

# CHARITABLE SOLICITATION COMPLIANCE

An explanation of increasingly complex state charity requirements



## Charitable solicitation compliance is not optional. It is the law.

Charitable solicitation is regulated on the state-level, and the requirements vary by state. 45 states have charitable solicitation laws; of those, 41 states require registration and the remaining 4 states require disclosure statements to be included on solicitations. As a prerequisite to registration, some states require an additional filing process with the Secretary of State, called foreign qualification, and appointment of a registered agent.

Online fundraising subjects many organizations to charitable registration nationwide. It is up to charities to be in compliance with charitable solicitation laws, and organizations should pay close attention to the requirements as they relate to fundraising online.

Penalties for noncompliance can be severe and include fines, loss of state recognition of tax exempt status, and denial of the right to solicit. Noncompliance can damage relationships with donors and grantmakers who expect the charities they support to be compliant. The cost of noncompliance is too great to ignore.

Compliance with state charitable solicitation laws is challenging; however, it is necessary. Taking a proactive approach to charitable solicitation registration is the best course of action to ensure compliance and avoid negative consequences.

## Registration Requirements

41 states require charitable solicitation registration. Solicitations made by phone, direct mail, in person, by email, or online may subject a charity to registration requirements. In addition, solicitations through professional solicitors, fundraising consultants, and commercial co-ventures trigger registration requirements.

Almost every state requires charities to register before they begin soliciting, regardless of whether any donations are received. California allows charities to begin soliciting before registering. Charities have 30 days to register in California after the date that assets are first received. In most states, the government agency managing registration is the Charities Division of the Office of the Attorney General or the Secretary of State.

## Charitable Registration Forms

Charitable solicitation registrations generally consist of the state's specific form, supporting documents, and a filing fee. Fees vary by state and are typically calculated based on total gross revenue in the previous year or amount of contributions received in the state. Currently, Arkansas has the lowest registration fee of \$0. For most organizations, the highest registration fee is \$412.50 for the District of Columbia. However, Massachusetts fees range from \$135 to \$2,100; organizations with annual revenue over \$100,000,000 are subject to the \$2,100 fee.

### Charitable Registration Materials

Typically, registration forms are accompanied by the following documents:

- Articles of Incorporation, charter, or other organizing document
- Bylaws
- IRS Determination Letter
- IRS 1023 application
- List of all officers, directors, trustees, and key executives
- Lists of affiliates
- IRS Form 990 and state-specific supplement, if required
- Audited financial statements, if required
- Contracts with professional fundraisers, consultants, and commercial co-ventures

State forms may require charities to disclose solicitation methods, the individuals responsible for fundraising and managing funds, and banks in which funds are deposited. Most states require the background of the organization and executives, including whether the organization's right to solicit has ever been denied and any conflicts of interest that exist.

## Exemptions

In many states, certain charities can be exempt from registration, including those that receive less than a certain amount of contributions annually. Religious organizations, hospitals, and schools can also be exempt. Ironically, exemptions themselves typically require an application and also require renewal on an annual basis. For those reasons, exemptions may reduce an organization's state fees but hardly limit the time investment needed. Organizations that file exemptions still face the challenges of determining changing state requirements, preparing applications, tracking renewals, and monitoring fluctuations in annual contributions.

## Renewal Requirements

Charitable solicitation registrations typically must be renewed on an annual basis. Like initial registrations, renewal filings are complex and require the state form and supporting documentation. Most states have a separate process and fee structure for charitable solicitation renewals. Organizations can expect to submit, along with their renewal form, the most recently filed annual report to the IRS (Form 990). Some states require nonprofits of a certain size to also submit a report from an independent auditor. Additionally, certain states require charities to provide an updated copy of the organizing document or bylaws, if amended.

Charitable registrations must be renewed on an annual basis in every state except Georgia and the District of Columbia. Georgia and D.C. currently renew on a biennial basis. Renewal due dates are usually set based on the organization's fiscal year end or on the anniversary of registration.

Each state requires renewal applications to be submitted at different times throughout the year. Keeping track of varied due dates is one of the major challenges of charitable solicitation compliance.

