser has been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets and a listing of those jurisdictions.

iv. The fund raising counsel's or independent paid fund raiser's registration has been denied, suspended or revoked by any jurisdiction, together with the reasons for that denial, suspension, or revocation and a listing of those jurisdictions.

v. The fund raising counsel or independent paid fund raiser has voluntarily entered into an assurance or voluntary discontinuance or agreement with any jurisdiction or Federal agency or officer and a listing of those jurisdictions;

5. Photocopies of any and all written documentation (such as a court order, administrative order, judgment, formal notice or written assurance) supporting an affirmative response to (b)4ii, iii, iv and v above;

6. A list of all the charitable organizations which have engaged or retained the services of the fund raising counsel or independent paid fund raiser within the last five years to plan or conduct solicitation activities in the State of New Jersey; and

7. Any other information as may be requested of the applicant.

(c) The accuracy and completeness of all information contained in the registration statement shall be signed and sworn to by the principal executive officer.

(d) The registration statement shall be accompanied by the fee specified in N.J.A.C. 13:48-2.1. A fund raising counsel or independent paid fund raiser which is a partnership or corporation shall pay a single fee.

(e) Any material change in any information, including registration information required by N.J.A.C. 13:48-9.1, filed with the Attorney General shall be reported in writing to the Attorney General within 10 business days after the change.

(f) The registration of each fund raising counsel or independent paid fund raiser shall expire annually on June 30.

13:48-7.2 Bond requirements for fund raising counsel and independent paid fund raisers

(a) A fund raising counsel or independent paid fund raiser who has or intends to have custody, control, or access to a charitable organization's money shall, at the time of making application for registration, file with the Attorney General a bond in which it shall be the principal obligor for the sum of \$20,000 for the initial registration.

(b) The bond shall provide for one or more sureties whose liability in the aggregate shall equal at least \$20,000.

(c) The fund raising counsel or independent paid fund raiser shall maintain the bond in effect during the entire period of registration.

(d) The bond shall be payable to the Attorney General for the benefit of any person who may have a cause of action against the principal obligor of the bond for any violation of the Act.

(e) If at any time, the Attorney General receives information from any state or Federal agency or notice from a court of competent jurisdiction that a surety on any bond is not acceptable, the Attorney General shall provide notice to the fund-raising counsel or the independent paid fund raiser by certified mail, return receipt requested, whereupon a new bond shall be provided, or a request for a hearing made, to the Attorney General within 10 days following the registrant's receipt of the notice.

1. If the registrant fails to provide a new bond after the registrant has been given notice and an opportunity for a hearing, the Attorney General may revoke or suspend the fund raising counsel's or independent paid fund raiser's registration.

2. The Attorney General may rely upon a determination by any state or Federal agency or notice from a court of competent jurisdiction in assessing the adequacy of a surety.

(f) If the surety wishes to cancel the bond, the surety shall give 60 days advance written notice by certified mail to the Attorney General before the surety may cancel. The 60 days shall begin to run on the day following the Attorney General's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

(g) If a surety gives notice pursuant to (f) above, a fund raising counsel or independent paid fund raiser shall replace the bond before the expiration of the existing bond or cease fundraising activities.

Amended by R.2005 d.70, effective February 22, 2005.
See: 36 N.J.R. 4370(a), 37 N.J.R. 618(a).

In (a), deleted the last sentence.

13:48-7.3 Requirements for effective registration of fund raising counsel and independent paid fund raisers; failure to comply

(a) A fund raising counsel or independent paid fund raiser shall not be deemed registered pursuant to the Act unless the fund raising counsel or the independent paid fund raiser has met all of the requirements of the Act, has obtained the requisite bond and has made all of the filings with the Attorney General as required by this subchapter.

(b) It shall be a violation of the Act for any fund raising counsel or independent paid fund raiser to take custody or control of, or to have access to, a charitable organization's money prior to filing a bond with the Attorney General and accomplishing registration in accordance with the Act and these regulations.

SUBCHAPTER 8. REGISTRATION OF SOLICITORS

13:48-8.1 General requirements

(a) Each solicitor for an independent paid fund raiser shall register or be registered by an independent fund raiser annually with the Attorney General.

(b) The registration shall be signed by the solicitor on a form prescribed by the Attorney General, which shall contain the following information:

1. The name and address of the solicitor;
2. The name, address, registration number, and telephone number of the independent paid fund raisers who employ the solicitor; and

3. Any other information as may be requested of the applicant.

(c) The registration shall be accompanied by the fee specified in N.J.A.C. 13:48-2.1(a)8.