### Common Charitable Solicitation Renewal Deadlines

There are three periods when the majority of state renewals are due:

1. On a fixed date for all organizations, such as September 1st in Alaska
2. On the anniversary of registration, such as in Florida and Georgia
3. Based on the close of a charity's tax year, usually four months and fifteen days later, such as South Carolina

Some states have entirely different renewal dates. Keep in mind that renewal dates are subject to change.

## Extensions

For organizations that have a calendar tax year, renewal deadlines of May 15 pose an additional challenge, since that is the same day that Form 990 is due to the IRS. Larger organizations tend to struggle to meet the state and IRS deadlines. The 990 and financial audit are commonly not ready in time to allow the organization to file with the states. In those cases, it is necessary to file an extension with each state in order to stay in good standing.

## Filing for an Extension

At the state level, extensions to the charitable solicitation renewal are filed in various ways, including:

1. Submitting a copy of IRS Form 8868 to the charity official, such as in Hawaii
2. Written, faxed, or email request, such as in Illinois
3. Filing an entire renewal packet without the Form 990, such as in Kansas or South Carolina
4. Using the state's own form, such as in New Jersey

Some states, like New York and Ohio, grant automatic extensions, and no filing is required. In each state, extensions are processed differently, and do not grant the same length of time. Generally, the length of the extension is 90 days or 180 days, but can be as little as 60 days and as much as a year.

Whether or not organizations are required to file an extension varies state-by-state, and can even vary year-to-year for the same organization. The earlier that the audit and Form 990 are complete, the earlier the organization can submit its fundraising registration renewals. Failure to file extensions can lead to late fees and penalties for lapsed registration, so it is important to treat extensions like renewal applications.

## Filing Methods

Almost every state requires organizations to file initial and renewal registrations by paper. Charities will send a packet to the state charity official using the United States Postal Service or a private company like UPS. For large organizations, it is not uncommon that packets reach 100 or 200 pages for a single state. Logistically speaking, it is important to get renewals in early, as some states count a packet as received on the date of receipt rather than a postmark and can assess a late fee.

In Colorado, Hawaii, New Mexico, Mississippi, and Ohio, online filing is required. Several other states either have or are transitioning to an online filing system: District of Columbia, North Carolina, Oklahoma, Michigan, New York, Tennessee, and Utah. Online filing is both a blessing and a curse. Typically, applications are processed faster, and deficiencies are immediately noted. However, online applications can create more work in having to set up accounts, learn to use unfriendly state software, and enter data. One such example is manually entering the names, addresses, titles, and salaries of each officer, director, and executive into Colorado's website. Charities that have more than ten of these individuals have to spend the time keying all of these parties one by one.

Some states allow charities to file by email or fax, but for large organizations, these methods tend to be more inconvenient than sending a packet by mail.

## Unified Registration Statement (URS)

The Unified Registration Statement was an attempt to make charitable solicitation registration uniform across states and less complex for applicants. Unfortunately, the URS has not accomplished either goal successfully. 32 of 41 states accept the URS, and the other 9 do not. Of those 32 accepting the URS, 13 require supplements, which are typically a state-specific form.

The URS tends to add complexity rather than remove it. The form itself is longer and requires more information than state-specific forms, and examiners take longer to process these applications. Examiners tend to be less familiar with the URS and can request more information to process the registration. Using the state's own form typically leads to swifter approval and less time spent on the applications.

At the end of the day, what was in theory a very good idea, has in practice become an unwieldy, unnecessarily confusing document.

## Online Fundraising

Online fundraising allows charities to access a broader donor base. Fundraising online can take many forms including crowdfunding, website "Donate Now" buttons, email campaigns, and social media. The downside is that fundraising online is likely to subject organizations to charitable registration requirements in multiple states. Providing the option for making a donation online could trigger a charity's requirements to register in potentially 41 states. Charities that fundraise online without carefully monitoring their registration obligations can be at risk for noncompliance.