(d) Any material change in any information filed with the Attorney General including, but not limited to, a change in the independent paid fund raiser by whom the solicitor is retained shall be reported in writing by the solicitor or the independent paid fund raiser to the Attorney General within 10 business days of the change.

(e) The registration of each solicitor shall expire annually on June 30.

SUBCHAPTER 9. CONTRACTS; CHARITABLE SALES PROMOTIONS REPORTS

13:48-9.1 Contract, service agreement, and report requirements for fund raising counsel and independent paid fund raiser

(a) A fund raising counsel or independent paid fund raiser shall file a copy of any contract with a charitable organization with the Attorney General at least 10 days prior to the performance of any service within this State. An additional copy shall be filed by the charitable organization, which obligation cannot be delegated to the fund raising counsel or independent paid fund raiser.

(b) The contract shall contain a description of the relationship between the charitable organization and the fund raising counsel or independent paid fund raiser and shall include the following information:

1. A statement of the respective obligations of the professional fund raiser and the charitable organization;
2. A clear statement of the fees or rate which will be paid to the fund raising counsel or independent fund raiser;
3. The projected commencement and termination dates of the solicitation campaign;
4. A statement as to whether the fund raising counsel or independent paid fund raiser will have custody, control or access to contributions;
5. A statement as to the guaranteed minimum percentage of the gross receipts from contributions which will be

remitted to the charitable organization, if any, or if the solicitation involves the sale of goods, services or tickets to a fund raising event, the percentage of the purchase price which will be remitted to the charitable organization, if any. Any stated percentage shall exclude any amount which the charitable organization is to pay as fund raising costs;

6. A statement as to the percentage of the gross revenue from which the fund-raising counsel or independent paid fund raiser will be compensated. If the compensation of the fund raising counsel or independent paid fund raiser is a flat fee, which is not contingent upon the number of contributions or the amount of revenue received, the compensation shall be expressed as a reasonable estimate of the percentage of anticipated gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the fund raising counsel or independent paid fund raiser regarding the solicitation to be conducted by the independent paid fund raiser;

7. The bank branch, address, and each account number where all monies will be deposited;

8. The mailing address or addresses which will receive any contributions;

9. The name and address of any caging or escrow agent retained in connection with the performance of the contract; and

10. The names of the individuals who will be authorized signatories for the accounts where all monies are deposited.

(c) The contract shall be signed by two authorized officials of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer of the fund raising counsel or independent paid fund raiser.

(d) Each contract filed by the fund raising counsel or independent paid fund raiser shall be accompanied by the fee specified in N.J.A.C. 13:48-2.1(a)9.

(e) A fund raising counsel or independent paid fund raiser shall file a report on forms prescribed by the Attorney General as follows:

1. The report shall be filed within 40 days after the expiration of the contract;

2. For campaign contracts lasting more than 12 months, the report must be filed within 40 days of the end of each of the charitable organization's fiscal years;

3. Upon the completion of a campaign contract lasting more than 12 months, a final report shall be filed within 40 days after the expiration of the contract or service agreement;

4. Any financial campaign report filed pursuant to this subchapter shall contain the following information:

i. Gross revenues;

ii. An itemization of all expenses incurred;

iii. The mailing address or addresses which received the contributions;

iv. The name and address of any company or any individuals who picked up any contributions;

v. The bank branch, address and account numbers where all monies were deposited;

vi. The names of the individuals who are or were signatories on the accounts where all monies were deposited; and

vii. Any other information as may be requested of the fund raising counsel or independent paid fund raiser.

5. This report shall be signed by an authorized official from the fund raising counsel or independent paid fund raiser;

6. In addition, the report shall be reviewed and signed by an authorized official from the charitable organization; and

7. The financial campaign report shall be accompanied by the fee specified in N.J.A.C. 13:48-2(a)11.

13:48-9.2 Contracts with commercial co-venturers; sales promotion report

(a) A charitable organization which permits a charitable sales promotion to be conducted on its behalf shall obtain a written contract from the commercial co-venturer and shall file a copy of the agreement with the Attorney General at least 10 business days prior to the initiation of that charitable sales promotion, solicitation, or venture agreement.

(b) The charitable sales promotion contract shall include, but is not limited to, the following information:

1. A description of the charitable sales promotion, solicitation, or venture undertaken, and dates to be commenced and terminated;

2. The name and address of the charitable organization and of the commercial co-venturer;

3. The dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose. If the actual dollar amount or percent cannot reasonably be determined prior to the final date of the charitable sales promotion, the commercial co-venturer shall disclose an estimated dollar amount or percent. Any such estimate shall be reasonable and shall be based upon all of the relevant facts known to the commercial co-venturer and the charitable organization regarding the charitable sales promotion; and