As state legislation catches up to the pace of technology, different states regulate online fundraising in different ways. In 2001, the National Association of State Charity Officials (NASCO) released the Charleston Principles as guidelines to the states about how to regulate internet fundraising.

### The Charleston Principles

The Charleston Principles suggest that registration should be required if a nonprofit has an interactive webpage that allows donors to give, such as a “Donate Now” button, and either:

1. sends targeted emails to someone they know is in a given state or encourages people in a state to give

*or*

2. receives contributions from a state on an ongoing, repeated, or substantial basis.

The Charleston Principles were created as guidelines for states to follow; however, they are not law. States like Pennsylvania have elected to follow the Charleston Principles, but many states, such as Florida, have not. Florida law differs significantly from the Charleston Principles in determining what online behavior constitutes solicitation. Florida considers organizations to be soliciting in the state by merely maintaining a “Donate Now” button on their website.

Ultimately, there are two ways to ensure compliance: first, by registering or filing an exemption in every state; or second, by clearly indicating on the charity’s website that it only accepts contributions from the states where it has registered (as well as those that do not require registration). Small organizations must weigh the cost and time investment of nationwide registration versus prioritizing their registrations. Some organizations face “paralysis by analysis,” where they become overwhelmed by state compliance requirements and do nothing at all. Compliance is not optional, but organizations can take tangible steps to be proactive.

## Foreign Qualification and Registered Agent

As a prerequisite to charitable solicitation registration, certain states require charities to file with the Corporations Division of the Secretary of State. In these states, charities must apply for a certificate of authority to transact operations as an out-of-state, or foreign, nonprofit corporation. This process is called foreign qualification. The states that require foreign qualification are California, Colorado, District of Columbia, Illinois, Michigan, Nevada, North Dakota, and Oregon. Florida and Georgia strongly encourage, but do not require, foreign qualification.

In each state where foreign qualification is required, nonprofit corporations must appoint a registered agent for service of process and maintain that agent continuously. Approximately ten more states require a registered agent but not qualification. The registered agent must be located within the state's borders, and its duties are to receive service of process and other legal and government notices on the organization's behalf. Most organizations appoint a corporate registered agent with a presence in all 50 states and the District of Columbia. With a reliable corporate registered agent, organizations can consolidate representation in all states with one provider and ensure receipt of time-sensitive legal documents. A registered agent should also help an organization stay in good standing with Corporations Division.

The process of foreign qualifying involves filing an application for authority to transact business and appointment of a registered agent. The application requires documents from the state of domicile, which is usually a certificate of existence (commonly known as "good standing") and/or certified copies of Articles of Incorporation and all amendments.

Maintaining good standing of each foreign registration is required. The state Corporations Divisions require filing periodic reports to maintain good standing, typically annually. Periodic due dates vary by state, and are not the same as the charitable solicitation renewal. It is equally important to track and file these reports on time.

## Disclosure Statements

About half of all states require disclosure statements to be included on solicitations. The specific required language varies, but generally must contain where a donor can obtain more information about a charity, either from a government agency or from the organization itself. The purpose of disclosure statements is to protect citizens from unregulated or illegitimate charities and to allow prospective donors to research a charity further before making a gift.

Disclosures generally must be included on written solicitations, acknowledgments of donations, and on an organization's website. This is an example of a disclosure statement for Pennsylvania:

*"The official registration and financial information of (insert the legal name of the charity as registered with the department) may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 732-0999. Registration does not imply endorsement."*

Disclosure statements are typically required by statute, but whether they are required in a specific situation often depends on whether the organization uses certain solicitation methods, such as professional solicitors, call centers, or external mailing facilities. As donors become more educated, many come to expect disclosure statements on solicitations.

## Consequences of Noncompliance

State penalties for noncompliance are diverse and can be severe. Soliciting prior to registering, failure to register after receiving funds, filing late renewal applications, or complaints by the public against an organization can all trigger adverse consequences. States can assess fines and late fees, prosecute officers and directors, stop recognizing an organization's tax exempt status, and deny an organization's right to solicit funds entirely.

Some states, like South Carolina, impose penalties for missing a renewal up to \$2,000 per year. Per state statute, Mississippi can charge up to \$25,000 after multiple infractions. Pennsylvania imposes a late fee of \$25 every month an organization solicits without registering after receiving \$25,000 in contributions. In California, a delinquent organization is forbidden from using charitable funds to pay delinquency fees; an officer or director must write a personal check to cover the penalty. Officers and directors can face criminal and civil penalties for knowingly submitting false information. California can revoke an organization's franchise tax exemption, which results in a minimum \$800 annual tax that profit corporations and LLCs are required to pay. Some states, like Virginia, publish notices of delinquency, which can lead to bad PR. Arguably the worst penalty of all is losing the right to solicit altogether.

Charities must also consider their relationships to prospective and existing donors, whether they are foundations, corporations, or individuals. Experienced donors are becoming increasingly aware of the requirements and expect the charities to which they donate to be compliant. Noncompliance can delay receipt of a donation or grant, or could result in losing the opportunity altogether. Some foundations request proof of charitable registration before releasing grant funds. Contracts with professional solicitors or fundraising consultants may not be able to take effect until state registrations are in place. Corporate and individual donors may ask for proof of registration or use the state online databases to search for a charity's registration status. Worst of all, organizations could lose donations and not even know it, so the actual cost of noncompliance could be unknown.

## Moving Forward

Compliance with state charitable solicitation laws is challenging; however, it is necessary. Understanding the requirements is the first step to establishing compliance. Nonprofits should carefully research the states in which their organizations are required to register and work to address any gaps in registration. Taking a proactive approach to charitable solicitation registration will help charities ensure compliance and avoid negative consequences.

## Charitable Solicitation Registration Reference Table

| State                | Is charitable registration required? | What are the fees for initial registration? | Is foreign qualification required? | Is a registered agent required? | Is a disclosure statement required? |
|----------------------|--------------------------------------|---|------------------------------------|---------------------------------|-------------------------------------|
| Alabama              | Yes                                  | \$25  | No                                 | No                              | No                                  |
| Alaska               | Yes                                  | \$40  | No                                 | No                              | No                                  |
| Arizona              | No                                   | N/A   | No                                 | No                              | No                                  |
| Arkansas             | Yes                                  | \$0   | No                                 | No                              | Yes                                 |
| California           | Yes                                  | \$25  | Yes                                | Yes                             | No                                  |
| Colorado             | Yes                                  | \$10  | Yes                                | Yes                             | Yes                                 |
| Connecticut          | Yes                                  | \$50  | No                                 | No                              | No                                  |
| Delaware             | No                                   | N/A   | No                                 | No                              | Yes                                 |
| District of Columbia | Yes                                  | \$412.50                                    | Yes                                | Yes                             | No                                  |
| Florida              | Yes                                  | \$10 - \$400                                | Yes                                | Yes                             | Yes                                 |
| Georgia              | Yes                                  | \$35  | No                                 | No                              | Yes                                 |
| Hawaii               | Yes                                  | \$0   | No                                 | Yes                             | No                                  |
| Idaho                | No                                   | N/A   | No                                 | No                              | No                                  |
| Illinois             | Yes                                  | \$15  | Yes                                | Yes                             | Yes                                 |
| Indiana              | No                                   | N/A   | No                                 | No                              | No                                  |
| Iowa                 | No                                   | N/A   | No                                 | No                              | Yes                                 |
| Kansas               | Yes                                  | \$35  | No                                 | No                              | No                                  |
| Kentucky             | Yes                                  | \$0   | No                                 | Yes                             | No                                  |
| Louisiana            | Yes*                                 | \$25  | No                                 | Yes                             | No                                  |
| Maine                | Yes                                  | \$50  | No                                 | No                              | Yes                                 |
| Maryland             | Yes                                  | \$0 - \$300                                 | No                                 | No                              | Yes                                 |
| Massachusetts        | Yes                                  | \$135 - \$2,100                             | No                                 | No                              | No                                  |
| Michigan             | Yes                                  | \$0   | Yes                                | Yes                             | Yes                                 |
| Minnesota            | Yes                                  | \$25  | No                                 | Yes                             | Yes                                 |
| Mississippi          | Yes                                  | \$53  | No                                 | Yes                             | Yes                                 |
| Missouri             | Yes**                                | \$0   | No                                 | No                              | No                                  |
| Montana              | No                                   | N/A   | No                                 | No                              | No                                  |
| Nebraska             | No                                   | N/A   | No                                 | No                              | No                                  |
| Nevada               | Yes                                  | \$0   | Yes                                | Yes                             | Yes                                 |
| New Hampshire        | Yes                                  | \$25  | No                                 | Yes                             | No                                  |
| New Jersey           | Yes                                  | \$30 - \$250                                | No                                 | No                              | Yes                                 |
| New Mexico           | Yes                                  | \$0   | No                                 | Yes                             | No                                  |
| New York             | Yes                                  | \$25  | No                                 | No                              | Yes                                 |
| North Carolina       | Yes                                  | \$0 - \$200                                 | No                                 | No                              | Yes                                 |
| North Dakota         | Yes                                  | \$25  | Yes                                | Yes                             | No                                  |
| Ohio                 | Yes                                  | \$0   | No                                 | No                              | Yes                                 |
| Oklahoma             | Yes                                  | \$15 or \$65                                | No                                 | No                              | No                                  |
| Oregon               | Yes                                  | \$0   | Yes                                | Yes                             | Yes                                 |
| Pennsylvania         | Yes                                  | \$15 - \$250                                | No                                 | No                              | Yes                                 |
| Rhode Island         | Yes                                  | \$90  | No                                 | No                              | Yes                                 |
| South Carolina       | Yes                                  | \$50  | No                                 | Yes                             | No                                  |
| South Dakota         | No                                   | N/A   | No                                 | No                              | No                                  |
| Tennessee            | Yes                                  | \$50  | No                                 | No                              | No                                  |
| Texas                | Yes***                               | \$200, \$250 or \$500                       | No***                              | No                              | No                                  |
| Utah                 | Yes                                  | \$78  | No                                 | Yes                             | No                                  |
| Vermont              | No                                   | N/A   | No                                 | No                              | No                                  |
| Virginia             | Yes                                  | \$110 - \$425                               | No                                 | Yes                             | Yes                                 |
| Washington           | Yes                                  | \$60  | No                                 | No                              | Yes                                 |
| West Virginia        | Yes                                  | \$15 or \$50                                | No                                 | No                              | Yes                                 |
| Wisconsin            | Yes                                  | \$15  | No                                 | No                              | Yes                                 |
| Wyoming              | No                                   | N/A   | No                                 | No                              | No                                  |

## Notes:

\* Required only if the organization is using professional fundraisers

\*\* 501(c)(3)s request a letter of exemption from the Attorney General

\*\*\* Registration with the Attorney General is required for solicitation for law enforcement, public safety or veterans' causes; registration with the Secretary of State is required for telephone solicitors and public safety organizations, promoters, and publications

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Founded in 2012 by a group of government licensing professionals and technology experts, Harbor Compliance is a leading provider of compliance solutions for organizations of all types and sizes. Headquartered in Lancaster, Pennsylvania, Harbor Compliance partners with organizations in every state and over 25 countries abroad to help solve the most challenging compliance problems. Our clients range from the largest organizations in the country to fast-growth startups, and our deep industry expertise allows us to fully manage government licensing compliance in both nonprofit and business sectors. For more information on Harbor Compliance, please visit us online at [www.harborcompliance.com](http://www.harborcompliance.com) or call us at 888-995-5895.

## Our Nonprofit Expertise

Harbor Compliance provides services and software to help executive teams and boards manage compliance. We have a proven track record of success in all stages and aspects of charitable solicitation compliance including registrations, exemptions, extensions, renewals, corporate qualifications, and registered agents. Our unique, collaborative approach combines the expertise of tax exemption specialists and state registration experts to provide the most complete knowledge base to our clients. Our full service management paired with our cloud-based software provide comprehensive solutions for compliance.



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